
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**GOVERNMENT PENSION OFFSET
EXEMPTION FOR TEXAS SCHOOL
DISTRICTS' EMPLOYEES**

January 2007

A-09-06-26086

AUDIT REPORT



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SOCIAL SECURITY

MEMORANDUM

Date: January 8, 2007

Refer To:

To: The Commissioner

From: Inspector General

Subject: Government Pension Offset Exemption for Texas School Districts' Employees
(A-09-06-26086)

OBJECTIVE

Our objective was to determine whether beneficiaries who were previously employed by certain Texas school districts were exempt from Government Pension Offset (GPO).

BACKGROUND

Under section 218 of the *Social Security Act*,¹ individuals employed by State and local governments are not covered by Social Security unless the government entity has entered into a voluntary agreement with SSA. These agreements include the provisions, definitions, and conditions required for Social Security coverage. In addition, Social Security benefits for a spouse or surviving spouse are generally reduced for individuals who receive a monthly pension from a State or local government agency. However, this offset did not apply if an individual's last day of employment was in a position that was covered by both Social Security and a State or local government pension plan. The offset exemption applies only to those individuals whose last day of employment was before July 1, 2004.² *The Social Security Protection Act of 2004*³ subsequently amended the GPO provisions to require that State and local government employees be covered by Social Security throughout their last 60 months (5 years) of employment to be exempt from GPO.

¹ *The Social Security Act* § 218 (a)(1), 42 U.S.C. § 418 (a)(1).

² SSA, Program Operations Manual System (POMS), GN 02608.102.

³ Pub. L. No. 108-203 § 418.

In October 2005, we received an allegation that approximately 22,000 individuals who retired from 15 Texas independent school districts before July 1, 2004 may have been improperly exempted from GPO because they did not meet the last day of employment provision. Specifically, the allegation stated the 22,000 individuals paid the school districts fees to work for 1 day as a non-professional employee. According to the allegation, the improper exemptions granted to these individuals will cost the Social Security Trust Fund \$2.1 billion.

Although the allegation identified 15 school districts, we limited our review to the 7 school districts that hired the largest numbers of 1-day workers: West, Hudson, Lindale, Premont, Coleman, Sweeny and Kilgore. According to the allegation, these 7 school districts hired approximately 19,000 (86 percent) of the 22,000 1-day workers (see Appendix B for a discussion of our Scope and Methodology).

RESULTS OF REVIEW

We found that individuals employed as 1-day workers by the seven Texas school districts did not appear to meet the requirements to receive a GPO exemption. This occurred because of the questionable nature of these individuals' employment. We also found that five of the school districts did not have the authority to provide these individuals Social Security coverage.

We identified 20,248 individuals who were employed as 1-day workers by the 7 school districts. Based on our review of a random sample of 665 of these individuals, we determined that 629⁴ should not have been exempt from GPO. Projecting our sample results to the population, we estimate that 19,212 individuals will receive \$110 million in spousal benefits annually to which they may not be entitled. Over their lifetimes, they will potentially receive about \$2.2 billion in spousal benefits (see Appendix C).

QUESTIONABLE EMPLOYMENT

Our review disclosed that the seven school districts hired 1-day workers primarily to generate revenue for their districts. Specifically, officials at six of the school districts stated they would not have hired all the 1-day workers if they had not collected fees. In addition, we found the number of individuals hired was primarily based on the number of applications received rather than an actual need for their services.

Although the individuals hired as 1-day workers were generally paid minimum wage, they paid fees to the school districts ranging from \$100 to \$750 each. We found that the seven school districts collected approximately \$7.4 million in fees from their 1-day workers, while only paying them about \$900,000. The following chart summarizes the total fees collected and the wages paid by the seven school districts.

⁴ Of the 665 individuals, 36 were not employed as 1-day workers. These 36 cases, included, but were not limited to, individuals hired through the school districts' normal hiring, individuals employed as substitute teachers or student workers, and individuals who withdrew their applications for employment as 1-day workers.

Fees Collected and Wages Paid by Seven Texas School Districts			
School District	Number of 1-Day Workers	Total Fees Paid to School Districts	Total Wages Paid to 1-Day Workers
West	1,860	\$1,069,478	\$62,273
Hudson	1,887	493,100	77,744
Lindale	4,313	1,335,205	177,696
Premont	2,186	1,052,035	87,440
Coleman	3,642	699,498	218,520
Sweeny	2,958	1,428,703	121,870
Kilgore	3,402	1,289,215	140,162
TOTAL	20,248	\$7,367,234	\$885,705

According to school district officials, they used the revenue generated by their 1-day worker programs to pay the wages of the individuals hired, finance capital improvements, and pay general expenses. The capital improvements included resurfacing parking lots; constructing a new nurse's station; building and installing new seating and lighting for auditoriums; building a distance-learning center; and improving the school board's conference room.

Significance of GPO Exemption on Spousal Benefits

The GPO provisions only affect Social Security benefits paid to spousal beneficiaries. Specifically, SSA must reduce spousal benefits for individuals who receive a pension from a Federal, State or local government based on work where Social Security taxes were not paid. The spousal benefits are generally reduced by two-thirds of the government pension amount. The value of a GPO exemption is illustrated by the following three examples we randomly selected from our sample cases.

