OFFICE OF
THE INSPECTOR GENERAL

SOCIAL SECURITY ADMINISTRATION

THE SOCIAL SECURITY ADMINISTRATION'S USE OF ADMINISTRATIVE SANCTIONS IN THE OLD-AGE, SURVIVORS AND DISABILITY INSURANCE PROGRAM

September 2008 A-07-07-17052

AUDIT REPORT

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- **Promote economy, effectiveness, and efficiency within the agency.**
- **Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- **Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- **Independence to determine what reviews to perform.**
- **Access to all information necessary for the reviews.**
- **Authority to publish findings and recommendations based on the reviews.**

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

SOCIAL SECURITY

MEMORANDUM

Date: September 19, 2008 Refer To:

To: The Commissioner

From: Inspector General

Subject: The Social Security Administration's Use of Administrative Sanctions in the Old-Age, Survivors and Disability Insurance Program (A-07-07-17052)

OBJECTIVE

Our objective was to determine the extent to which the Social Security Administration (SSA) used administrative sanctions as a deterrent to fraud and abuse in the Old-Age, Survivors and Disability Insurance (Title II) program.

BACKGROUND

In 1950, Congress enacted the Old-Age, Survivors and Disability Insurance program under Title II of the *Social Security Act*.[1] Under the Title II program, monthly benefits are paid to retired or disabled workers and their families and to survivors of deceased workers. At the end of 2007, almost 50 million individuals were receiving Title II benefits.[2]

Amendments to the *Social Security Act* authorize SSA to suspend benefits as a deterrent to fraud and abuse of its programs and operations.[3] Specifically, section 207 of the *Foster Care Independence Act of 1999* amended the *Social Security Act* to authorize SSA, under certain circumstances, to impose administrative sanctions against any person who knowingly makes, or causes to be made, fraudulent or misleading statements or omissions of material fact for use in determining benefit eligibility or amount with a knowing disregard for the truth.[4] Further, section 201 of the *Social Security Protection Act of 2004* broadened the range of actions that result in an administrative sanction to include failure to report an event that is material to eligibility or

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[1] The *Social Security Act* § 201 42 U.S.C. § 401; 20 C.F.R. § 404.1.

[2] SSA's, *The 2008 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds (April 10, 2008).*

[3] SSA, POMS GN 02604.400.A.

[4] Pub. L. No. 106-169 § 207; *The Social Security Act* § 1129A; 42 U.S.C. § 1320a-8a.

benefit amount if the person knows or should know that failure to report is misleading.[5] This change was included in SSA's administrative sanctions policy effective November 24, 2006.[6]

According to SSA's administrative sanctions process, individuals[7] who are potentially sanctionable must be referred to the Office of the Inspector General (OIG) before an administrative sanction can be imposed.[8] The OIG evaluates the referral and may investigate and present the case for potential criminal prosecution, civil prosecution or civil monetary penalties (CMP).[9] If the referral is declined for prosecution or CMP, the matter is referred back to SSA, and SSA decides whether to impose an administrative sanction. If SSA imposes a sanction, the individual will not receive benefit payments for the duration of the sanction period: 6 months for a first occurrence, 12 months for a second occurrence and 24 months for any subsequent occurrence.[10]

[5] Pub. L. No 108-203 § 201; SSA, POMS GN 02604.400.A.

[6] SSA, POMS GN 02604.405; The failure to report must be discovered on or after November 27, 2006 (SSA, POMS GN 02604.405A.1.B).

[7] We use the term "individual" to refer to persons who were receiving Social Security benefits (beneficiaries) and persons who were potentially sanctionable but were not receiving Social Security benefits.

[8] The OIG receives allegations of fraud from SSA employees and third parties. Third parties include law enforcement officials, private citizens, and public agencies.

[9] Under section 1129 of the *Social Security Act*, the OIG may impose a CMP against certain persons who make (or cause to be made) false statements or omissions of material facts to SSA. A penalty of up to $5,000 may be imposed for each false statement or representation. A person subject to a penalty may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments paid as a result of such false statement or representation.

[10] SSA, POMS GN 02604.405.D.

From October 2000 through March 2008, SSA imposed 1,557 administrative sanctions.[11] Of these, 275 were Title II administrative sanctions. Table 1 provides a breakdown of the Title II administrative sanctions by Region.[12]

Table 1
Title II Sanctions Imposed by SSA Region[13]

Region	Number of Sanctions
Boston	2
New York	39
Philadelphia	6
Atlanta	67
Chicago	60
Dallas	32
Kansas City	38
Denver	0
San Francisco	13
Seattle	18
TOTAL	**275**

RESULTS OF REVIEW

We found that SSA rarely used administrative sanctions as a deterrent to fraud and abuse in the Title II program. In fact, from October 2000 through March 2008, SSA imposed only 275 Title II administrative sanctions. The 275 Title II administrative sanctions imposed in this period appear to be minimal considering that during the same period, millions of individuals received Title II benefits, SSA incurred billions of dollars in overpayments and SSA referred thousands of fraud cases to the OIG.

