

119021

45575

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Prisoners Receiving Social Security And Other Federal Retirement, Disability, And Education Benefits

Public concern over prisoners receiving cash benefits from Social Security and Veterans Administration programs led to legislation in 1980 to exclude certain cash benefits from prisoners.

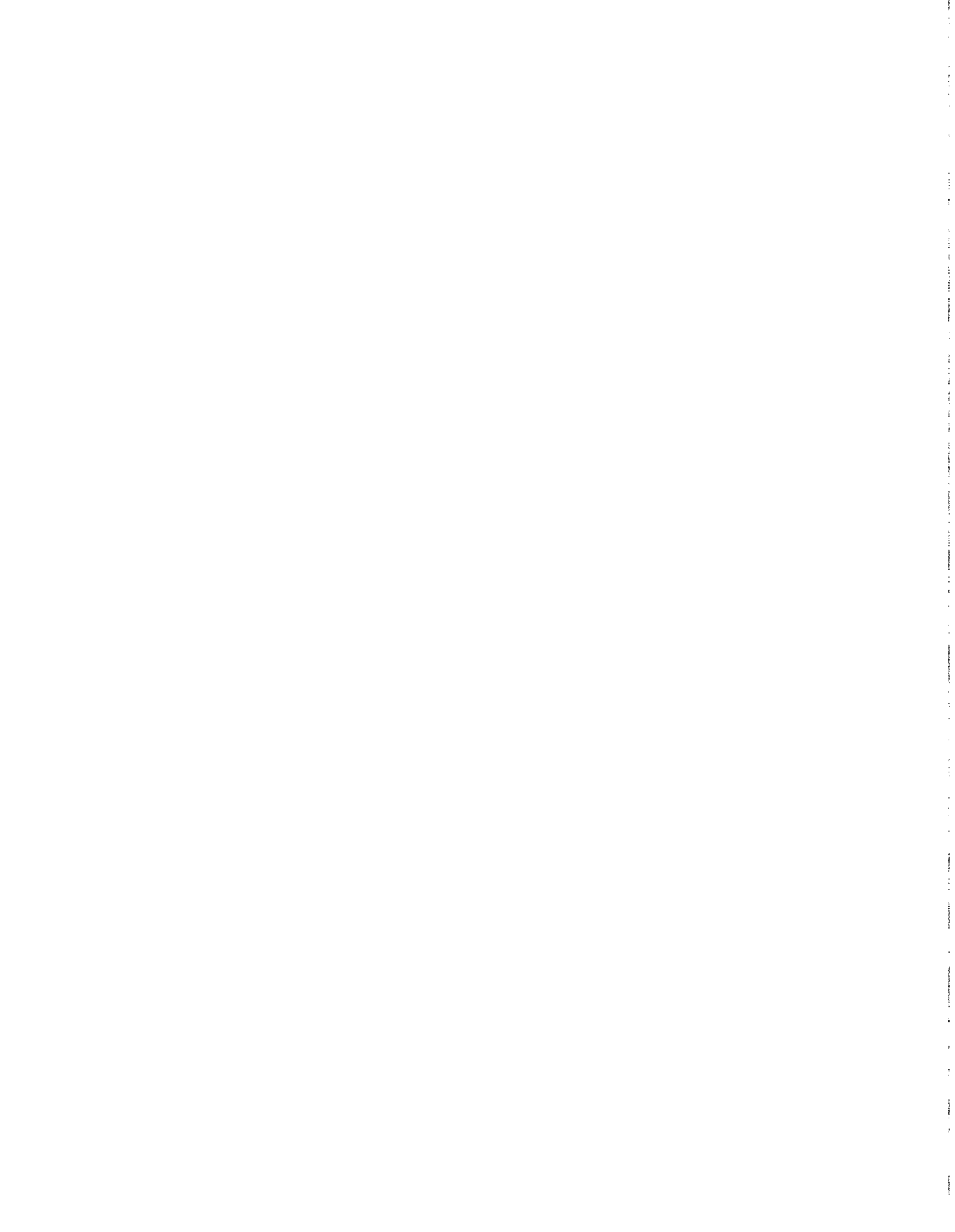
This report estimates the number of prisoners who were receiving these benefits and the number who receive other similar Federal cash benefits not addressed in the 1980 amendments and recommends improvements in the prisoner identification process.

The report also discusses Federal funding of prisoner postsecondary education through Pell Grants and recommends changes in regulations so that Pell Grants are no longer based on tuitions greater than schools actually charge the prisoners.



GAO/HRD-82-43
JULY 22, 1982

022810





COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-202095

To the President of the Senate and the
Speaker of the House of Representatives

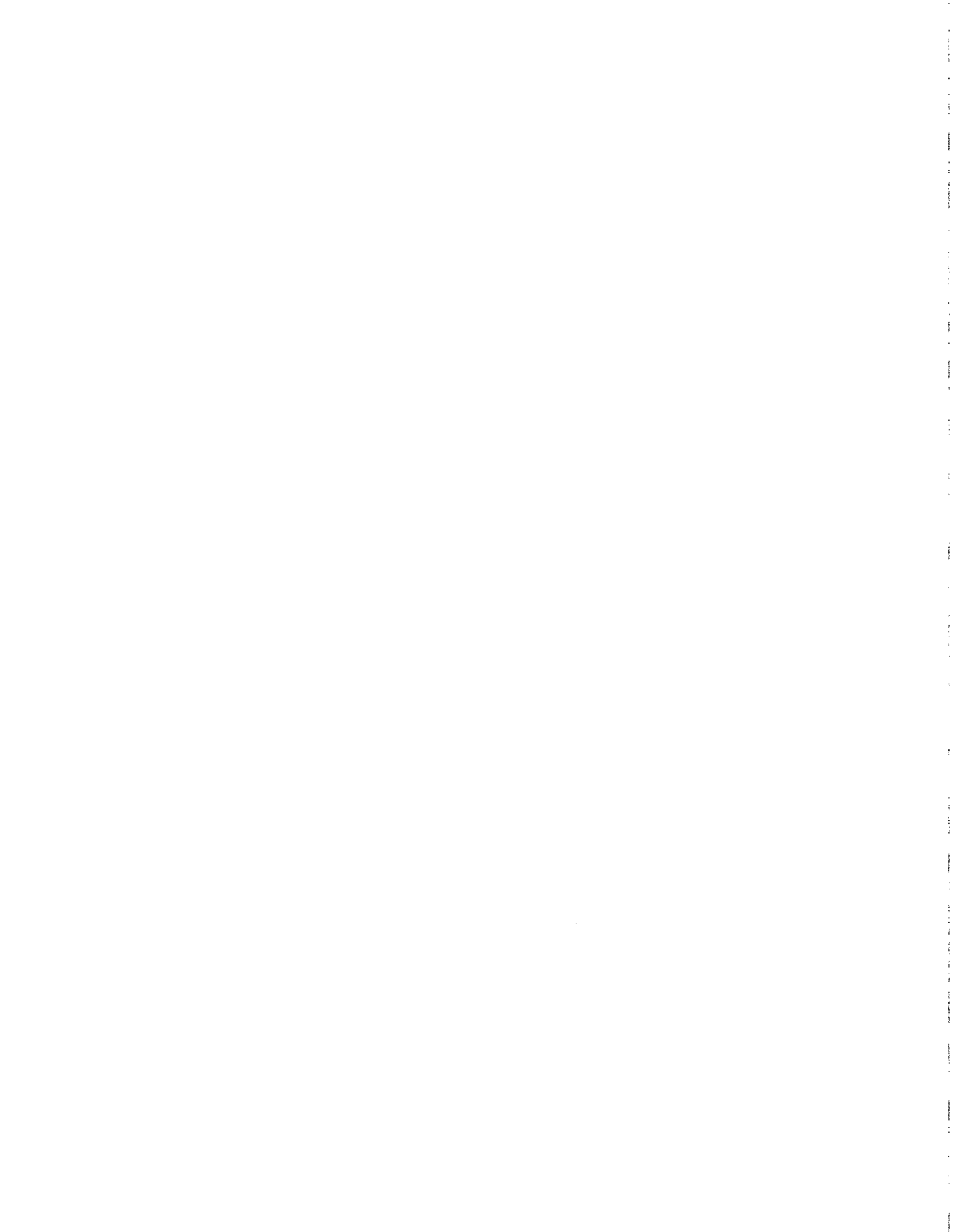
This report estimates the number of incarcerated felons who were receiving Social Security and other cash benefits from various Federal programs while incarcerated. Some of these programs have been amended to restrict such benefits to prisoners, while others have not. The report also addresses prisoner postsecondary education funded through the Pell Grant program.