Example 1 – An individual who was previously employed by another school district paid a \$250 fee to work on June 18, 2002 in the Kilgore school district. The individual was paid \$41.20, from which \$2.55 in Social Security taxes was withheld. The individual filed for spousal benefits on September 1, 2005, became entitled to benefits at age 62, and is receiving full spousal benefits of \$288.80 with no offset for their monthly government pension of \$2,177.50. The \$250 fee the individual paid was recovered by the value of the GPO exemption for 1 month of spousal benefits. Had SSA imposed GPO, the monthly spousal benefit payable would have been reduced to zero.

Example 2 – An individual who was previously employed by another school district paid a \$200 fee to work on June 11, 2002 in the Coleman school district. The individual was paid \$60.00, from which \$3.72 in Social Security taxes was withheld. The individual filed for spousal benefits on January 15, 2002, became entitled to benefits at age 64, and is receiving full spousal benefits of \$623.60 with no offset for their monthly government pension of \$330.68. The \$200 fee the individual paid was recovered by the

value of the GPO exemption for 1 month of spousal benefits. Had SSA imposed GPO, the monthly spousal benefit payable would have been reduced to \$403.10.

Example 3 – An individual who was previously employed by another school district paid a \$500 fee to work on June 3, 2004 in the Sweeny school district. The individual was paid \$41.20, from which \$2.55 in Social Security taxes was withheld. The individual filed for spousal benefits on September 27, 2004, became entitled to benefits at age 64, and is receiving full spousal benefits of \$235.00 with no offset for their monthly government pension of \$1,052.93. The \$500 fee the individual paid was recovered by the value of the GPO exemption for less than 3 months of spousal benefits. Had SSA imposed GPO, the monthly spousal benefit payable would have been reduced to zero.

FIVE SCHOOL DISTRICTS DID NOT HAVE AUTHORITY TO PROVIDE SOCIAL SECURITY COVERAGE TO 1-DAY WORKERS

We found that five⁵ of the seven school districts did not have the authority to provide their 1-day workers Social Security coverage. These five school districts had agreements with SSA, pursuant to section 218 of the *Social Security Act*, that precluded them from providing Social Security coverage to part-time employees.⁶ Although school district officials stated they hired the 1-day workers for full-time positions, we found there was no intent or expectation by either party that the employment would last longer than 1 day.

The application packages provided to individuals interested in the 1-day worker programs at three of the five school districts included letters stating, “In response to your request, this packet is being mailed to you in order for you to work your final day in the Texas Teacher Retirement System under the (insert school district name) as a non-professional...” The fourth school district required that applicants submit a resignation letter before their scheduled day of work. The fifth school district called its 1-day worker program the “...one day offset program for Social Security.”

Our review of 475 employees from these 5 school districts disclosed that 450 were hired as 1-day workers. None of these 450 workers worked longer than 1 day. Since these individuals did not intend to work more than 1 day and, in fact, did not work more than 1 day, they were not in positions covered by Social Security on their last day of employment. Therefore, they should not be exempt from GPO.

⁵ West, Hudson, Lindale, Premont and Coleman.

⁶ *The Social Security Act* § 218 (a)(1), 42 U.S.C. § 418 (a)(1).

DETAILS OF THE SEVEN SCHOOL DISTRICTS' 1-DAY WORKER PROGRAMS

Our review disclosed that the 1-day worker programs at each of the seven school districts shared many of the same procedures and characteristics. Below is a general description of how the programs worked.

- The interested applicants, usually teachers planning to retire from other school districts, contacted the hiring school districts and requested application packages.
- The hiring school district sent out application packages requesting the applicants to return their completed packages along with the application/processing fees.
- The hiring school districts sent out confirmation packages, including a letter stating that the purpose of the employment was for the applicants to work their “final day in the Texas Teacher Retirement System.”
- The retiring teachers worked 1 day (usually between 6.5 and 8 hours) at the hiring school district in non-professional positions, usually as janitors or office clerks.
- The individuals were paid between \$33 and \$60 for their 1 day of employment.
- The school districts provided the individuals letters stating they were employed by the school district in a position covered by Social Security.
- The individuals presented these letters to SSA as evidence that they should be exempt from GPO.

The 1-day worker program at each of the seven school districts is described below.

West Independent School District

We found that West’s employment of its 1-day workers was questionable. In addition, we found that West did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

Questionable Employment – West required that applicants pay fees ranging from \$500 to \$750 to participate in its 1-day worker program. Whereas, all other individuals West hired did not pay fees. According to West, it determined the fee amounts based on what other school districts were charging. In addition, our audit disclosed that the number of 1-day workers West hired was generally based on the number of interested applicants rather than an actual need for their services. Finally, West stated it would not have hired the 1-day workers without collecting application fees.

In total, West collected \$1,069,478 in fees from its 1,860 1-day workers. West deposited the fees into the district's general fund, which it used to pay the 1-day workers, cover the cost of processing the applications, and offset shortfalls in the school district's finances. West paid the 1,860 1-day workers approximately \$62,000. From our sample of 95 individuals, West had hired 91 as 1-day workers. All 91 of these individuals paid fees ranging from \$500 to \$750. They were paid \$33 for 1 day of employment.