Given the minimal number of administrative sanctions imposed, we attempted to determine whether SSA had used administrative sanctions to the fullest extent possible. To accomplish this, we identified two Title II populations of actions taken by individuals that could have possibly resulted in administrative sanctions.

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[11] During this same period, there were 1,078 Supplemental Security Income sanctions imposed. Further, there were 204 deferred sanctions that will be imposed at a later date because the sanctionable party was not receiving benefits at the time the sanction would have been imposed. SSA did not track the amount of sanctions imposed on any of the cases. We obtained the number of sanctions imposed from SSA's Administrative Sanctions Database. According to our discussions with SSA, this database is the sole repository for recording information on the sanctions imposed by the Agency.

[12] See Appendix B for the scope and methodology of our review.

[13] The number of sanctions imposed was obtained from SSA's Administrative Sanctions Database.

The first population contained 7,261 Title II cases that SSA referred to the OIG between October 1, 2004 and June 30, 2007. Ultimately, these cases were not selected for prosecution or action under the CMP program. Given that these cases were referred to the OIG with allegations of potential fraud, we would have expected that SSA would have considered imposing administrative sanctions for a significant number of these cases that were not selected for CMP action by OIG. However, we were only able to confirm that 61 of the 7,261 cases were considered for administrative sanctions after being returned to SSA by OIG. Further, administrative sanctions were only imposed on individuals for 39 of these cases. For the remaining 7,200 cases, we could not determine whether SSA considered administrative sanctions.

The second population contained 94,299 Title II overpayments posted to beneficiaries' Social Security records between December 1, 2006 and September 12, 2007. We reviewed a select number of these overpayments to determine whether they resulted from potentially sanctionable actions and should have been referred to the OIG. Based on the results of our review of these overpayments, we estimate that at least 38,175 of the 94,299 overpayments could have been referred to the OIG since the overpayments occurred because of potentially sanctionable actions. Further, if SSA had referred these overpayments to the OIG and the referral did not result in prosecution or CMP action, SSA could have considered administrative sanctions once OIG had referred the matter back to SSA.

Further, our discussions with SSA's Regional Sanctions Coordinators (RSC) disclosed that administrative sanctions were not being used to the fullest extent possible. The RSCs stated that administrative sanctions were not being used because the process was time-consuming and cumbersome, SSA staff were not properly trained in the administrative sanctions process and the sanction timeframes and penalties were too harsh.

FRAUD REFERRALS TO OIG

The first population we reviewed included 7,261 Title II cases SSA referred to the OIG between October 1, 2004 and June 30, 2007 that were not selected for prosecution or CMP action. Typically, once OIG determines a case is not suitable for CMP action, it then refers the matter back to SSA so SSA may consider imposing administrative sanctions. We reviewed the 7,261 cases to determine whether SSA considered administrative sanctions. Of these 7,261 cases, we could only confirm that SSA considered 61 of the cases for administrative sanctions. Of these 61 cases, administrative sanctions were only imposed on individuals for 39 cases.[14]

[14] These 61 cases were recorded in SSA's Administrative Sanctions Database. According to SSA, this Database is the sole repository for recording information on administrative sanction cases. Therefore, if a case is not recorded in the Database, there is no other source for determining whether SSA considered the case for administrative sanctions.

For the remaining 7,200 cases, we could not determine whether SSA considered administrative sanctions. According to SSA, these cases should have been recorded in the Agency's Administrative Sanctions Database if administrative sanctions were considered. However, we found that none of these 7,200 cases were recorded in the database.

Given that these 7,200 cases were referred to the OIG with allegations of potential fraud, we would have expected that administrative sanctions would have been considered on a significant number of these cases that were not selected for CMP action by OIG. Since SSA did not maintain documentation on how many, if any, of these cases were considered for administrative sanctions, there was no way for us to know precisely the percentage of the 7,200 cases where individuals should have had administrative sanctions imposed. However, we do know that individuals had administrative sanctions imposed for 45 percent of the cases SSA documented as being considered for sanctions from October 2000 through March 2008.[15] Therefore, if SSA had pursued administrative sanctions on 45 percent of the 7,200 cases, individuals could have had sanctions imposed totaling approximately $17.6 million.[16]

If SSA considered any of these 7,200 cases for administrative sanctions, they were not recorded in the Administrative Sanctions Database. We believe all potential administrative sanctions cases should be recorded in the Administrative Sanctions Database so SSA management can evaluate periodically whether its employees are considering administrative sanctions appropriately and to the fullest extent possible.

[15] For the period October 2000 through March 2008, SSA recorded 3,456 cases in the Administrative Sanctions Database. Of these cases, administrative sanctions were imposed on individuals for 1,557 cases. Therefore, SSA imposed administrative sanctions on 45 percent of the cases recorded in the Database (1,557 ÷ 3,456). Accordingly, we assume that, since 45 percent of the cases in the database had sanctions imposed, 45 percent of the associated dollars should be sanctionable as well. As a result, we used 45 percent to calculate the potential administrative sanction amounts presented in this audit report. See Appendix D, Table 1.