The review, requested by Congressman G. William Whitehurst, was done to give the Congress prisoner beneficiary data for its use in deliberations over benefit restrictions.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Health and Human Services; the Commissioner of Social Security; the Secretary of Education; and the Administrator of Veterans Affairs.

Charles A. Bowser

Comptroller General
of the United States



D I G E S T

Because of public concern over prisoners receiving cash benefits from Social Security Administration (SSA) and Veterans Administration (VA) programs and the lack of data on the number of prisoners receiving such benefits, Congressman G. William Whitehurst requested GAO to determine this number. After receiving from GAO initial estimates on the number of prisoner beneficiaries of Social Security disability benefits, the Congress enacted legislation in October 1980 to exclude certain benefits to SSA and VA prisoners. (See p. 1.)

GAO estimates that, before the amendments, about 4,300 (1.4 percent) of the approximately 314,000 incarcerated felons were receiving Social Security disability benefits of about \$17 million a year, about 3,000 (1.0 percent) were receiving VA disability compensation benefits of about \$8 million a year, and about 4,000 (1.3 percent) were receiving VA education benefits of about \$14 million a year. (See app. I.)

Prisoners were also receiving cash benefits from other similar Federal programs not addressed by the 1980 amendments, including about 1,400 (0.4 percent) who were receiving Social Security retirement or survivor benefits of about \$4 million a year. Other benefits include military retirement, civil service retirement and disability, black lung, and Federal employees workers' compensation benefits. (See pp. 10 and 11.)

Other prisoners were receiving cash benefits from the Federal needs-based programs of Supplemental Security Income and Veterans Pensions to which they were not entitled while incarcerated.

SSA and VA will not be able to completely identify prisoner beneficiaries until accurate social security numbers are available for all prisoners. States vary widely in the completeness and accuracy of this information and could improve their documentation in coordination with SSA's validation process. (See pp. 12 and 13.)

GAO also estimates that about 11,000 prisoners (4 percent) were receiving postsecondary education funded through Pell Grants (formerly called Basic Education Opportunity Grants). The amount per grant varied widely, and in some cases, because of tuition waivers, the grants were based on tuitions higher than the schools actually charged the prisoners. (See p. 15.)

RECOMMENDATIONS

The Secretary of Health and Human Services should direct the Commissioner of Social Security to (1) encourage State prison systems to give SSA periodic lists of prisoners, incarceration dates, and accurate social security numbers and (2) validate these numbers and share the information with VA so that it can better identify prisoner beneficiaries.

The Secretary of Education should amend the Pell Grant regulations so that schools are required to calculate the students' cost of education, upon which Pell Grants are based, after any tuition waivers are granted.

AGENCY COMMENTS

The Department of Health and Human Services and VA agreed with our recommendations. The Department noted, however, that even though the Congress, in December 1981, enacted legislation to require prison systems to furnish prisoner social security numbers to SSA, it will take extensive work with the States over time before all jurisdictions amend their recordkeeping process to collect and maintain these data.

The Department of Education acknowledged that the legislation and regulations may have unintentionally created a loophole through which institutions may secure, for their students, excessive Pell Grant awards and said it would submit a Notice of Proposed Rulemaking on this tuition waiver issue.

C o n t e n t s

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
Public concern about prisoners receiving Federal disability and education cash benefits led to the Social Security and Veterans Administration amendments of 1980	1
GAO was asked to study prisoner benefits-- objective, scope, and methodology used	2
Social Security amendments	4
Veterans Administration amendments	6
2 OVER 4 PERCENT OF INCARCERATED FELONS WERE RECEIVING CASH BENEFITS FROM FEDERAL DIS- ABILITY, RETIREMENT, AND EDUCATION PROGRAMS DURING 1980	8
About 4 percent received cash benefits from programs that were amended in 1980 to limit future benefits	8
Others received cash benefits from programs not addressed by the 1980 amendments	10
Others received cash benefits from programs to which they were not entitled	11
Complete identification of prisoner benefici- aries will not be possible without accurate SSNs	12
Conclusions	13
Recommendations to the Secretary of Health and Human Services and the Administrator of Veterans Affairs	14
Agency comments	14
3 ABOUT 4 PERCENT OF INCARCERATED FELONS WERE RE- CEIVING POSTSECONDARY EDUCATION FUNDED THROUGH FEDERAL PELL GRANTS	15
Background on Pell Grants	15
Pell Grants pay some schools more than half the tuition actually charged the prisoners	15
State policies influence use of Pell Grants in prisoner education	17
Conclusion	18
Agency comments	18
Our evaluation	19
Recommendation to the Secretary of Education	19

	<u>Page</u>	
APPENDIX		
I	Estimates of Federal and State incarcerated felons receiving cash benefits from SSA and VA entitlement programs during 1980	20
II	Prison file SSN availability and accuracy	21
III	March 26, 1982, letter from the Inspector General, Department of Health and Human Services	22
IV	April 7, 1982, letter from the Administrator of Veterans Affairs	25
V	April 13, 1982, letter from the Deputy Assistant Secretary for Student Financial Assistance, Department of Education	26

ABBREVIATIONS

GAO	General Accounting Office
SEOG	Supplemental Education Opportunity Grant
SSA	Social Security Administration
SSI	Supplemental Security Income
SSN	social security number
VA	Veterans Administration

CHAPTER 1

INTRODUCTION

During 1979 and 1980, considerable publicity was given to the discovery that (1) some prisoners were receiving disability and education cash benefits from Social Security and Veterans Administration (VA) programs during incarceration, (2) some of the disabilities compensated under Social Security resulted from crimes committed, and (3) prisoners did not need cash benefits since their subsistence and education were already provided at public expense. These programs included Social Security disability insurance, Social Security dependents allowance for students, VA disability compensation, and VA education assistance.