[Lack of Authority to Grant Social Security Coverage](#) - Although West stated it hired 1-day workers for full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 91 individuals hired under the program actually worked only 1 day. West's section 218 agreement states that part-time positions (defined as 30 hours per week or less) are excluded from Social Security coverage. Our review disclosed that each of the 91 individuals hired under West's 1-day program worked less than the required 30 hours per week.

Hudson Independent School District

Our review disclosed that Hudson's employment of its 1-day workers was questionable. In addition, we found that Hudson did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

[Questionable Employment](#) – Hudson required that applicants pay between \$300 and \$500 to participate in its 1-day worker program. None of the other individuals Hudson hired paid fees. In addition, our audit disclosed that the number of 1-day workers Hudson hired was generally based on the number of interested applicants rather than an actual need for their services. According to Hudson, the number of individuals hired was only limited by the number it could adequately supervise. We found that Hudson had as many as 210 workers on the same day. Finally, Hudson stated that, if it had not collected application fees, the school district would only have hired between 15 and 20 individuals.

In total, Hudson collected approximately \$493,000 in fees from its 1,887 1-day workers. Hudson deposited the fees into the district's general fund, which it used to pay the wages of the 1-day workers and a consultant who was responsible for and completed all necessary personnel actions for hiring the 1-day workers. According to Hudson, the administrative expense of its 1-day worker program was \$82,475. Hudson used the surplus for capital improvements, such as resurfacing parking lots and purchasing a modular nurse's station. The total wages paid to the 1,887 1-day workers was approximately \$78,000. From our sample of 95 individuals, Hudson had hired 85 as 1-day workers. All 85 of these individuals paid between \$300 and \$500. They were paid \$41 for 1 day of employment.

[Lack of Authority to Grant Social Security Coverage](#) - Although Hudson stated it hired 1-day workers for full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 85 individuals hired under the program only worked 1 day. Hudson's section 218 agreement states that part-time positions (defined as 20 hours per week or less) are excluded from Social Security coverage. Our review disclosed that each of the 85 individuals hired under Hudson's 1-day worker program worked less than the required 20 hours per week.

Lindale Independent School District

Our review disclosed that Lindale's employment of its 1-day workers was questionable. In addition, we found that Lindale did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

[Questionable Employment](#) – Lindale required that applicants pay between \$100 and \$500 to participate in its 1-day worker program. None of the other individuals Lindale hired paid fees. In addition, our audit disclosed that the number of 1-day workers Lindale hired was generally based on the number of interested applicants rather than an actual need for their services. According to Lindale, the number of individuals hired was only limited by the number it could reasonably supervise. Finally, Lindale stated that, if it had not collected application fees, the school district would only have hired three or four individuals.

Lindale collected \$1,335,205 in fees from its 4,313 1-day workers. Lindale deposited the fees into the district's general fund, which it used to pay the wages of the 1-day workers and cover the administrative expense of hiring these individuals. Lindale officials stated it used the surplus to "improve fund balance" and pay for other general expenditures. The 4,313 1-day workers were paid approximately \$178,000. From our sample of 95 individuals, Lindale had hired 90 as 1-day workers. All these individuals paid fees ranging from \$100 to \$500. They were all paid \$41 for 1 day of employment.

[Lack of Authority to Grant Social Security Coverage](#) - Although Lindale stated it hired 1-day workers to fill full-time positions, we found there was no intent or expectation by either party that the employment would last longer than 1 day. In fact, all 90 individuals hired under the program actually worked only 1 day. Lindale's section 218 agreement states that part-time positions are excluded from Social Security coverage. Our review disclosed that each of the 90 individuals hired under the school district's 1-day worker program worked 8 hours or less.

Premont Independent School District

We found that Premont's employment of its 1-day workers was questionable. In addition, we found that Premont did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

[Questionable Employment](#) – Premont required that applicants pay \$500 to participate in its 1-day worker program. None of the other individuals Premont hired paid fees. In addition, we found the number of 1-day workers Premont hired was generally based on the number of interested applicants rather than an actual need for their services. We found that Premont had as many as 502 workers on the same day. Finally, Premont stated that, if it had not collected application fees, the school district would not have hired any 1-day workers because they did not have the funds to pay their wages.

In total, Premont collected \$1,052,035 in fees from its 2,186 1-day workers. Premont deposited the fees into the district's general fund, which it used to pay the wages of the 1-day workers and cover the administrative expense of hiring them. Premont officials stated it used the surplus to fund capital improvements in the district. For example, Premont used the surplus to refurbish the seating and lighting in an auditorium, remodel a storage building into a distance-learning center, and upgrade air conditioning systems. The 2,186 1-day workers were paid approximately \$87,000. From our sample of 95 individuals, Premont had hired 90 as 1-day workers, who paid fees of \$500 each. They were all paid \$40 for 1 day of employment.

[Lack of Authority to Grant Social Security Coverage](#) - Although Premont stated it hired 1-day workers to fill full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 90 individuals hired under the program actually worked only 1 day. Premont's section 218 agreement states that part-time positions (defined as 20 hours or less per week) are excluded from Social Security coverage. We found that each of the 90 individuals hired under Premont's 1-day worker program worked less than the required 20 hours per week.