[16] See Appendix D, Table 2.

BENEFICIARY OVERPAYMENTS

The second population we reviewed included 94,299 Title II overpayments posted to beneficiaries' Social Security records between December 1, 2006 and September 12, 2007.[17, 18] For our review, these 94,299 overpayments were separated into 2 groups—those not involving the annual retirement test and those involving the annual retirement test[19]—as shown in Table 2.

Table 2
TITLE II OVERPAYMENT POPULATION

Type of Overpayment	Number of Overpayments	Total Overpayments
Non-Annual Retirement	61,503	$1,111,250,407
Annual Retirement	32,796	316,206,846
Totals	**94,299**	**$1,427,457,253**

As discussed below, we reviewed a select number of overpayments from each of the two types of overpayments identified in Table 2 to determine the number of these overpayments that resulted from a potentially sanctionable action by an individual. We also determined whether these overpayments were referred to OIG for investigation and CMP determination and subsequently considered by SSA for administrative sanctions.

[17] We selected this period to coincide with the most recent date of changes in SSA's Administrative Sanctions policy, dated November 27, 2006.

[18] These overpayments had a value of $5,500 or greater. We selected overpayments with a value of $5,500 or greater so as to review only overpayments with a value that exceeded the benefit payments associated with the first time administrative sanction offense of 6 months. To derive the $5,500, we identified the Fiscal Year 2006 median monthly Title II benefit rate for disabled workers of $905.70 times 6 which represents the 6-month timeframe for a first time sanction offense ($905.70 x 6 = $5,434.20). We used the disabled workers' median monthly benefit amount because it was the lowest of the three types of payments (Retired Workers, Survivors and Disabled Workers) made under the Title II program.

[19] When an individual under full retirement age receives retirement benefits and also has earnings that exceed a certain level, SSA withholds an amount of their benefits based on the amount the individual earned. SSA refers to this process as the annual retirement test. Overpayments not related to the annual retirement test are due to such events as failure to report work activity while receiving disability benefits; changes in eligibility for benefits due to marriage, divorce or annulment; or ineligibility of benefits due to incarceration of the beneficiary.

Non-Annual Retirement Test Overpayments

Of the 94,299 overpayments, there were 61,503 overpayments not related to the annual retirement test. Overpayments not related to the annual retirement test are due to such events as failure to report work activity while receiving disability benefits; changes in eligibility for benefits due to marriage, divorce or annulment; or ineligibility of benefits due to incarceration of the beneficiary. Of these 61,503 overpayments, we found

- 61,450 overpayments had amounts between $5,500 and $199,999, and
- 53 overpayments had amounts of $200,000 and greater.

We reviewed a random sample of 250 of the 61,450 overpayments with amounts between $5,500 and $199,999. We found that 176 (70 percent) of the 250 overpayments met SSA's criteria for referral to the OIG because individuals failed to report material information to SSA (163), made a false or misleading statement (11) or omitted a material fact (2).[20] Of these 176 overpayments, 21 were referred to OIG and 155 were not.[21]

Because 155 of the 250 overpayments we reviewed were not appropriately referred to OIG for investigation, we estimate that at least 38,099 of the 61,450 overpayments could have been referred to the OIG for investigation and CMP consideration.[22] If these overpayments were referred to the OIG and the referral did not result in prosecution or CMP, SSA could have considered administrative sanctions. If SSA had pursued administrative sanctions on 45 percent of the 38,099 overpayments, individuals could have had sanctions imposed totaling $105,614,985.[23]

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[20] We determined that 74 of the 250 overpayments were not sanctionable because (1) the beneficiary was not at fault for causing the overpayment (26); (2) the event that caused the overpayment was discovered before the November 27, 2006 law change that allowed sanctions due to failure to report (19); (3) the sanctionable party had not ever received benefits (9); (4) the overpayment was waived (7); (5) the beneficiary was deceased (6); (6) no information was available about the event that caused the overpayment (3); (7) the sanctionable party would have been an organizational payee for which administrative sanctions would not apply (2); (8) the sanctionable party was deceased (1); and (9) the overpayment was determined to be invalid (1).

[21] These 21 overpayments were referred to the OIG for fraud investigation. However, as of May 30, 2008, these overpayments were not recorded in the Administrative Sanctions Database. Since this Database is SSA's sole repository for recording administrative sanctions, we could not determine whether these 21 overpayments were considered for administrative sanctions.

[22] See Appendix C, Table 1.

[23] See Appendix D, Table 3.