While the Social Security Administration (SSA) and VA had little information on the number of prisoners receiving these benefits, guards at a New Jersey State prison estimated that about 10 percent of their inmates were receiving Social Security benefits. In March 1980 we were asked to estimate the number and amount of such benefits being received by prisoners, and in October 1980 the Congress enacted legislation to place restrictions on cash benefits for disability and education to prisoners from SSA and VA programs. We gave the Congress preliminary estimates for prelegislation hearings, and this report provides the final results of our analysis--including estimates of similar cash benefits not addressed by the legislation. This report also identifies problems in detecting prisoner beneficiaries and ways detection could be improved and discusses the use of Pell Grants for prisoners' education. This study's primary focus was the Social Security disability benefits to prisoners.

PUBLIC CONCERN ABOUT PRISONERS RECEIVING FEDERAL DISABILITY AND EDUCATION CASH BENEFITS LED TO THE SOCIAL SECURITY AND VETERANS ADMINISTRATION AMENDMENTS OF 1980

Because disability and education cash benefits paid through SSA and VA programs are not based on individual need, but instead on workers' earnings from employment and self-employment (upon which Social Security insurance taxes are paid) or military service rendered, a recipient's need for these benefits to provide subsistence and education can vary widely depending on his or her financial status. In the case of prisoners, these cash benefits--usually several hundred dollars a month--were not for basic subsistence, nor were they normally used for education, since these needs were already paid for by the public. The prisoners, therefore, could use the cash to buy things that many other prisoners could not afford on prisoner wages and to accumulate savings while incarcerated.

This situation drew public attention during 1979 and 1980, when prison guards and officials complained about prisoners' use of these benefits and the news media publicized examples of certain prisoner benefits. In the Social Security disability examples, usually the disability began during or after the time of the crime, and the severity of impairment appeared questionable.

In one situation, for example, a news article described a Social Security disability beneficiary who was receiving over \$300 a month for a disabling condition of headaches and dizzy spells allegedly resulting from a struggle with the police upon arrest. The article noted that, while in prison, the prisoner used his benefits to organize mail order fraud.

In another example, a prisoner, serving four concurrent life sentences, reportedly was receiving Social Security disability benefits for a mental disability although he was not enrolled in any regular psychiatric treatment program. It was further reported that, while incarcerated, the prisoner was a fulltime student taking correspondence courses and working toward a bachelor's degree.

In an example involving VA benefits, it was reported that a prisoner preferred to remain in prison rather than accept probation because he was receiving \$400 a month in GI Bill payments and had no subsistence expenses.

GAO WAS ASKED TO STUDY PRISONER BENEFITS--
OBJECTIVE, SCOPE, AND METHODOLOGY USED

Although disability and education cash benefits to prisoners were much publicized, the magnitude of the situation was unknown. SSA and VA had no way of adequately determining from their records which of their disability benefit recipients were prisoners. Prison mailing addresses would identify some, but many prisoners would likely have checks sent home or to a bank.

Since the Congress was considering legislation to address this issue, Congressman G. William Whitehurst asked us to estimate the size of the problem. We started the review in April 1980; in June 1980, we gave Congressman Whitehurst and the Social Security Subcommittee of the House Ways and Means Committee the results of our matching of a computer tape of current Federal prisoners and their social security numbers (SSNs) with the Social Security Master Beneficiary Record file. This match showed that about 1 percent of the Federal prison population was receiving Social Security disability benefits.

Later in June, the Subcommittee held hearings on this issue. Witnesses familiar with State prison systems testified that the percentage of State prisoners receiving Social Security disability benefits would be much higher.

Because of this potential variance between prison systems, we expanded our review to include a random sample of prison systems of 20 States and the District of Columbia. Because of problems in obtaining automated files of prisoners' SSNs from some States, our sample was limited to 13 States, the District of Columbia, and the Federal prison systems. Estimates and sampling errors were developed from data provided by this limited sample and are based on the assumption that the States from which we obtained the necessary data are representative of the other seven States in our sample from which we could not obtain the necessary data.

We also expanded our review to include estimates of other Federal cash benefits received by prisoners. Our estimates consist of statistical estimates for SSA and VA entitlement programs (Social Security Retirement, Survivor, and Disability Insurance; and VA Disability and Education programs). We also reviewed other similar Federal programs (including Civil Service Disability and Retirement, Military Retirement, Black Lung benefits, and needs-based programs of Supplemental Security Income and Veterans Pensions), but reviewed only a few selected States within our sample (except for VA Pensions), and therefore did not make national estimates based on these results. The reported results apply only to the States reviewed. We also reviewed prisoners' use of Pell Grants for postsecondary education. These grants are made to the educational institution to pay part of a student's cost of education.

For all of these programs, we identified prisoner beneficiaries by matching their SSNs with the program beneficiary files. Because of time and resource constraints, we did not include in our study local or military prison populations.

It should also be noted that there are nonincarcerated populations institutionalized at public expense and receiving cash assistance payments from the programs addressed. Our review, however, addressed only the incarcerated population.

The States varied in what information they could furnish and how quickly they could furnish it. Some States did not have SSNs in their automated records, and some took longer than others to give us information, primarily because of their concerns about complying with their privacy laws. Most States in our sample represented prisoner populations current as of some time from March through December 1980. Two State prison populations were current as of January and February 1981.

In addition to estimating the number of prisoners receiving various Federal benefits, we studied whether prisoners became disabled before or during incarceration and whether their disability was crime related. Our studies of whether the disability was

crime related required us to review prisoners' disability case files at SSA and their records at the prisons. We did this more extensive review in Texas, New Jersey, and Virginia. These States were selected for various reasons, including availability of data, physical location, size differentials, previous publicity of prisoner benefits, and differences in the use of Pell Grants.

Our review was made in accordance with our current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

SOCIAL SECURITY AMENDMENTS

The Social Security amendments enacted in 1980 (Public Law 96-473, section 5) address prisoner eligibility for title II Social Security disability insurance benefits and Social Security benefits to dependent students. Before the amendments, there were three limitations to criminals receiving title II benefits:

- The Social Security Act requires that individuals deported from the United States under certain sections of the Immigration and Nationality Act on conviction of certain crimes, including subversive activities, would not be paid Social Security benefits for the period they are out of the country.
- Under Social Security regulations, a person may not become entitled to survivors' benefits or payments on the earnings records of a worker if the person was convicted of a felony for intentionally causing the worker's death. (This was apparently based on the common law principle that no one should be allowed to profit from his or her own wrongdoing.)
- A 1956 act provision that allows a court to impose--as part of the sentence for a person convicted of espionage, sabotage, censorship, treason, sedition, and subversive activities--the denial of Social Security benefits.

Additional benefit restrictions provided by the 1980 Social Security amendments include:

- An impairment arising out of a felony committed after October 19, 1980 (effective date of the amendments), is not to be considered in Social Security disability determinations.
- An impairment arising out of incarceration for a felony committed after October 19, 1980, is not to be considered in determining whether the person is under a disability for purposes of benefits during the period of incarceration.

--Social Security "student benefits" are not permitted during the period of incarceration of a person convicted of a felony committed after October 19, 1980.

--Disability benefits are suspended during incarceration for a person incarcerated for a felony (even if it was committed before October 19, 1980) starting with October 1980 benefits. 1/ Auxiliary benefits to the prisoner's dependents are continued during the suspension.