Coleman Independent School District

We found that Coleman's employment of its 1-day workers was questionable. In addition, we found that Coleman did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

[Questionable Employment](#) – Coleman required that applicants pay between \$100 and \$300 in fees to participate in its 1-day worker program. Although the school district required that all new employees pay fees, Coleman held the checks and

returned them to the individuals who worked more than 30 days. However, Coleman immediately deposited the checks from its 1-day workers into its general fund. In total, Coleman collected \$699,498 in fees from its 3,642 1-day workers. Coleman deposited the fees into the district's general fund, which was used to pay its operating expenses, including the wages paid to its 1-day workers. The 3,642 1-day workers were paid approximately \$218,000. From our sample of 95 individuals, Coleman had hired 94 as 1-day workers. All 94 of these individuals paid between \$100 and \$300 in fees. They were all paid \$60 for their 1 day of employment.

[Lack of Authority to Grant Social Security Coverage](#) - Although Coleman stated it hired its 1-day workers to fill full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 94 individuals hired under the program actually worked only 1 day. Coleman's section 218 agreement states that part-time positions are excluded from Social Security coverage. Our review disclosed that each of the individuals hired under Coleman's 1-day worker program worked 8 hours or less.

Sweeny Independent School District

Our review disclosed that the employment between Sweeny and its 1-day workers was questionable. Sweeny required that 1-day worker applicants "donate" \$500 to the Sweeny Education Foundation (Foundation). The Foundation is a nonprofit organization that transfers funds into Sweeny's general fund as needed. In addition to the \$500 "donation," the 1-day worker applicants paid a consultant \$200 to process their applications. Other individuals Sweeny hired neither donated to the Foundation nor paid a consultant \$200 to process their applications. We also found the number of 1-day workers Sweeny hired was generally based on the number of interested applicants rather than an actual need for their services. We found that Sweeny had as many as 374 workers on the same day. Finally, Sweeny stated that, if it had not collected the \$500 "donation," the school district would have only hired between 10 and 15 individuals.

In total, Sweeny collected \$1,428,703 in fees from its 2,958 1-day workers. These 1-day workers were paid approximately \$122,000. From our sample of 95 individuals, Sweeny had hired 92 as 1-day workers. All 92 of these individuals made a "donation" of \$500 to the Foundation. They were all paid \$41 for their 1 day of employment.

Kilgore Independent School District

We found that Kilgore's employment of its 1-day workers was questionable. Kilgore required that applicants pay between \$250 and \$500 in fees to participate in its 1-day worker program. None of the other individuals Kilgore hired paid fees. In addition, we found the number of 1-day workers Kilgore hired was generally based on the number of interested applicants rather than an actual need for their services. According to Kilgore, the number of individuals hired was only limited by the number it could reasonably supervise. We found that Kilgore had as many as 97 workers on the same day. Finally,

Kilgore stated if it had not collected application fees, the school district would not have hired any 1-day workers.

In total, Kilgore collected \$1,289,215 in fees from its 3,402 1-day workers. Kilgore deposited the fees into its general fund, which it used to pay the wages of the 1-day workers and cover the administrative expense of hiring these individuals. These 1-day workers were paid approximately \$140,000. From our sample of 95 individuals, Kilgore hired 87 as 1-day workers. We found that 86 of these individuals paid between \$250 and \$500 in fees (1 of the 87 individuals was not required to pay a fee because she was a Kilgore employee). All 87 individuals were paid \$41 for their 1 day of employment.

SSA MAY HAVE IMPROPERLY GRANTED GPO EXEMPTIONS TO 1-DAY WORKERS

SSA needs to revise its policies and procedures concerning acceptable proof and evidence for the last day of employment exemption for GPO. Specifically, we found that, of the 665⁷ individuals in our sample, 170 were receiving spousal benefits. SSA exempted 168 of them from GPO. Generally, this occurred because SSA relied solely on documentation provided by the 1-day workers to determine whether they should be exempt from GPO. This documentation included pay stubs and letters addressed to SSA from the school districts stating the individual was employed in a position covered by both the Texas Teachers Retirement System and Social Security on their final day of employment. According to SSA policy,⁸ this documentation is considered acceptable evidence that a GPO exemption applies. However, our review of the practices at the seven Texas Independent School Districts found that relying solely on this documentation does not provide SSA sufficient information to determine whether it should exempt an individual from GPO. To determine whether an individual should be exempt from GPO, SSA needs to examine the terms and conditions of the employment and the school district's section 218 agreement.

ADDITIONAL 1-DAY WORKER PROGRAMS

The allegation we received in October 2005 identified 8 other Texas school districts⁹ that hired approximately 3,285 1-day workers. If the same conditions we found at the 7 school districts we reviewed occurred in these 8 school districts, about 3,107 of these individuals should not be exempt from GPO. Furthermore, we estimate these 3,107 individuals will receive approximately \$17.8 million in spousal benefits annually to

⁷ Of the 665, 350 had not attained age 62 and therefore were not yet eligible for spousal benefits.

⁸ SSA, POMS, GN 02608.102 B1.

⁹ Hidalgo, Yoakum, Iraan-Sheffield, Hunt, Ft. Davis, Anahuac, Port Arthur and Somerville.

which they may not be entitled. Over their lifetimes, they could receive about \$353 million in spousal benefits.¹⁰

Our audit disclosed that the 1-day worker programs were generally limited to State and local government entities in Texas. To determine the extent to which this could be occurring in other States, we reviewed SSA's payment records. This review identified all spousal beneficiaries for whom SSA noted the State of the pension payments and who were exempt from GPO based on the last day of employment provision. According to SSA's Master Beneficiary Record, 1,303 spouses are exempt from GPO based on the last day of employment provision. Of these 1,303 individuals, 1,276 (98 percent) had been employed by a State or local government entity in Texas. We estimate 995¹¹ of the 1,276 individuals were from the 15 Texas school districts (see Appendix C).