As previously stated, there were also 53 overpayments not related to the annual retirement test with amounts of $200,000 and greater. We found that 25 (47 percent) of the 53 overpayments could have been referred to the OIG for investigation.[24] Of these 25 overpayments, 3 were referred to the OIG for investigation.[25] The remaining 22 overpayments could have been referred because individuals failed to report material information. If these 22 overpayments were referred to OIG and the referral did not result in prosecution or CMP, SSA could have considered administrative sanctions. If SSA had pursued administrative sanctions on 45 percent of these 22 overpayments, individuals could have had sanctions imposed totaling $54,508.[26]

Annual Retirement Test Overpayments

When an individual under full retirement age receives retirement benefits and also has earnings that exceed a certain level, SSA withholds an amount of their benefits based on the amount the individual earned.[27, 28] SSA refers to this process as the annual retirement test.[29] Specifically, if beneficiaries are working and also receiving retirement benefits under full retirement age, SSA requires that they estimate their earnings for the year.[30] SSA also requires that the beneficiary report any material changes in work activity.[31] SSA needs the most accurate earnings information possible to avoid underpayments and/or overpayments to the beneficiary.

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[24] We determined that 28 of the 53 overpayments were not sanctionable because (1) the event that caused the overpayment was discovered before the November 27, 2006 law change which allowed sanctions due to failure to report (8); (2) the overpayment resulted in prosecution (6); (3) the beneficiary was found to be not at fault for causing the overpayment (4); (4) the beneficiary was deceased (4); (5) an incorrect overpayment amount was posted and corrected to a minimal amount and would most likely not be considered for sanctions (3); (6) no information was available about the event that caused the overpayment (2); and (7) the overpayment occurred prior to the Social Security amendments that allowed administrative sanctions to be imposed (1).

[25] These three overpayments were referred to the OIG for fraud investigation. However, as of May 30, 2008, these overpayments were not recorded in the Administrative Sanctions Database. Since this Database is SSA's sole repository for recording administrative sanctions, we could not determine whether these three overpayments were considered for administrative sanctions.

[26] See Appendix D, Table 4.

[27] SSA deducts $1 from benefits for each $2 earnings over the annual exempt amount. In 2006, 2007 and 2008, the exempt amounts were $12,480, 12,960 and $13,560, respectively.

[28] SSA, POMS RS 02501.021.

[29] The Annual Retirement Test is also referred to as the Annual Earnings Test and also applies to individuals receiving survivors' benefits (see SSA Handbook §1801.2).

[30] SSA, POMS RS 02501.105.

[31] SSA, POMS RS 02501.005.

Of the 94,299 overpayments, we identified 32,796 overpayments related to the annual retirement test. The overpayments occurred because beneficiaries underestimated their earnings. Of these overpayments, we found

- 32,787 overpayments had amounts between $5,500 and $49,999, and
- 9 overpayments had amounts of $50,000 and greater.

We reviewed a random sample of 50 of the 32,787 overpayments between $5,500 and $49,999. None of these overpayments were referred to the OIG for investigation. However, we found that 48 (96 percent) of the 50 overpayments could have been referred to the OIG because individuals failed to report material information.[32]

Specifically, the individuals substantially underestimated their earnings. For example, one individual in our sample was overpaid approximately $20,600 because he did not initially provide SSA with an accurate estimate of his potential annual earnings. Further, the individual did not follow SSA policy and report during the year that his work activity resulted in eight times more income than he estimated to SSA.

If these 48 overpayments were referred to OIG and the referral did not result in prosecution or CMP, SSA could have considered administrative sanctions. If SSA had pursued administrative sanctions on 45 percent of these 48 overpayments, individuals could have had sanctions imposed totaling $159,003.[33]

As previously stated, there were also nine overpayments related to the annual retirement test with amounts of $50,000 and greater. None of these overpayments were referred to the OIG. However, we found that six (67 percent) of the nine overpayments could have been referred to the OIG.[34] These overpayments could have been referred because the individuals failed to report material information (5) or made a false or misleading statement (1). If these six overpayments were referred to OIG and the referral did not result in prosecution or CMP, SSA could have considered administrative sanctions. If SSA had pursued administrative sanctions on 45 percent of these six overpayments, individuals could have had sanctions imposed totaling $23,580.[35]

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[32] We determined that 2 of the 50 overpayments were not sanctionable because the beneficiary was not at fault for causing the overpayment.

[33] See Appendix D, Table 5.

[34] We determined that three of the nine overpayments were not sanctionable because the beneficiary was prosecuted (1), the beneficiary was not at fault for causing the overpayment (1), or the beneficiary was deceased (1).

[35] See Appendix D, Table 6.

Summary of Beneficiary Overpayments

In summary, we determined that at least 38,175 of the 94,299 overpayments in our population could have been referred to the OIG since they occurred because of potentially sanctionable actions.[36] Even if OIG had not pursued CMP action in these cases, OIG would likely have referred these cases back to SSA for consideration of administrative sanctions. If SSA had pursued administrative sanctions on 45 percent of the 38,175 overpayments, individuals could have had sanctions imposed totaling approximately $105.8 million. SSA should evaluate the current administrative sanctions process and initiate necessary changes to ensure that all potential administrative sanctions are identified and proactively considered. In doing so, SSA may want to implement a risk-based approach that focuses on sanctionable actions that result in significant overpayments. In addition, SSA should remind staff to refer to the OIG as appropriate, overpayments that occur due to sanctionable events such as an individual failing to report material information, making a false or misleading statement, or omitting a material fact.