Earned right in question

A primary issue raised during the deliberations preceding the 1980 change in law was whether taking away a prisoner's benefits on the basis of incarceration and/or conviction violates an "earned right" principle of Social Security. Under this principle, the employee and his or her employer contribute to Social Security through a payroll tax to insure the individual against the loss of income because of age, death, or disability. While this may not be a vested right in the contractual sense since the Congress can change the amount and nature of Social Security benefits, the Supreme Court has ruled that these benefits cannot be taken away in an arbitrary or capricious manner. Legislation limiting prisoner benefits would need to be rationally related to achieving some legitimate governmental objective.

The Supreme Court, for instance, citing among others the legislative prohibition against felons being enlisted in the Armed Forces, serving on grand juries, or holding Federal office, upheld a statute which in effect disqualified a convicted felon from serving in a waterfront labor organization. The legislature, the Court noted, was "acting on impressive if mortifying evidence that the presence on the waterfront of ex-convicts was an important contributing factor to the corrupt waterfront situation."

Without such a rational basis for distinguishing prisoner claimants from other claimants similarly situated for Social Security purposes--such as inmates of nonpenal public institutions--the denial of benefits could be viewed as strictly penal, and unrelated to the purposes of the Social Security program.

1/Exceptions to this suspension are permitted if the prisoner is "actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time."

On the other hand, it is argued that the Social Security program's purposes are not served by paying benefits to prisoners because the immediate cause of their loss of income is the imprisonment, not the disability. In reporting on the amendment, the Senate Committee on Finance stated:

"The committee believes that the basic purposes of the social security program are not served by the unrestricted payment of benefits to individuals who are in prison or whose eligibility arises from the commission of a crime. The disability program exists to provide a continuing source of monthly income to those whose earnings are cut off because they have suffered a severe disability. The need for this continuing source of income is clearly absent in the case of an individual who is being maintained at public expense in prison. The basis for his lack of other income in such circumstances must be considered to be marginally related to his impairment at best."

VETERANS ADMINISTRATION AMENDMENTS

During 1980 the Congress enacted legislation to restrict prisoner benefits under the VA disability, dependency, and indemnity compensation, and education programs.

Disability, dependency, and indemnity compensation

On October 7, 1980, the Congress enacted legislation to limit disability, dependency, and indemnity compensation to incarcerated felons (Public Law 96-385). For incarcerated veterans with a service-connected disability, the amendments limit compensation to the amount paid for a 10-percent disability rating (currently \$58 per month) if the prisoner's disability rating is 20 percent or more. If the rating is less than 20 percent, the amount payable is one-half of the 10-percent rate (or \$29 a month).

This restriction applies to those incarcerated for more than 60 days for a felony committed after October 7, 1980. It also applies to those who, on October 1, 1980, were incarcerated for a felony, but whose compensation benefit had not yet been awarded, except that the full amount of benefits due for periods before October 8, 1980, is payable. It does not apply to prisoners in a halfway house, in a work release program, or on parole.

The remaining compensation that an incarcerated veteran would have received may be apportioned to his or her spouse and children. An apportionment may not, however, be paid to a dependent who is incarcerated for the conviction of a felony.

Education benefits

On October 17, 1980, the Congress enacted legislation to limit education benefits of incarcerated veterans and of incarcerated dependents of disabled veterans (Public Law 96-466). The amendments limit the education benefits to such persons incarcerated for felony convictions (including those in work release programs or halfway houses who are having all of their living expenses defrayed by governmental funds) to the established charges for tuition and fees required of nonveterans in similar circumstances enrolled in the courses and the necessary costs of supplies, books, and equipment, or \$342 per month, whichever is less. Persons incarcerated for misdemeanors (whether convicted or not) and for felonies (but not convicted) shall be paid no benefits if the course has no tuition and fees and proportionately less benefits to the extent that tuition and fees are paid by a non-VA government program. VA education benefits for veterans range from \$342 a month for a full-time institutional student with no dependents to \$464 a month for such a student with two dependents, plus \$29 per month for each additional dependent.

This limitation is based on the principle that active duty military personnel attending school under the GI bill are paid only the cost of tuition and fees. The basis for not allowing active-duty service personnel the payment of a subsistence allowance is that their living allowances are being provided by the Armed Forces.

CHAPTER 2

OVER 4 PERCENT OF INCARCERATED FELONS WERE RECEIVING CASH BENEFITS FROM FEDERAL DISABILITY, RETIREMENT, AND EDUCATION PROGRAMS DURING 1980

Based on our sampling of the 1980 Federal and State prison populations, we estimate that over 13,000 prisoners, or over 4 percent of the estimated 314,000 incarcerated felons, were receiving cash benefits from Federal disability, retirement, and education programs at any time during 1980. Payments to prisoners under these programs represent over \$45 million annually.

SSA and VA will be unable to completely identify prisoners subject to benefit limitations until accurate SSNs are available for all Federal and State prisoners. While many States have automated information systems for prisoner identification, SSNs are not recorded on these systems for all prisoners, and some of the SSNs are inaccurate. Some systems do not record SSNs.

ABOUT 4 PERCENT RECEIVED CASH BENEFITS FROM PROGRAMS THAT WERE AMENDED IN 1980 TO LIMIT FUTURE BENEFITS

As shown in appendix I, we estimate that about 12,000, or about 4 percent of the estimated 314,000 Federal and State prisoners in 1980, 1/ were recipients of cash benefits from one or more SSA or VA programs that were later amended to restrict such benefits in the future. This includes about 4,300 prisoners (or 1.4 percent) who were receiving monthly cash benefits averaging about \$322 from the Social Security disability insurance program, 3,000 prisoners (or 1.0 percent) who were receiving monthly cash benefits averaging about \$232 from the VA compensation program for service-connected disabilities, about 4,000 prisoners (or 1.3 percent) who were receiving monthly cash benefits averaging about \$284 from the VA education program, and about 800 prisoners (or 0.2 percent) who were receiving monthly cash benefits averaging about \$212 as dependent students under SSA's retirement and disability programs.

Some SSA disability beneficiaries have incarceration- or crime- connected disabilities

About 18 percent of the Social Security disabled prisoners-- in our 13 State, District of Columbia, and Federal prison system

1/The 314,000 prisoners are those with sentences over 1 year as of December 31, 1980.

review--became entitled to benefits during their current incarceration. In the three States and Federal prison systems where we reviewed individual case files, the proportion of disabled prisoners with physical versus mental disabilities was about the same regardless of whether the disability occurred during or before incarceration.

Relationship of Incarceration to
Type and Occurrence of Disability
(Federal, Texas, New Jersey, and Virginia prisoners)

	SSA case files reviewed (note a)		Proportion of cases by disability					
	Num- ber	Per- cent	Physical		Mental		Both	
			Num- ber	Per- cent	Num- ber	Per- cent	Num- ber	Per- cent
Disability occurring during incarcera- tion	57	19	36	63	17	30	4	7
Disability occurring before in- carceration	<u>249</u>	<u>81</u>	<u>158</u>	63	<u>78</u>	31	<u>13</u>	6
Total	<u>306</u>	<u>100</u>	<u>194</u>	63	<u>95</u>	31	<u>17</u>	6

a/Although we identified 447 disabled workers in these systems, case files were readily available for only 306. The other files were in various stages of processing within SSA and its field offices.

The proportion of disabilities occurring before or during incarceration in these cases is essentially the same as in our overall sample.