CONCLUSIONS AND RECOMMENDATIONS

We found the employment agreements between the seven Texas school districts and their 1-day workers were questionable. In addition, five of the school districts did not have the authority to provide these individuals Social Security coverage. Our review disclosed that the school districts hired the 1-day workers primarily to generate revenue. The individuals hired as 1-day workers paid fees far in excess of any wages received. However, we believe these individuals paid these fees based on an expectation that they would be provided an exemption from GPO. On average, the GPO exemption is valued at approximately \$113,000 per person over the average life expectancy of an individual receiving spousal benefits.

Unless SSA changes its policies and procedures for evaluating individuals who are eligible for GPO exemptions, we estimate 19,212 individuals will receive \$110 million in spousal benefits annually to which they may not be entitled. Over their lifetimes, these individuals could cost the Social Security Trust Funds about \$2.2 billion. In addition, we estimate 3,107 individuals at 8 other Texas schools districts could improperly receive \$17.8 million in spousal benefits. Over their lifetimes, they could receive \$353 million in spousal benefits.

We recommend that SSA:

1. Develop policies and procedures to ensure individuals employed as 1-day workers only receive GPO exemptions if appropriate. For example, SSA should obtain documentation to evaluate whether the terms and conditions of the employment are valid and whether the school district's Social Security coverage complies with its section 218 agreement.

¹⁰ See Appendix C for a description of our estimation methodology.

¹¹ This will significantly increase in the next few years given the number of individuals who participated in the 1-day worker programs at these school districts.

2. Reexamine the decisions to grant an exemption from GPO for the 168 spouses in our sample.
3. Identify and reexamine any decisions to grant exemptions from GPO for spouses in the population of 20,248 1-day workers employed by the 7 school districts.
4. Review the 1-day worker programs at the other eight Texas independent school districts identified in the allegation to determine whether their 1-day workers programs would result in inappropriate GPO exemptions.

AGENCY COMMENTS

SSA agreed, in part, with our recommendations. Specifically, SSA stated it would ensure that appropriate section 218 agreements are in force for the school districts and take appropriate action if it identified any problems.

Regarding the questionable employment, SSA stated the payment of a fee does not affect the validity of the wages unless the fee is considered a reimbursement of wages paid to the worker. SSA further stated it has no evidence these fees were considered a reimbursement of wages, nor does the draft OIG report state this is the case.

Regarding Social Security coverage for part-time employees, SSA agreed that many part-time positions are not covered under section 218 agreements. However, SSA stated it generally looks to the employers to determine whether the position is full- or part-time. SSA stated that, in all our cases, the school districts paid the Social Security taxes, which demonstrated that the school districts determined the positions were full-time and, therefore, covered under the section 218 agreements.

See Appendix D for the full text of SSA's comments.

OIG RESPONSE

We are pleased that SSA agreed, in part, with our recommendations. However, we have the following observations.

- With respect to the employment questioned in our report, we found substantial evidence that SSA needs to review the employment relationship for the very reasons SSA cited. Most notable, the fees were, in substance, a return or reimbursement of the wages paid. We noted in several instances in our report that the school districts did not have the funds to pay the wages or would not have hired these individuals without charging a fee. As such, we believe the fees were a reimbursement of wages paid.
- With respect to the Social Security coverage for part-time employees, we believe SSA should not rely on these school districts to determine whether the positions were covered by Social Security simply because they paid Social Security taxes.

Rather, SSA should examine the facts and circumstances of the employment at each school district as we outlined in our report, to determine whether the employment is full- or part-time and covered under the section 218 agreements.

We also believe SSA's review needs to consider that these employment practices primarily occurred in these 15 school districts. As we noted, we estimate 995 of the 1,303 individuals nationwide who are exempt from GPO under the last day of employment provision were from these 15 school districts. These school districts almost exclusively hired individuals from other school districts rather than individuals from their own school district. Of the 665 individuals in our sample, 649 (97.6 percent) had not been previously employed by the hiring school district.



Patrick P. O'Carroll, Jr.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – Sampling Methodology and Results

APPENDIX D – Agency Comments

APPENDIX E – OIG Contacts and Staff Acknowledgments

Acronyms

Act	<i>Social Security Act</i>
Foundation	Sweeny Education Foundation
GPO	Government Pension Offset
MEF	Master Earnings File
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SSA	Social Security Administration
U.S.C.	United States Code

Scope and Methodology

We obtained a data extract from the Master Earnings File (MEF) of individuals for whom the seven school districts¹ had reported earnings of \$100 or less between January 1, 2001 and June 30, 2004. In addition, we obtained lists from six of the school districts² that contained identifying information about individuals who participated in their 1-day worker programs. Using the data extract and information provided by the school districts, we identified a population of 20,248 individuals who likely participated in 1-day worker programs during our audit period. From this population, we randomly selected a sample of 665 individuals (95 from each school district) for review.