INFORMATION OBTAINED FROM RSCs

We interviewed the RSC in each of SSA's 10 regional offices to obtain information related to the administrative sanctions process. Based on these interviews, we found that 8 of the 10 RSCs believed that administrative sanctions were not being used to their fullest extent. The RSCs gave the following potential reasons for administrative sanctions not being used:

- the workload is time-consuming and cumbersome,
- SSA staff were not properly trained in the administrative sanctions process, and
- sanction timeframes and penalties were too harsh.[37]

Regarding the harshness of the administrative sanctions timeframes and penalties, the RSCs provided the following suggestions.

- Shorten the sanction timeframe for a first offense to less than the minimum 6 months of benefit suspension.

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[36] See Appendix D, Table 7. Also, as shown in Table 2 on page 6 of this report, the annual retirement test population accounted for 32,787 of the 94,299 overpayments. For the annual retirement test population, we did not review the number of overpayments needed for statistical projections as we did for the non-annual retirement test population of 61,503. Therefore, we reported actual results for the overpayments we reviewed in the annual retirement test population. Since we did not project to this population, our estimate that 38,175 of the 94,299 overpayments should have been referred to OIG is most likely understated.

[37] Administrative sanction timeframes and penalties are outlined in Pub. L. No. 106-169 § 207, 42 U.S.C. § 1320a-8a. Therefore, changes to the sanction timeframes and penalties would require legislation.

- Align the sanction timeframe with the offense based on the overpayment amount.
- Change the sanction penalty to a percentage of monthly benefit suspension instead of a 100 percent suspension of monthly benefits.

The RSCs also expressed concerns with the Administrative Sanctions Database not being user-friendly. For example, as many as 60 inputs are required to enter the information for each administrative sanction, which makes the process tedious and time-consuming for SSA staff. Given this time-consuming process, it is possible that SSA staff, along with their other workloads may not have sufficient time to actively pursue all potential administrative sanctions. SSA should determine whether the Administrative Sanctions Database could be streamlined so potential sanctions are easier to input, thereby making the administrative sanctions process less time-consuming for staff but effective for the purposes intended. Further, SSA should ensure that staff are properly trained in the administrative sanctions process.

CONCLUSION AND RECOMMENDATIONS

Although Congress authorized administrative sanctions as a deterrent to fraud and abuse of SSA's programs and operations, we found that administrative sanctions are rarely imposed. In fact, SSA imposed only 275 Title II administrative sanctions from October 2000 through March 2008. Our review disclosed that administrative sanctions were not used to the fullest extent possible because SSA did not identify all potential sanctions. And, for the potential sanctions SSA identified, only a minimal number of administrative sanctions were actually imposed.

To ensure administrative sanctions are being used to the fullest extent, we recommend SSA:

1. Record all potential administrative sanctions in the Administrative Sanctions Database so SSA management can periodically determine whether the Agency's employees are considering administrative sanctions appropriately and to the fullest extent possible.

2. Evaluate the current administrative sanctions process and implement necessary changes to ensure that all potential administrative sanctions are identified and proactively considered. In doing so, SSA may want to implement a risk-based approach that focuses on sanctionable actions that result in significant overpayments.

3. Remind staff to refer to the OIG as appropriate, overpayments that occur due to sanctionable events such as an individual failing to report material information, making a false or misleading statement, or omitting a material fact. This should include reminding staff that, if OIG determines CMP action is not appropriate, the case may be referred back to SSA for consideration of administrative sanctions.

4. Determine whether the current sanction timeframes and penalties are appropriate considering the concerns expressed by the RSCs. If SSA determines that changes are needed, take necessary actions to initiate appropriate legislation.

5. Streamline the Administrative Sanctions Database so potential sanctions are less time-consuming to input by staff and ensure that staff are properly trained in the administrative sanctions process.

AGENCY COMMENTS

SSA agreed with all our recommendations. See Appendix E for the full text of SSA's comments.

Patrick P. O'Carroll, Jr.

Appendices

Acronyms

C.F.R.	Code of Federal Regulations
CMP	Civil Monetary Penalty
NICMS	National Investigative Case Management System
OCIG	Office of the Counsel to the Inspector General
OI	Office of Investigations
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L.	Public Law
RSC	Regional Administrative Sanctions Coordinator
SSA	Social Security Administration
Title II	Old-Age, Survivors and Disability Insurance
U.S.C.	United States Code

Scope and Methodology

To accomplish our audit objectives, we:

- Reviewed sections of the *Social Security Act* and the Social Security Administration's (SSA) regulations, rules, policies, procedures, and other legislation pertaining to the administrative sanctions process.

- Interviewed the Regional Administrative Sanctions Coordinator in each of SSA's 10 regions on the administrative sanctions process.

- Interviewed staff from SSA's Offices of the Inspector General (OIG), Investigations (OI), and Council to the Inspector General (OCIG) to obtain an understanding of OI and OCIG's role in the administrative sanctions process.