About 4 percent, or 6 of 145 disability cases--for which we reviewed both SSA and prison files--from Texas, New Jersey, and Virginia appeared to involve impairments that fully or partially arose in connection with the commission of a felony. All six involved gunshot wounds. Some of the other impairments may have been related to the commission of a felony, but did not necessarily begin or become aggravated during the crime. One person, for example, was disabled with kidney failure allegedly contributed to by his several years of heroin addiction. The felony was committed to support the addiction.

We were unable to determine which of the disabilities involving mental impairments--64 of the 145 cases reviewed--arose in connection with the commission of a felony. We expect that SSA may also have difficulty making such judgments in future cases involving mental disabilities. For example, a person convicted for shooting his wife with a shotgun was adjudged insane at a pretrial hearing, committed to the State hospital for treatment until competent to stand trial, and sentenced 3 years later. Although the mental impairment appeared to be related to the crime and was discovered because of the crime, there was little evidence in the files about whether the mental impairment existed previously or to what extent it may have been worsened during the commission of the crime.

Some SSA disability beneficiaries
may not be currently disabled

In reviewing the Texas prison population, we looked for evidence indicating that prisoners were no longer disabled, including prisoner work restriction classifications and overdue medical reexaminations scheduled by SSA.

In the 89 cases for which we reviewed both SSA and Texas case files, we found 10 prisoners with physical disabilities who were assigned to unrestricted or light work by the prison. Three of the 10 prisoners had been scheduled for a medical reexamination; one examination had been done, and the other two were 3 or more years overdue. In total, 19 reexaminations were scheduled, of which 5 were overdue. This is similar to our finding for the general population of Social Security disability recipients, as we reported in an earlier report. 1/

OTHERS RECEIVED CASH BENEFITS
FROM PROGRAMS NOT ADDRESSED
BY THE 1980 AMENDMENTS

Other prisoners were receiving monthly cash benefits from Federal programs similar to those affected by the 1980 amendments. These programs include Social Security Retirement and Survivors' Insurance, Civil Service Disability and Retirement, Military Retirement, Black Lung compensation, and Federal employees workers' compensation. We reviewed the occurrence of Social Security benefits for each of the prison systems in our sample and the occurrence of Civil Service, Military, and Black Lung benefits in selected prison systems in the sample. We did not review the extent to which prisoners were receiving Federal workers' compensation benefits, but because of the program's relatively small

1/"More Diligent Followup Needed to Weed Out Ineligible SSA Disability Beneficiaries" (HRD-81-48, Mar. 3, 1981).

size--about 45,000 nationwide disability beneficiaries--we believe the number of such prisoners would be insignificant.

Social Security Retirement, Survivor, and Dependent benefits

As shown in appendix I, about 1,400 prisoners (or 0.4 percent) were receiving Social Security retirement benefits, and survivor or dependent benefits (excluding dependent student benefits, which were addressed by the 1980 amendments). The retirement benefits averaged about \$242 a month, and the survivor and dependent benefits averaged about \$233 a month.

Civil Service and Military benefits

For Civil Service and Military benefits, we limited our review to the Federal and Texas prison populations; therefore, the results do not necessarily reflect the national picture. We found that 12 prisoners, or less than 0.1 percent of the Federal or Texas populations, were receiving Civil Service disability or retirement benefits, and 73 prisoners, or about 0.2 percent, were receiving military retirement benefits, excluding those who have partially waived military retirement benefits in lieu of receiving VA disability compensation.

Black Lung benefits

For Black Lung beneficiaries, we limited our matching to Kentucky and Pennsylvania--States with relatively high percentages of Black Lung beneficiaries--and to the Texas prison system because of its relatively large population. In Kentucky nine prisoners (or 0.3 percent) were receiving Black Lung benefits. Five of these were also receiving Social Security disability benefits. We found one prisoner receiving Black Lung benefits in Pennsylvania and none in Texas.

OTHERS RECEIVED CASH BENEFITS FROM PROGRAMS TO WHICH THEY WERE NOT ENTITLED

We also matched the prison files against SSA's SSI and VA's pension beneficiary files. Although prisoners have not been entitled to benefits under these programs, except during the first 2 months of incarceration for VA pension benefits, some prisoners were receiving benefits from these programs beyond the first 2 months of incarceration.

SSI and VA pension, unlike the programs previously discussed, are needs-based programs whose benefits are to be suspended during periods of incarceration. Program officials do not always learn, however, about beneficiaries being incarcerated and thus do not suspend benefits.

For SSI beneficiaries we limited our review to four States and the District of Columbia and found that 25 prisoners (or about 0.2 percent) were receiving SSI benefits. About half of these prisoners had been receiving such benefits for 6 months or longer after being incarcerated. SSA is currently using prison files to identify and stop SSI benefits going to prisoners.

For VA pension beneficiaries, we reviewed the 13 States, District of Columbia, and Federal prison populations in our sample and found that 163 prisoners (or about 0.2 percent) were receiving VA pension benefits. Most of these prisoners had been receiving these benefits for 6 months or longer after being incarcerated.

COMPLETE IDENTIFICATION OF PRISONER
BENEFICIARIES WILL NOT BE POSSIBLE
WITHOUT ACCURATE SSNS

All prisoner recipients of SSA or VA benefits cannot be identified without accurate data from the Federal and State prisons on prisoners' SSNs. SSA and VA can readily identify which of their beneficiaries are prisoners when they have these numbers to match against their beneficiary files. Currently, however, prison systems have considerable room for improvement in terms of furnishing complete and accurate SSNs.

Some States do not have automated files of their prison population, and some that have such files do not record SSNs. When SSNs are part of the file, they are not always complete or accurate. Of our sample of 22 prison systems (20 States, the District of Columbia, and Federal), 17 had automated files and 13 of these had SSNs. As shown in appendix II, about 72 percent of the prisoners on the automated files used in our review had SSNs recorded, and about 16 percent of these appeared to be erroneous (i.e., the name and date of birth on the prison records did not agree with information in SSA records for the same SSNs).

As shown in appendix II, the SSN accuracy rate varies widely by State, with Iowa and Georgia having the highest validated rates in our sample. The variance between States may relate to their need for and use of SSN information. When Georgia officials sent us their files, for example, they asked to be informed of SSNs we found to be inaccurate so they could correct their files. Other States did not make such a request.

Currently, SSA researches its files to find SSNs for prisoners without SSNs on the prison files and for prisoners whose prison file SSNs appear to be invalid. SSA does not detect most of the invalid SSNs, however, because it reviews the validity only when the prison file SSN matches an SSN on its automated Master Beneficiary Record. About 90 percent of prison SSNs do not result in such a match. (The Master Beneficiary Record contains data on

those who have applied for Social Security disability, retirement, or survivor benefits, and certain data on the Black Lung, Railroad Retirement, and SSI programs.)

The VA identification process involves VA district offices contacting the prisons to ascertain which prisoners are veterans, then matching their military service numbers with beneficiary files. VA officials from the compensation, pension, and education programs told us that their identification process would be enhanced, however, with prisoner SSNs identified and validated by SSA.

CONCLUSIONS

Over 13,000 prisoners, or over 4 percent of incarcerated felons, were receiving cash benefits from Federal disability, retirement, and education programs during 1980. Most of these, or about 4 percent of the total prison population, were receiving benefits from programs that have since been amended to restrict benefits to prisoners. Others were beneficiaries of similar Federal programs, including Social Security retirement, that remain unrestricted to prisoners; and others were receiving benefits from needs-based programs to which they were not entitled.