To accomplish our objective, we

- reviewed the applicable sections of the *Social Security Act* (Act), U.S. Code, and Social Security Administration's (SSA) Program Operations Manual System;
- interviewed SSA employees from the Dallas Regional Office, Office of Income Security Programs and Office of General Counsel;
- interviewed officials from the following school districts: West, Hudson, Lindale, Premont, Coleman, Sweeny and Kilgore;
- reviewed policies and other documentation related to the 1-day worker programs at the 7 school districts; and
- extracted a random sample of 665 individuals who participated in the 1-day worker programs of the 7 school districts (95 individuals in each district). For each sampled individual we obtained employment information from the school districts and queries from SSA's MEF and Master Beneficiary Record.

We determined whether the computer-processed data were sufficiently reliable for our intended use. We conducted tests to determine the completeness and accuracy of the data. These tests allowed us to assess the reliability of the data and achieve our audit objectives.

¹ The seven school districts were West, Hudson, Lindale, Premont, Coleman, Sweeny and Kilgore.

² Lindale was unable to provide a listing. Therefore, we determined the number of 1-day workers hired by the school district based on the data in the MEF extract.

Our audit was primarily a compliance review and therefore our review of internal controls was limited to assessing SSA's policies and procedures concerning acceptable evidence to support the last day of employment exemption for GPO. We did not review the internal controls in each of the seven school districts because it was not necessary to achieve our objective.

We performed audit work related to the seven school districts in the cities of West, Lufkin, Lindale, Premont, Coleman, Sweeny and Kilgore, Texas and Richmond, California, between December 2005 and August 2006. The entity audited was SSA's Office of Operations under the Deputy Commissioner for Operations. We conducted our audit in accordance with generally accepted government auditing standards.

Sampling Methodology and Results

Sample of 1-day workers - We obtained a data extract from the Master Earnings File (MEF) of individuals for whom the seven school districts¹ reported earnings of \$100 or less between January 1, 2001 and June 30, 2004. In addition, we obtained lists from six of the school districts² that contained identifying information about individuals who had participated in their 1-day worker programs. Using the data extract and information provided by the school districts, we identified a population of 20,248 individuals who likely participated in 1-day worker programs during our audit period. The following table includes the number of individuals per school district.

School District	Individuals in the 1-Day Worker Programs
West	1,860
Hudson	1,887
Lindale	4,313
Premont	2,186
Coleman	3,642
Sweeny	2,958
Kilgore	3,402
Total	20,248

We randomly selected 665 individuals, 95 individuals from each school district, for review. For each sampled individual, we obtained employment information from the school districts to determine whether the employment was valid and whether the school districts had the authority (per their section 218 agreements) to provide Social Security coverage to the individual.

Of the 665 individuals in our sample, we found 629 (95 percent) should not be exempt from GPO based on the last day of employment provision. Projecting our sample results to the population, we estimate that 19,212 individuals will receive \$110 million in spousal benefits annually to which they may not be entitled. Over their lifetimes, they will potentially receive about \$2.2 billion in spousal benefits. The following tables provide the details of our sample results and statistical projections.

¹ The seven school districts were West, Hudson, Lindale, Premont, Coleman, Sweeny and Kilgore.

² Lindale was unable to provide a listing. Therefore, we determined the number of 1-day workers hired by the school district based on the data in the MEF extract.

Table 1 – Number of Individuals Who May Not Be Eligible for GPO Exemptions

School District	Sample Size	Ineligible Individuals	Population	Point Estimate	Lower Limit	Upper Limit
West	95	91	1,860	1,782		
Hudson	95	85	1,887	1,688		
Lindale	95	90	4,313	4,086		
Premont	95	90	2,186	2,071		
Coleman	95	94	3,642	3,604		
Sweeny	95	92	2,958	2,865		
Kilgore	95	87	3,402	3,116		
Totals	665	629	20,248	19,212	18,925	19,497

All statistical projections are at the 90-percent confidence level.

Table 2 – Annual Estimate of Spousal Benefits Paid to Individuals Who May Not Be Eligible for GPO Exemptions

School District	Point Estimate	Average Annual Spousal Benefits ³	Annual Estimate
West	1,782	\$5,736	\$10,221,552
Hudson	1,688	\$5,736	\$9,682,368
Lindale	4,086	\$5,736	\$23,437,296
Premont	2,071	\$5,736	\$11,879,256
Coleman	3,604	\$5,736	\$20,672,544
Sweeny	2,865	\$5,736	\$16,433,640
Kilgore	3,116	\$5,736	\$17,873,376
Totals	19,212	\$5,736	\$110,200,032

³ We based our estimate on the average monthly spousal benefit of \$478 paid to beneficiaries in 2004.