- Obtained a file containing 94,299 overpayments totaling approximately $1.4 billion that were posted to beneficiaries' Social Security records between December 1, 2006 and September 12, 2007.[1] From this file, we:

  - ✓ Selected a random sample of 250 overpayments with amounts between $5,500 and $199,999 where the type of overpayment event was not the annual retirement test.
  - ✓ Reviewed 53 overpayments with amounts of $200,000 and greater where the type of overpayment event was not the annual retirement test.
  - ✓ Selected a random sample of 50 overpayments with amounts between $5,500 and $49,999 where the type of overpayment event was the annual retirement test.
  - ✓ Reviewed nine overpayments with amounts of $50,000 and greater where the type of overpayment event was the annual retirement test.

- Obtained a file from SSA's Administrative Sanctions Database that contained 1,041 cases from October 1, 2004 through June 30, 2007. In addition, we obtained a file from OIG's National Investigative Case Management System (NICMS) that contained 7,261 Old-Age, Survivors and Disability Insurance cases between October 1, 2004 and June 30, 2007. These cases were declined for prosecution and did not have civil monetary penalties imposed. We compared these files to determine whether the cases in NICMS had administrative sanctions imposed.

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[1] See Appendix C for our population and sample results.

- Obtained a summary report of the Administrative Sanctions Database from October 2000 through March 2008. From this report, we determined the total number of cases in the Database and the number of administrative sanctions imposed on these cases.

- Reviewed SSA's Administrative Sanctions Database and OIG's NICMS to determine whether the overpayments we reviewed were referred to the OIG and had administrative sanctions imposed.

We conducted our audit in Kansas City, Missouri, from March through May 2008. We determined the data used for this audit were sufficiently reliable to meet our objective. The organizational component responsible for the oversight of administrative sanctions is the Office of Public Service and Operations Support. We conducted our audit in accordance with generally accepted government auditing standards.

Sampling Methodology and Results

We identified a population of 94,299 Old-Age, Survivors and Disability Insurance (Title II) overpayments with amounts of $5,500 or greater totaling approximately $1.4 billion.[1] These overpayments were separated into two groups—those not involving the annual retirement test and those involving the annual retirement test. We only made statistical projections for the non-annual retirement test overpayments. Specifically, we identified 61,503 overpayments totaling approximately $1.1 billion that did not involve the annual retirement test.

Of these overpayments, 61,450 had overpayments between $5,500 and $199,999. We reviewed a random sample of 250 of the 61,450 overpayments. We found that 176 (70 percent) of the 250 overpayments met the Social Security Administration's (SSA) criteria for referral to the Office of the Inspector General (OIG) since they occurred because individuals failed to report material information to SSA (163 overpayments), made a false or misleading statement (11 overpayments) or omitted a material fact (2 overpayments). Of these 176 overpayments, 21 were referred to OIG and 155 were not.[2]

Based on the fact that 155 of the 250 overpayments we reviewed were not appropriately referred to OIG for investigation, we estimate that at least 38,099 of the 61,450 overpayments should have been referred to the OIG for investigation and civil monetary penalty (CMP) consideration. Based on our sample results, 38,099 of the 61,450 overpayments (62 percent) could have been considered for potential administrative sanctions of $234,699,967.[3] See Table 1.

[1] These overpayments had a value of $5,500 or greater. We selected overpayments with a value of $5,500 or greater because this amount is approximately the Fiscal Year 2006 median monthly Title II benefit rate for disabled workers of $905.70 applied to the 6-month timeframe for a first time sanction offense: ($905.70 x 6 months=$5,434). We used the disabled workers' median monthly benefit amount because it was lowest median monthly payment for the Title II program.

[2] These 21 overpayments were referred to the OIG for fraud investigation. However, as of May 30, 2008, these overpayments were not recorded in the Administrative Sanctions Database. Since this Database is SSA's sole repository for recording administrative sanctions, we could not determine whether these 21 overpayments were considered for administrative sanctions.

[3] Projections were calculated at the 90-percent confidence level. Before considering administrative sanctions on these overpayments, they would have been referred to OIG. If the referral did not result in prosecution or CMP, OIG would either close the case or refer the case back to SSA for consideration of administrative sanctions. This referral e-mail to SSA is automatically generated and is sent to the administrative sanctions coordinators in both Headquarters and field office locations.

Table 1 Potential Administrative Sanctions Population and Sample Size	
	Total
Population Size	61,450
Sample Size	250
Number of Potentially Sanctionable Overpayments	
Number of Potentially Sanctionable Overpayments Identified in the Sample	155
Projected Number of Potentially Sanctionable Overpayments in the Population	38,099
Projection Lower Limit	34,826
Projection Upper Limit	41,240
Potential Sanction Amounts	
Total Potential Sanctions for the 155 Overpayments[4]	$954,841.20
Projected Amount of Potential Sanctions for the 38,099 Overpayments	$234,699,967
Projection Lower Limit	$211,607,384
Projection Upper Limit	$257,792,550

If these overpayments were referred to the OIG and the referral did not result in prosecution or CMP, SSA could have considered administrative sanctions. If SSA had pursued administrative sanctions on 45 percent of the 38,099 overpayments, individuals could have had sanctions imposed totaling $105,614,985.[5]

[4] To calculate the $954,841.20, we identified the monthly benefit amount payable to each of the individuals associated with the 155 sanctionable overpayments when the overpayment was posted. We then took that benefit amount for each of the individuals and multiplied it by 6 based on the first time sanction period of 6 months.