Although there were allegations of prisoners faking mental disabilities while incarcerated or becoming disabled during the commission of a crime, our findings show that most prisoners receiving Social Security disability benefits were receiving benefits for disabilities starting before their present incarceration and that most did not appear to become disabled during the commission of a crime.

While some crime-connected impairments may be easy to identify--particularly those resulting from traumatic injuries, such as gunshot wounds--SSA may have difficulty separating portions of progressive physical and mental impairments that arose during the commission of a felony.

Identification of prisoner beneficiaries of SSA and VA programs, and any other Federal programs that may be subject to similar restrictions in the future, will be incomplete without accurate SSNs on prison system files. SSA can enhance this completeness and accuracy by encouraging prison systems to make such improvements and by validating all prisoner SSNs. If SSA keeps track of SSN error rates by State, greater emphasis or assistance can be directed to States with higher rates. Also, SSA should share such validated information with VA so that VA can better identify prisoner beneficiaries of its programs.

RECOMMENDATIONS TO THE SECRETARY
OF HEALTH AND HUMAN SERVICES AND
THE ADMINISTRATOR OF VETERANS AFFAIRS

We recommend that the Secretary of Health and Human Services direct the Commissioner of Social Security to:

- Encourage State prison systems to give SSA periodic lists of prisoners, incarceration dates, and accurate SSNs.
- Validate all prisoner SSNs and share the names, validated SSNs, and incarceration dates with VA so that VA can better identify prisoner beneficiaries of its programs.
- Share the corrected SSNs with the prison systems to enhance the accuracy of their prisoner files.

We recommend that the Administrator of Veterans Affairs use the prisoner identification information supplied by SSA to better identify prisoner beneficiaries of VA programs.

AGENCY COMMENTS

The Department of Health and Human Services and VA agreed with our recommendations. The Department pointed out that enactment of Public Law 97-123 in December 1981 should make the task easier, as it requires Federal, State, and local correctional authorities to make available upon written request the names and SSNs of incarcerated felons. The Department noted, however, that it will take extensive work with the States over time before all jurisdictions amend their recordkeeping process to collect and maintain SSNs for prisoners.

CHAPTER 3

ABOUT 4 PERCENT OF INCARCERATED

FELONS WERE RECEIVING POSTSECONDARY

EDUCATION FUNDED THROUGH FEDERAL PELL GRANTS

About 11,000 prisoners, or about 4 percent of the Federal and State prison populations, were receiving postsecondary education partially or fully funded by Federal Pell Grants (formerly called Basic Education Opportunity Grants) during the 1979-80 academic year. ^{1/} Unlike programs discussed in chapter 2, payments are not made directly to the prisoners. The Pell Grant awards are made to the schools providing the education. The average Pell Grant was about \$360 per prisoner student and varied widely depending on the schools' tuition. In Virginia, for example, where most of the education was provided by private schools, in the 1979-80 academic year the average Pell funding per prisoner student was about \$700. In Texas, where prisoner education was primarily contracted by the State with public community colleges, the average was about \$140.

BACKGROUND ON PELL GRANTS

The Pell Grant program, administered by the Department of Education, helps financially needy students meet their costs of postsecondary education. The maximum grant allowable for the 1979-80 academic year was \$1,800. The grants pay up to half of a student's costs, depending on how much the family may be expected to contribute. The allowable costs include tuition, fees, room and board, and an allowance for books.

For prisoners, tuition is the primary cost since room and board is not a factor. Consequently, the grant amount for prisoners is primarily related to the tuition cost.

PELL GRANTS PAY SOME SCHOOLS MORE THAN HALF THE TUITION ACTUALLY CHARGED THE PRISONERS

Although the Pell Grant program is intended to pay up to half of a student's cost of postsecondary education, the program

^{1/}Our estimate is based on 13 States, the District of Columbia, and the Federal prison system, and with an assumption that the other 7 States in our sample would not be different from the 13 reviewed. The estimate is 11,375 prisoners, with a sampling error of 8,716 stated at the 95-percent confidence level. The high sampling error is due to wide variability among the States in the percentage of prisoners attending postsecondary education programs.

paid some schools more than half the prisoners' cost (tuition, fees, and books), and sometimes the full cost. This occurred when schools gave tuition waivers to prisoners for up to half the tuition charge while receiving Pell Grants based on the full tuition charge.

In Virginia, for example, during the 1979-80 academic year, about 600 of the approximately 700 prisoner students receiving Pell awards attended courses given in the prisons by the Elizabeth Brant School, a proprietary school (private for-profit school) that waived half of its \$2,500 annual tuition to the prisoners. The corresponding Pell Grant paid to the school for each student attending the school's 9-month program was \$1,262. 1/ More than 50 other prisoner students attended courses given in the prisons by Steed College, a private school that accepted the proprietary school's 9-month program as credit for the first year of its 2-year associate or 4-year bachelor degree program. This college charged about the same tuition as the proprietary school, waived half its tuition to prisoners, and also received Pell Grants based on the full tuition.

Other Virginia prisoners attended courses given in the prisons by public community colleges. Some of these students received VA education benefits and could therefore pay the other half of the approximately \$400 tuition not funded by Pell Grants. For nonveteran students, at least one of the community colleges-- J. Sargeant Reynolds--allocated enough of its Federal Supplemental Education Opportunity Grant (SEOG) 2/ funds to cover most or all of the tuition balance not funded by Pell Grants. Since then, Federal SEOG funding has been reduced, and nonveteran prisoners attending courses given by the Virginia community colleges have had to pay more of the balance, thus giving prisoners more incentive to select schools that will not charge them for the balance of tuition not funded from other sources.

1/The school charges the same tuition for nonprisoner students, but unlike prisoners, these students are able to secure student loans or other funds for the balance of tuition not funded by Pell Grants. The cost to the school of educating the prisoner population is less, however. Since the instruction is given in the prisons, the school incurs no classroom expense.

2/SEOG funds are relatively small grants made to schools for their allocation to supplement Pell awards of needy students. The proprietary school, for example, in the 1979-80 academic year received about \$53,000 in SEOG funds and \$604,000 in Pell funds. About two-thirds of its students were prisoners, for whom all of its SEOG funds were allocated, and for whom \$495,000 was provided in Pell Grants. SEOG, therefore, provided a small part of the unfunded tuition and books not provided for the prisoners by Pell Grants, and the other \$400,000 was waived.

Similar situations existed in other prison systems. We checked, for example, two of the educational institutions that were receiving the most Pell Grants for educating Federal prisoners and found that they were also waiving the balance of tuition and fees not funded by Pell or SEOG.

In one of these institutions, Mercer University in Georgia, the amount of tuition waiver depended on whether the students were State or Federal prisoners. This was because the State of Georgia was subsidizing its prisoners with a \$200 grant per school quarter, thus lessening the school tuition waiver. With an annual tuition and fees of about \$2,200, and a corresponding Pell Grant of about \$1,100, the \$800 State subsidy for four quarters left a balance of about \$300 for the school to waive. For Federal prisoners, however, there were no State grants, and the school waived the full difference of about \$1,100.

The second institution we checked, Rutledge College, was providing Federal prisoner education in more than one State. This school waived about \$600 per student annually, the full difference between the over \$2,100 annual tuition and fees and the \$1,500 received from Pell and SEOG funds per prisoner student.

