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BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

## Need To Prevent Windfall Benefits To Supplemental Security Income Recipients

In fiscal year 1977, SSI recipients received an estimated \$43 million in windfall benefits. These and other excess benefits result because the Social Security Act does not provide for SSI benefits to be fully adjusted when other retroactive income such as social security, veterans' pension or compensation, or railroad retirement is received. SSI benefits should be limited to those which the individual would have been entitled to had other income payments been current.



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HRD-80-44  
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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-164031(4)

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

*CWO 00001*

In fiscal year 1977, Supplemental Security Income (SSI) recipients received windfall benefits totaling an estimated \$43.6 million as a result of receiving retroactive social security retirement, survivors, or disability benefits. While similar estimates are not available for later years, windfall benefits continue as a result of retroactive income from these as well as other sources, including veterans' compensation and pensions, and railroad retirement benefits.

The SSI program, administered by the Social Security Administration (SSA), is a Federal needs-based program providing cash assistance to over 4 million needy aged, blind, or disabled persons who have little or no means of self-support. SSA is required to determine SSI eligibility and benefit payment amounts on a quarterly basis. It computes benefits prospectively, which means benefits are based on the income a recipient expects to receive over a projected 3-month period. Basic benefits are reduced dollar by dollar for countable income. Anything of value received by the individual or couple including retroactive benefits received from sources other than SSI is included as countable income, except for certain excluded amounts. <sup>1/</sup> Once computed, SSI payments are sent in equal monthly installments.

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<sup>1/</sup>The first \$60 of any income in a quarter, whether earned or unearned, is excluded, as well as the first \$195 of earned income and half of the remainder of earned income after the first \$195 in a quarter. Some types of unearned income can be entirely excluded. These include tuition and fee portions of grants, scholarships, and fellowships; home produce used for personal consumption; and work expenses of the blind.

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Windfall benefits occur when other retroactive income covering prior quarters is received in a current quarter and is greater than the current quarter's SSI benefits. Because the Social Security Act does not provide for the recovery of these windfall payments, a program inequity is created allowing recipients of large retroactive payments to receive more SSI benefits than recipients who receive a similar amount of non-SSI income on a current monthly basis.

The Social Security Act should be amended to allow SSI benefits to be reduced preventing windfall payments when other retroactive income is received. If enacted, either section 303 of the Social Welfare Reform Amendments of 1979 (H.R. 4904) or section 501 of the Social Security Disability Amendments of 1979 (H.R. 3236), both of which are currently before the 96th Congress, would partially solve the problem. (See pp. 7 and 8.)

#### SCOPE OF REVIEW

We made our review at SSA headquarters and several SSA field offices in Los Angeles County and obtained information on the procedures and operations of the SSI program. We also reviewed a randomly selected 10-percent sample of payments over \$1,000 made in April 1977 to determine the amount of windfall benefits received by SSI recipients as a result of initially being paid retroactive SSI and social security benefits. That month was selected because it was the latest month for which SSA had information on retroactive payments at the time we started our review, and SSA representatives said it was a typical month.

#### PRESENT LAWS DO NOT PRECLUDE WINDFALL BENEFITS

The Social Security Amendments of 1972 (42 U.S.C. 1381 (Supp. II, 1972)) established the SSI program, effective January 1, 1974. This program replaced State-administered assistance programs for the needy aged, blind, and disabled to assure minimum income to those persons meeting the national eligibility requirements.

The amount of SSI benefits paid to an applicant or recipient depends on the amount of income he or she actually receives or expects to receive during the calendar quarter for which payments are computed. However, when an applicant concurrently files for benefits in two or more programs, it is almost impossible for SSA to determine when (or in some

cases whether) the other income will be received. In such cases the possible receipt of such income is not taken into consideration when computing the SSI benefit amount paid for the quarter. In many cases, when the other income is received, it is provided retroactively.

Because retroactive income received by an SSI recipient only reduces the SSI benefit amount in the quarter in which it is received, any retroactive income received in excess of the current quarter's SSI payment can result in a windfall payment.

Neither the Social Security Act nor the legislation authorizing other Federal benefit-paying programs provides for reducing SSI payments when retroactive benefits are received from other Federal programs.

RECIPIENTS WITH INCOME OTHER THAN WAGES  
RECEIVE WINDFALL BENEFITS

Sources of retroactive income which can allow recipients to receive SSI windfall benefits include annuities, pensions, retirement, or disability benefits. These include veterans' compensation and pensions; workman's compensation payments; social security old-age, survivors, and disability insurance benefits; railroad retirement annuities and pensions; and unemployment compensation. Recipients' windfall benefits accrue for the most part as a result of retroactive social security benefits, veterans' compensation and pensions, or railroad retirement annuities.

Social security benefits

In February 1978, we issued a report to Congresswoman Elizabeth Holtzman "The Social Security Administration Needs To Improve Its Disability Claims Process" (HRD-78-40). In the report we stated that individuals are encouraged to apply concurrently for social security and SSI disability benefits. While SSA is usually able to determine whether a claimant is entitled for both programs' benefits simultaneously, it could not make concurrent payments because of different processing requirements.

In the report, we estimated that about \$64 million in SSI disability benefits were paid annually to claimants who later received social security disability benefits covering

the same period. SSA classified about \$33 million of these payments as overpayments subject to collection or waiver procedures. It considered the remaining \$31 million as windfall benefits which would not be recovered since they were considered proper payment amounts according to prescribed regulations.