[5] See Appendix D, Table 3.

Report Calculations

Development of Administrative Sanctions Percentage

From October 2000 through March 2008, the Social Security Administration (SSA) recorded 3,456 cases in the Administrative Sanctions Database. Of these cases, administrative sanctions were imposed on individuals for 1,557 cases. Therefore, SSA imposed administrative sanctions on 45 percent of the cases recorded in the Database. Accordingly, we assume that, since 45 percent of the cases in the database had sanctions imposed, 45 percent of the associated dollars should be sanctionable as well. As a result, we used 45 percent to calculate the potential administrative sanction amounts presented in this audit report.

Table 1 Percentage Used to Calculate Potential Sanctions	
Total Number of Administrative Sanctions Imposed	1,557
Total Number of Cases Recorded in SSA's Administrative Sanctions Database from October 2000 through March 2008	3,456
Percentage of Sanctions Imposed	**45**

Fraud Referrals

If SSA had pursued administrative sanctions on 45 percent of the 7,200 cases that were referred to the Office of the Inspector General for investigation, individuals could have had sanctions imposed totaling $17,606,808.

Table 2 Potential Administrative Sanctions for Fraud Referrals	
Number of Potentially Sanctionable Cases	
Population Size	7,200
Percentage of Sanctions Imposed	45%
Number of Potentially Sanctionable Cases	3,240
Sanctionable Amount	
Number of Potentially Sanctionable Cases	3,240
6 Months of Sanctioned Benefits[1]	$5,434.20
Total Potential Sanctions	**$17,606,808**

[1] The sanctioned benefit amount was derived by taking the Fiscal Year 2006 median monthly Old-Age, Survivors and Disability Insurance benefit rate for disabled workers of $905.70 multiplied by 6 which represents the 6-month timeframe for a first time sanction offense ($905.70 x 6 = $5,434.20). We used the disabled workers' median monthly benefit amount because it was the lowest of the three types of payments (Retired Workers, Survivors and Disabled Workers) made under the Title II program.

Non-Annual Retirement Test Overpayments

If SSA had pursued administrative sanctions on 45 percent of the 38,099 non-annual retirement test overpayments between $5,500 and $199,999, individuals could have had sanctions imposed totaling $105,614,985.[2]

Table 3 Non-Annual Retirement Test Overpayments with Overpayments Between $5,500 and $199,999	
Number of Potentially Sanctionable Overpayments	
Population Size	61,450
Projected Number of Potentially Sanctionable Overpayments	38,099
Sanctionable Amount	
Total Potential Sanctions	$234,699,967
Percentage to be Sanctioned	45%
Total Potential Sanctions	**$105,614,985**

If SSA had pursued administrative sanctions on 45 percent of the 22 non-annual retirement test overpayments of $200,000 and greater, individuals could have had sanctions imposed totaling $54,508.

Table 4 Non-Annual Retirement Test Overpayments with Overpayments of $200,000 and Greater	
Number of Potentially Sanctionable Overpayments	
Population Size	53
Number of Potentially Sanctionable Overpayments	22
Sanctionable Amount	
Total Potential Sanctions[3]	$121,128
Percentage to be Sanctioned	45%
Total Potential Sanctions	**$54,508**

[2] See Appendix C for a detailed explanation of this statistical calculation.

[3] To calculate the $121,128, we identified the monthly benefit amount payable to each of the individuals associated with the 22 sanctionable overpayments at the time the overpayment was posted. We then took that benefit amount for each of the individuals and multiplied it by 6 based on the first time sanction period of 6 months.

Annual Retirement Test Overpayments

If SSA had pursued administrative sanctions on 45 percent of the 48 annual retirement test overpayments between $5,500 and $49,999, beneficiaries could have had sanctions imposed totaling $159,003.

Table 5 Annual Retirement Test Overpayments with Overpayments Between $5,500 and $49,999	
Number of Potentially Sanctionable Overpayments	
Population Size	32,787
Sample Size	50
Number of Potentially Sanctionable Overpayments	48
Sanctionable Amount	
Total Potential Sanctions[4]	$353,339
Percentage to be Sanctioned	45%
Total Potential Sanctions	**$159,003**

If SSA had pursued administrative sanctions on 45 percent of the six annual retirement test overpayments of $50,000 and greater, individuals could have had sanctions imposed totaling $23,580.

Table 6 Annual Retirement Test Overpayments with Overpayments of $50,000 and Greater	
Number of Potentially Sanctionable Overpayments	
Population Size	9
Number of Potentially Sanctionable Overpayments	6
Sanctionable Amount	
Total Potential Sanctions[5]	$52,400
Percentage to be Sanctioned	45%
Total Potential Sanctions	**$23,580**

[4] To calculate the $353,339, we identified the monthly benefit amount payable to each of the individuals associated with the 48 sanctionable overpayments at the time the overpayment was posted. We then took that benefit amount for each of the individuals and multiplied it by 6 based on the first time sanction period of 6 months.