Table 3 – Lifetime Estimate of Spousal Benefits Paid to Individuals Who May Not Be Eligible for GPO Exemptions

School District	Point Estimate	Average Annual Spousal Benefits	Average Life Expectancy at Age 62 ⁴	Spousal Benefits Paid Over Lifetime
West	1,782	\$5,736	19.82	\$202,591,161
Hudson	1,688	\$5,736	19.82	\$191,904,534
Lindale	4,086	\$5,736	19.82	\$464,527,207
Premont	2,071	\$5,736	19.82	\$235,446,854
Coleman	3,604	\$5,736	19.82	\$409,729,822
Sweeny	2,865	\$5,736	19.82	\$325,714,745
Kilgore	3,116	\$5,736	19.82	\$354,250,312
Totals	19,212	\$5,736	19.82	\$2,184,164,635

Estimate of Additional 1-Day Workers at Remaining Texas School Districts Identified in the Allegation – Our sample results at the 7 school districts found that 629 of 665 individuals (95 percent) who participated in the 1-day worker program may not be eligible for a GPO exemption. We applied this percentage to the 3,285 individuals identified in the allegation for the remaining 8 school districts and estimate an additional 3,107 individuals should not be exempt from GPO. These 3,107 individuals would receive about \$17.8 million annually and \$353 million over their lifetimes. The following table provides the details of our estimate.

Table 1 – Estimate of Spousal Benefits Paid to Individuals at Remaining Eight School Districts

Description	Sample Results for 7 School Districts	Remaining 8 School Districts Identified in the Allegation
Individuals in the 1-day worker program	665	3,285
Number of Individuals Who May Not Be Eligible for GPO Exemption	629	3,107
Percent Not Eligible	94.58	94.58
Average Annual Spousal Benefits		\$5,736
Annual Estimate		\$17,821,752
Average Life Expectancy at Age 62		19.82
Spousal Benefits Paid Over Lifetime		\$353,227,125

⁴ We based our estimate on the average life expectancy of 19.82 years for an individual at age 62.

[Sample of Spousal Beneficiaries Currently Exempt from GPO](#) – We obtained a data extract from SSA’s Master Beneficiary Record of all spousal beneficiaries for whom SSA identified the State of the pension payments and who are exempt from GPO based on the last day of employment provision. From this, we identified a population of 1,303 spouses, of which 1,276 were previously employed by a State or local government entity in Texas. From the 1,276 individuals, we randomly selected 100 for review and found that 78 were previously employed by the 15 Texas school districts. Projecting our sample results to our population, we estimate that 995 individuals were previously employed by the 15 Texas school districts. These school districts almost exclusively hired individuals from other school districts rather than individuals from their own school district. Of the 665 individuals in our sample, 649 (97.6 percent) had not been previously employed by the hiring school district. The following tables provide the details of our sampling results and statistical projections.

Table 1 – Population and Sample Size

Description	Population	Sample Size
Spouses Exempt from GPO Based on the Last Day of Employment Provision	1,276	100

Table 2 – Sample Results and Statistical Projections

Description	Number of Cases
Sample Results	78
Point Estimate	995
Lower Limit	899
Upper Limit	1,076

All statistical projections are at the 90-percent confidence level.

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: December 15, 2006

Refer To: S1J-3

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

From: Larry W. Dye /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Government Pension Offset Exemption for Texas School Districts' Employees" (A-09-06-26086)-- INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the draft report content and recommendations are attached.

Let me know if we can be of further assistance. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at extension 54636.

Attachment:
SSA Response

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, “GOVERNMENT PENSION OFFSET EXEMPTION FOR TEXAS SCHOOL DISTRICTS’ EMPLOYEES” (A-09-06-26086)

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

The Government Pension Offset (GPO) reduces Social Security spousal benefits by two-thirds of the amount of the government pension. Prior to July 1, 2004, Social Security beneficiaries could be exempt from GPO if, on “the last day” of employment, they were in a position covered by both Social Security and the government pension plan. To meet this exemption, some Texas Teacher’s Retirement System (TRS) participants who had worked their careers in employment not covered by Social Security, transferred to a position that was covered by both TRS and Social Security just prior to retirement, often for only one day of employment. When this application of the last day test came to the attention of Congress, the Social Security Administration (SSA) advised that, while questionable from a public policy perspective, the application was legally supported. Congress ended the last day test in the Social Security Protection Act (SSPA), substituting a requirement that an individual work his or her last 60-months in covered employment in order to be eligible for the GPO exemption.

The draft OIG report indicates that SSA misapplied the law by affording the “last day” exemption to certain Texas TRS participants who paid a fee and worked their last day of employment in other school districts in positions for which Social Security taxes were paid. However, the legislative history of the SSPA clearly indicates that Congress knew how SSA was interpreting the law and administering the “last day” exemption. Moreover, the fact that Congress felt compelled to take legislative action to end the practice indicates that it recognized the limits of the Agency’s discretion under the former statutory language. This issue was raised to Congress in an August 2002 Government Accountability Office (GAO) report entitled “Social Security Administration: Revision to the Government Pension Offset Should be Considered.” That report acknowledged that individuals who paid a fee to obtain their one-day job in Social Security covered employment met the requirements for the “last day” exemption to the GPO provision as SSA was administering the provision. This report had no findings, either stated or implied, that indicated that SSA was not properly applying the “last day” exemption. In fact, the report concluded that, to address the issue of potential abuses resulting from the “last day” exemption, Congress needed to consider revising the Social Security Act to extend the requirement for covered employment for a longer period of time.

The Committee on Ways and Means report on the 2004 legislation that ended the “last day” exemption to the GPO cites GAO testimony that the exemption “allows a select group of individuals with a relatively small investment of work time and only minimal Social Security contributions to gain access to potentially many years of full Social Security spousal benefits.” This testimony, as well as GAO’s 2002 report, led to thorough investigations by Congress and SSA. Congressional interest in this issue was evidenced by a hearing that was held in May 2003.