STATE POLICIES INFLUENCE USE OF PELL GRANTS IN PRISONER EDUCATION

State policies regarding financial assistance to prison post-secondary education can also affect the use of Pell Grants. Texas, for example, with help from proceeds from the annual prison rodeo, pays the balance of tuition and books not funded by the Pell program. 1/ Consequently, Texas has a financial incentive to primarily contract with relatively low tuition public community colleges, and the Pell program funding per student is, therefore, minimized.

New Jersey's policy is to fully fund prisoner education. Accordingly, like Texas, New Jersey has a financial incentive to minimize education costs per prisoner student and primarily contracts with community colleges.

Virginia's policy, however, is not to contribute State funds to support prisoner postsecondary education. The tuition of schools providing education to prisoners, therefore, is of no financial concern to the State. As previously discussed, this situation led to prisoners' selecting certain higher tuition schools that waived the balance of their tuition not paid by Pell Grants. The Pell Grant program funding per Virginia prisoner, therefore, is high.

1/SEOG funds are not involved since Texas does not authorize their use by community colleges in prisoner education.

CONCLUSION

While the Pell Grant program is intended to pay up to half a needy student's cost of education, some schools have received funds from the program based on tuitions that were higher than those actually charged the prisoners. This situation exists when schools waive part of their tuition while receiving Pell Grants based on the full tuition. Although several schools within our sample engaged in this practice, we do not know the extent to which this practice exists throughout the national prisoner population.

When schools waive the unfunded tuition portion, the students have a financial incentive to select those schools even though their tuitions may be relatively high compared to other schools.

We believe this practice circumvents the purpose of the Pell Grant program and is therefore inappropriate.

AGENCY COMMENTS

In our draft report, we proposed that the Secretary of Education recover payments made under the Pell Grant program when schools have received funds based on tuitions that were higher than those charged to the prisoners.

The Department responded that it was not certain it has a basis for claiming these funds as overpayments. The Department said that it and its predecessor agency, the Office of Education, have allowed schools the option of defining tuition fee waivers as student financial aid, and that regulations reflect the concept that financial aid of any kind does not lower a student's cost of attendance for purposes of computing Pell Grant amounts.

The Department acknowledged, however, that our audit disclosed that the program legislation and regulations may have unintentionally created a loophole through which institutions may secure, for their students, excessive Pell Grant awards. It noted, however, that these regulations attempted to address tuition waivers of the type received by school employees and their dependents and by senior citizens.

The Department said it would submit a Notice of Proposed Rulemaking which invites comments on the tuition waiver issue and then, based on the responses received, determine whether to study the extent to which practices such as those we identified exist nationwide.

We also solicited comments from the schools mentioned in the report. Generally they disagreed with our proposal that the Department recover, as overpayments, excess grant amounts not based on net tuition costs. As explained below, we have withdrawn this

proposal, but continue to believe that future grants should be based on tuitions net of waivers. Since this proposal has been withdrawn, and because of the volume of the schools' responses, we are not including these responses in the appendixes.

OUR EVALUATION

We concur with the Department's position that, because of its previous allowance of tuition waivers in the Pell Grant program, it may not have a basis for claiming overpayments. Therefore, we have withdrawn our proposal that such payments be recovered.

We found nothing, however, in the Pell Grant legislation, legislative history, or regulations that indicates any congressional or agency intention to include the waived part of a student's tuition in the calculation of the student's cost of attendance upon which the Pell Grant is based. Since such inclusion can result in students securing Pell Grants for more than half their cost of education, we continue to believe that this would circumvent the purpose of the Pell Grant program.

We believe, therefore, that the regulations should be amended to specify that tuition charges used in the schools' calculations of students' cost of attendance should be the tuitions charged the students less any waived amount. Accordingly, we believe that the Department's Notice of Proposed Rulemaking should specify that it intends to make this change, rather than simply inviting comments on the tuition waiver issue.

RECOMMENDATION TO THE SECRETARY OF EDUCATION

We recommend that the Secretary of Education amend the Pell Grant program regulations so that schools are required to calculate the students' cost of attendance, upon which Pell Grants are based, after any tuition waivers have been granted.

ESTIMATES OF FEDERAL AND STATE INCARCERATED FELONSRECEIVING CASH BENEFITS FROM SSA AND VA ENTITLEMENTPROGRAMS DURING 1980 (note a)

	Percentage of sam- ple with benefit	Sam- pling error	Number of beneficiaries		Sam- pling error	Benefits		Sam- pling error
			In sample	Population estimate		Monthly average in sample	Population estimate annualized	
(millions)								
<u>Programs with prisoner benefit restriction as of October 1980</u>								
SSA:								
Disability Insurance	1.4	0.3	1,750	4,300	773	b/\$322	\$16.6	2.9
Dependent Students (note c)	0.2	0.2	283	762	558	212	1.9	1.5
VA:								
Disability Compen- sation (note d)	1.0	0.2	1,259	2,993	605	232	8.3	1.4
Education	1.3	0.9	1,677	4,037	2,847	284	13.8	9.2
	3.9	0.9	4,970	e/12,093			40.7	7.9
<u>Programs without prisoner bene- fit restriction</u>								
SSA:								
Retirement	0.4	0.1	514	1,214	202	242	3.5	0.6
Survivors and De- pendents other than students	0.1	f/	66	163	54	233	0.5	0.2
	0.4	0.1	580	1,376	238		4.0	0.5
Total	4.3	0.8	5,550	13,469	2,578		\$44.7	7.6

a/The sample consists of incarcerated felons from the Federal system and prison systems of the District of Columbia and 13 States. The total sample consists of 130,041 prisoners as determined from March 1980 to February 1981, depending on when the data were made available to us from each prison system. The nationwide population of prisoners with sentences over 1 year, as of December 1980, was 314,272.

Our original sample included seven additional States; however, they were excluded from our review because SSNs were not available, data were received too late for our review, or SSNs from States with relatively large prison populations were not available to us in automated form. Estimates and sampling errors were developed from data provided by this limited sample and are based on the assumption that the States from which we obtained the necessary data are representative of the other seven States.

Sampling errors are stated at the 95-percent confidence level.

b/This does not include auxiliary benefits paid to dependents of the disabled prisoners. Of the disabled prisoner beneficiaries, 41 percent had such auxiliary beneficiaries. In these cases, the average prisoner benefit was \$377 a month, and the auxiliary benefits averaged an additional \$244 a month. The average monthly benefit for disabled prisoner beneficiaries without eligible dependents was \$306.

c/Our estimates of incarcerated VA beneficiaries include dependents and survivors as well as veterans.

d/We also matched our sample against the population of VA beneficiaries of Dependency and Indemnity Compensation, and found zero matches.

e/Since some are receiving benefits from more than one of these programs (about 3 percent of the recipients in the Federal and Texas populations), the total number receiving benefits from one or more of these programs would be slightly less.

f/Less than 0.1.

g/Detail may not add to totals due to independent rounding.