[5] To calculate the $52,400, we identified the monthly benefit amount payable to each of the individuals associated with the six sanctionable overpayments at the time the overpayment was posted. We then took that benefit amount for each of the individuals and multiplied it by 6 based on the first time sanction period of 6 months.

Summary of Estimates

If SSA had pursued administrative sanctions on 45 percent of the 38,175 overpayments identified in our review as potentially sanctionable, individuals could have had sanctions imposed totaling $105,852,076.

Table 7 Total Potential Sanctions			
Source	**Total Overpayments**	**Potentially Sanctionable Overpayments**	**Potential Sanction Amount**
Appendix D, Table 3	61,450	38,099	$105,614,985
Appendix D, Table 4	53	22	54,508
Appendix D, Table 5	32,787	48[6]	159,003
Appendix D, Table 6	9	6	23,580
Totals	**94,299**	**38,175**	**$105,852,076**

[6] For the population of 32,787, we are reporting the actual results for the 50 randomly selected overpayments we reviewed and no projection is provided. Since we determined 96 percent (48 of 50) of the overpayments reviewed were potentially sanctionable, we believe a majority of the 32,787 may be potentially sanctionable as well.

Agency Comments

SOCIAL SECURITY

MEMORANDUM

Date: September 11, 2008

Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: David V. Foster /s/
Executive Counselor to the Commissioner

Subject: Office of the Inspector General (OIG) Draft Report, “The Social Security Administration’s Use of Administrative Sanctions in the Old-Age, Survivors and Disability Program (A-07-07-17052)--INFORMATION

We appreciate OIG’s efforts in conducting this review. Attached is our response to the recommendations.

Please let me know if we can be of further assistance. Please direct staff inquiries to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Attachment

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, "THE SOCIAL SECURITY ADMINISTRATION'S USE OF ADMINISTRATIVE SANCTIONS IN THE OLD-AGE, SURVIVORS AND DISABILITY INSURANCE PROGRAM" (A-07-07-17052)

Thank you for the opportunity to review and provide comments on this draft report.

Recommendation 1

Record all potential administrative sanctions in the Administrative Sanctions Database so management can periodically determine whether employees are considering administrative sanctions appropriately and to the fullest extent possible.

Comment

We agree. We will lead an intercomponent workgroup to evaluate the current administrative sanctions process. The Administrative Sanctions Database captures identification data, dates of events, and yes or no responses, but does not allow for narrative remarks. Our database capabilities would have to be expanded to allow for data to be recorded on individual cases regarding whether or not to impose sanctions. We will explore systems options for recording all potential administrative sanctions in the Administrative Sanctions Database.

Recommendation 2

Evaluate the current administrative sanctions process and implement necessary changes to ensure that all potential administrative sanctions are identified and proactively considered. In doing so, consider implementing a risk-based approach that focuses on sanctionable actions that result in significant overpayments.

Comment

We agree. As stated in the response to recommendation 1 above, we will lead an intercomponent workgroup to evaluate the current administrative sanctions process. We will explore evaluation procedures that reflect a risk-based approach in identifying potential administrative sanctions.

Recommendation 3

Remind staff to refer to OIG as appropriate, overpayments that occur due to sanctionable events such as an individual failing to report material information, making a false or misleading statement, or omitting a material fact. This should include reminding staff that, if OIG determines civil monetary penalty action is not appropriate, the case may be referred back for consideration of administrative sanctions.

Comment

We agree. We will issue an administrative message as a reminder to employees to ensure that administrative sanctions are being applied appropriately.

Recommendation 4

Determine whether the current sanction timeframes and penalties are appropriate considering the concerns expressed by the Regional Administrative Sanctions Coordinators. If SSA determines that changes are needed, take necessary actions to initiate appropriate legislation.

Comment

We agree. We will determine whether the current sanction timeframes and penalties are appropriate. If we determine that changes are needed, we will take necessary actions to initiate appropriate legislation.

Recommendation 5

Streamline the Administrative Sanctions Database so potential sanctions are less time-consuming to input by staff and ensure that staff is properly trained in the administrative sanctions process.

Comment

We agree. The current database and input process is cumbersome and difficult to navigate, it should be redesigned to be more user-friendly. The workgroup will also consider ways to streamline the Administrative Sanctions Database.

OIG Contacts and Staff Acknowledgments

OIG Contacts

Mark Bailey, Director, Kansas City Audit Division (816) 936-5591

Ronald Bussell, Audit Manager (816) 936-5577

Acknowledgments

In addition to those named above:

Katherine Wunsch, Auditor

Kenneth Bennett, IT Specialist

For additional copies of this report, please visit our web site at www.socialsecurity.gov/oig or contact the Office of the Inspector General's Public Affairs Staff Assistant at (410) 965-4518. Refer to Common Identification Number A-07-07-17052.

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OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

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OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

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OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

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