The issue of whether the “last day” exemption to GPO should be retained or substantially modified was debated on the floor of the House of Representatives. Views on both sides of the issue were expressed -- that is, that the “last day” exemption should be retained and, alternatively, that this exemption was a loophole that was both costly and inappropriate. Throughout the time GAO was reporting to Congress, SSA was simultaneously communicating and working with members of the Social Security Subcommittee to seek a legislative change and to correct the loophole. Ultimately, Congress determined that legislation was necessary to close the loophole. The final legislation (section 418 of the SSPA) replaced the “last day” exemption with a requirement that, to be exempt from GPO, the individual must work in employment covered by Social Security for at least 60 months before retirement from a State or local government job.

In developing our existing policy, we reviewed (1) whether a bona fide employment relationship existed, even though teachers paid a processing fee that in many cases exceeded the wages they expected to earn; and (2) whether teachers employed for as little as one day met the requirements of those section 218 agreements that specifically exclude employees in part-time positions from Social Security coverage.

Section 210(j)(2) of the Social Security Act defines an employee as “... any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has that status of an employee.” Pursuant to 20 CFR 404.1007(a), a common-law relationship exists if the employer can tell the employee “what to do and how, when, and where to do it;” i.e., the employer controls the employee’s work. The fact that some workers paid the employer a fee for processing their job applications did not change the fact that the employer controlled the conditions of employment. As an employer, the school district could designate when and where the employees worked, in what position they worked, could withhold pay for nonperformance, and could fire them. As a result, we determined that the common law test was met and an employment relationship existed, regardless of whether a fee had been paid

The fact that a worker pays a fee to work does not impact the validity of the wages received or the underlying employee-employer relationship, as long as the fee is not considered a reimbursement of wages paid to the worker. We have no evidence of any of these fees being considered as such, nor does the draft OIG report state that this is the case.

With regard to the part-time status issue, it is true that many part-time positions are not covered under section 218 agreements in Texas. However, it is also true that full-time positions exist that may be filled on a part-time basis. In evaluating whether a position is covered under a section 218 agreement in Texas, it is the status of the *position*, not the status of the *person* who fills it, that is the determining factor. For example, if the position is one requiring a 40-hour workweek, individuals filling that position would have Social Security coverage, even if the position is filled by five individuals each working eight hours. Conversely, if the position requires a 20-hour work week and part-time positions are not covered by the section 218 agreement, then the individuals in that position would not be covered by Social Security whether it is five individuals each

working four hours or one individual working 20 hours. We generally look to the employer to determine the *position* to which the employee was assigned and whether Social Security taxes are payable. In all of these cases, the employer paid the Social Security taxes, demonstrating its determination that the positions being filled were full-time positions and, hence, covered under the section 218 agreement.

In addition, pension contributions for this work were made to the Texas Teachers Retirement System for these employees. Based on our understanding of the applicable pension rules, the contributions would not have been made had these employees been working in temporary (part-time) positions.

In the past, OIG has been supportive of SSA's implementation of the "last day" exemption to the GPO. Specifically, in response to an inquiry about the validity of one-day employment in one of the school districts, OIG noted that it was within SSA's purview to determine whether a bona fide employment relationship existed and indicated that additional work by OIG would be redundant in light of the work done by SSA and GAO, along with the elimination of the one-day test. It is not clear why OIG's views on this matter have changed.

Our responses to the specific recommendations are provided below:

Recommendation 1

SSA should develop policies and procedures to ensure individuals employed as one-day workers only receive GPO exemptions if appropriate. For example, SSA should obtain documentation to evaluate whether the terms and conditions of the employment are valid and whether the school district's Social Security coverage complies with its section 218 agreement.

Response

We agree in part with this recommendation. Our policies regarding the "last day" exemption to the GPO are based on the applicable statute in effect before enactment of the Social Security Protection Act of 2004. These policies are appropriate and have been reviewed and approved by our Office of General Counsel. However, we agree to check to ensure that an appropriate section 218 agreement is in force for the school district.

Recommendation 2

SSA should reexamine the decisions to grant an exemption from GPO for the 168 spouses in our sample.

Response

We agree to review the section 218 agreement for the seven school districts where the 168 spouses worked and, if we identify problems in this review, we will take appropriate action.

Recommendation 3

SSA should identify and reexamine any decisions to grant exemptions from GPO for spouses in the population of 20,248 one-day workers employed by the seven school districts.

Response

As stated in the response to recommendation 2, we agree to review the section 218 agreements for these seven school districts and, if we identify problems in this review, we will take appropriate action.

Recommendation 4

SSA should review the one-day worker programs at the other eight Texas independent school districts identified in the allegation to determine whether their one-day workers programs would result in inappropriate GPO exemptions.

Response

We agree to review the section 218 agreements for the other eight school districts identified in the OIG review and, if we identify problems in this review, we will take appropriate action.

OIG Contacts and Staff Acknowledgments

OIG Contacts

James J. Klein, Director, San Francisco Audit Division, (510) 970-1739

Joseph Robleto, Audit Manager, (510) 970-1737

Acknowledgments

In addition to those named above:

Timothy E. Meinholz, Senior Auditor

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 Specialist at (410) 965-3218. Refer to Common Identification Number A-09-06-26086.

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