PRISON FILE SSN AVAILABILITY AND ACCURACY

<u>Prison systems in sample</u>	<u>Population</u>	<u>Percentage of prisoners with SSNs on prison file</u>	<u>Percentage of SSNs that may be invalid</u>
With automated files:			
Colorado	2,533	85	15
Florida	22,440	54	17
Georgia	12,340	86	9
Illinois	9,804	40	18
Iowa	2,245	95	5
Kentucky	3,711	89	12
New Jersey	5,464	73	17
Pennsylvania	8,816	90	14
Texas	27,420	76	15
Virginia	8,910	79	15
Washington, D.C.	1,990	62	26
Federal	<u>21,897</u>	78	22
	<u>127,570</u>	72	16
Without automated files:			
New Hampshire	341	89	(a)
Nevada	1,873	93	(a)
Vermont	<u>257</u>	72	(a)
	<u>2,471</u>	90	--
Total	<u>130,041</u>	73	

a/Since these prison files were not automated, we did not include them in the validation process.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 26 1982

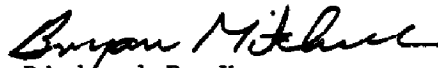
Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft of a proposed report "Prisoners Receiving Social Security and Other Federal Retirement, Disability, and Education Benefits." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,


Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE
GAO DRAFT REPORT "PRISONERS RECEIVING SOCIAL SECURITY AND OTHER
FEDERAL RETIREMENT, DISABILITY, AND EDUCATION BENEFITS"

GAO Recommendation

The Secretary of Health and Human Services (HHS) should direct the Commissioner of Social Security to encourage State prison systems to provide SSA with periodic listings of prisoners, incarceration dates and accurate social security numbers (SSNs).

Department Comment

We agree. Plans have been in place since enactment of Public Law 96-473 (October 1980), which eliminated certain social security benefits to prisoners, to encourage State officials to cooperate in providing identification of prisoners. SSA has asked State and local prison systems for their on-going help in obtaining prisoner identification data. We plan to continue to pursue State cooperation in acquiring this needed data. The enactment of Public Law 97-123 in December 1981 should make this task easier. Section 6 of P.L. 97-123 amended section 223(f) of the Social Security Act to require Federal, State and local correctional authorities to make available upon written request the names and SSNs of incarcerated felons.

We know that most jurisdictions are willing to cooperate; however, in many instances the identifying data they have on record does not include SSNs. Some States have indicated that budget problems may deter them from collecting and maintaining SSNs. We envision that it will require extensive work with the States over a period of time before all jurisdictions amend their recordkeeping process to collect and maintain SSNs for prisoners.

GAO Recommendation

The Secretary of Health and Human Services should direct the Commissioner of Social Security to validate all prisoner SSNs and share the names, validated SSNs and incarceration dates with the Veterans Administration (VA), so that identification of prisoner beneficiaries of VA programs may be enhanced. Also, SSA should share the corrected SSNs with the prison systems to enhance the accuracy of their prisoner files.

Department Comment

We agree. SSA will validate the current prisoner files with the automated SSN number file and return the resulting valid data to the prison systems and the VA. It should be noted, however, that the success we have in resolving questionable SSNs will depend on the amount of identifying data for each prisoner that is included with the prison systems input. To the extent we get full name, date of birth, sex, alleged SSN, other names used by the prisoner, place of birth and parents' names, we should be able to quickly resolve most of the questionable items through our automated SSN name file.

Other Matters

The material in the first sentence on page 1 of the draft report should be revised to indicate that social security benefits are based on the worker's earnings from employment and self-employment covered under social security, not the taxes actually paid into the system. Technically speaking, benefits are not dependent upon the degree to which the worker supported the system through tax contributions.

The first paragraph beginning on page 10 of the draft is misleading. The reported remarks of the House Subcommittee on Social Security regarding vocational rehabilitation for prisoners have been taken out of context. The subcommittee's statement merely described the specific provisions of a bill (H.R. 7555) introduced by Representatives Archer and Conable that would have amended section 222 of the Social Security Act (relating to deductions for refusal to accept rehabilitation services). This bill was not enacted. The statement was not intended as an expression of the subcommittee's views on the appropriateness of rehabilitation services for prisoners. The discussion of H.R. 7555 (the Archer-Conable bill) has no relevance to H.R. 5295 which was enacted into law and which permits the payment of benefits to a prisoner participating in a court-approved rehabilitation program. (See Ways and Means Committee Print No. 96-63, 96th Congress, 2d Sess. 12, dated June 18, 1980.) [See GAO note 1.]

A technical correction should be made on page 12, paragraph 6. The Social Security Master Beneficiary Record (MBR) contains certain data on the Black Lung, Railroad Retirement and Supplemental Security Income programs in addition to retirement, survivors and disability insurance information.

- GAO notes:
1. This paragraph was deleted from our final report.
 2. Page references have been changed to correspond with pages in the final report.

Office of the
Administrator
of Veterans Affairs

Washington, D.C. 20420



APRIL 7 - 1982



Mr. Gregory J. Ahart
Director, Human Resources Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Ahart:

Your February 10, 1982, report, "Prisoners Receiving Social Security and Other Federal Retirement, Disability, and Education Benefits," has been reviewed and I concur in the findings, conclusions, and recommendations. A periodic list of prisoners, incarceration dates, and accurate Social Security numbers would improve the Veterans Administration's effectiveness in applying the provisions of Public Law 96-385 and curbing the payment of Federal monies to persons who cannot use them in the manner intended.

There are several suggested changes to the text of the report I would like you to consider. I believe they are needed for clarity and/or to more accurately reflect the provisions of the Law. The suggested changes are enclosed.

Thank you for the opportunity to comment on this report.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Robert P. Nimmo'.

ROBERT P. NIMMO
Administrator

Enclosure

GAO note: Enclosure not attached because of its technical nature. The suggested changes were incorporated in the final report.



U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
WASHINGTON, D.C. 20202

OFFICE OF STUDENT
FINANCIAL ASSISTANCE

APR 13 1982

Mr. Gregory J. Ahart
Director, Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

This is in response to your draft report entitled, "Prisoners Receiving Social Security and Other Federal Retirement, Disability and Education Benefits."

The Department of Education and its predecessor agency, the Office of Education, has allowed schools the option of defining tuition fee waivers as student financial aid and has consistently defined cost of attendance as the "gross" cost of attendance under the Basic Grant and need based student aid programs.

As presently written, the regulations reflect two concepts which have a bearing on the issue of tuition waivers.

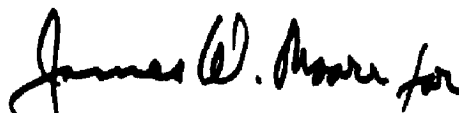
- financial aid of any kind does not lower a student's cost of attendance for purposes of computing Pell Grant award amounts.
- a tuition waiver is considered financial aid for determining cost of attendance only if the institution considers it to be a part of the student's package of financial aid.

Since we have allowed the option, we are not certain that the Department has a basis for claiming that Pell Grants to prisoners constitute overpayments.

This audit has brought to light the possibility that the program legislation and regulations may have unintentionally created a loophole through which institutions may secure, for their students, excessive Pell Grant awards. However, it should be recognized that these regulations attempted to address tuition waivers of the type received by school employees and their dependents and those granted to senior citizens.

We will submit a Notice of Proposed Rulemaking which invites comments on the tuition waiver issue. Based upon the responses we receive, a determination will be made as to the feasibility of conducting a study to ascertain the extent to which practices, such as those identified in the report, exist nationwide.

Sincerely,



Edward M. Elmendorf
Deputy Assistant Secretary for
Student Financial Assistance



Request for copies of GAO reports should be sent to:

**U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760**

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are \$3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are \$1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".