Overpayments could be reduced if retroactive social security payments were received before retroactive SSI benefit payments for the same period. If the SSI check is delayed, the amount of income received from social security is usually considered, thereby avoiding overpayments. However, if the social security check is delayed, an overpayment results. In either case, a windfall to the individual can occur.

In December 1978 we reported to the Secretary of Health, Education, and Welfare <sup>1/</sup> (HRD-79-26), on administrative actions needed to reduce large retroactive (\$1,000 or more) SSI overpayment and underpayment errors. Most retroactive payment errors occur because SSA did not obtain accurate information to determine the claimant's eligibility or the amount of benefit payment. This happened because SSA was unaware of changes in the claimant's circumstances which occurred between the application date and the payment date.

Our review of a randomly selected sample of large retroactive SSI payments made in April 1977 showed that applicants received initial retroactive payments for the same period from both social security and SSI in about 30 percent of the cases. Of these, the social security payment preceded the SSI payment about 45 percent of the time and resulted in SSI recipients receiving windfall benefits totaling an estimated \$12.6 million in fiscal year 1977. (On the average, each of these recipients' SSI payment exceeded by about \$1,480 that which would have been paid had social security benefits been paid on a current monthly basis.)

Recipients' windfall payments ranged from about \$100 to nearly \$7,000. For example, in October 1975 an individual applied for both social security disability benefits and SSI disability benefits. His initial claim was denied as well

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<sup>1/</sup>On May 4, 1980, a separate Department of Education was created. The part of the Department of Health, Education, and Welfare (HEW) responsible for the activities discussed in this report became the Department of Health and Human Services. This Department is referred to as HEW throughout this report.

as his first appeal to SSA. His second appeal was approved by an administrative law judge in January 1977. In February 1977, he received a retroactive social security payment of \$4,365 for the period August 1975 through January 1977. In April 1977 a retroactive SSI payment of \$4,716 was received for the period October 1975 through April 1977. The SSI check included a \$3,813 windfall benefit for the period October 1975 through December 1976 that could not have been received had social security benefits been paid monthly.

Veterans Administration compensation and pension programs

The Veterans Administration (VA) also pays retroactive compensation and pension benefits to veterans and their survivors. During fiscal year 1977, VA paid \$5.7 billion in compensation benefits to 2.6 million veterans and survivors and \$3.1 billion in pension benefits to 2.3 million veterans and survivors. Many veterans and survivors also receive SSI. In December 1978 about 123,000 SSI recipients received veterans' benefits.

The length of time taken to process a VA claim varies according to the type of claim and the circumstances involved. The four major types of claims in VA's compensation and pension programs are: disability compensation, dependency and indemnity compensation, disability pension, and death benefits. Based on a statistical sample of 521 original claims processed in fiscal year 1977 in six randomly selected VA regional offices, we estimated the following nationwide average elapsed times to process each of the four types of claims:

<u>Type of claim</u>	<u>Days to process</u>
Disability compensation	147
Dependency and indemnity compensation	80
Disability pension	129
Death benefits	81

These figures represent the time spent between VA's receipt of the claim and the adjudicator's decision to allow or disallow the claim. If benefits are awarded, we estimate that the average elapsed time between the adjudicator's decision and the first payment to the beneficiary is an additional 25 days.

New VA law resulted in retroactive payments for SSI recipients

On November 4, 1978, the Congress approved the "Veterans and Survivors' Pension Improvement Act of 1978" (Public Law 95-588). This legislation established a disability pension program providing financial assistance to needy wartime veterans who, because of disabilities from nonservice-connected causes, are precluded from gainful employment. Pension payments are made to veterans who are permanently and totally disabled or who are 65 years of age or older and meet specific income limitations.

Under the provisions of this act, any person who is entitled to receive a pension as of December 31, 1978, under certain sections of title 38 of the United States Code or the Veterans' Pension Act of 1959 may elect to be covered under the new law. The election, when made before October 1, 1979, will result in a retroactive payment from January 1, 1979. This amount would represent the difference between the new and the older pension for all months up to the election or October 1979.

Through October 1979, SSA estimates that 109,600 SSI recipients were eligible for coverage under the new law, and about 26,900 SSI recipients had elected to come under the new pension which resulted in retroactive payments. Besides the retroactive payments made to those electing coverage under the new law, retroactive payments will likely continue after October 1979 for new VA applicants or their survivors because of the time required to adjudicate new claims.

Railroad Retirement Program

The Railroad Retirement Board also pays retroactive benefits to aged and disabled retirees, their spouses and their survivors. During fiscal year 1978, the Board paid almost \$4 billion in benefit payments to over 1 million such eligible persons. In December 1978, almost 7,500 railroad retirement recipients also received SSI benefits.

The length of time the Board takes to process a claim varies according to the type of claim and the circumstances involved. According to a Board official, an average aged railroad retirement award took about 75 days while a disability claim required about 12 months. Retroactive payments



to new applicants that were aged or disabled averaged about \$1,500 and \$6,000, respectively. As of December 1978, over 2,200 of the 7,500 railroad retirement employees receiving SSI were disabled.

LEGISLATION INTRODUCED TO ELIMINATE  
WINDFALL BENEFITS

The Social Welfare Reform Amendments of 1979 (H.R. 4904) was passed by the House of Representatives on November 7, 1979.

"Section 303 of the Committee bill would allow the Secretary of HEW to offset against retroactive benefits paid under title II, Old-Age, Survivors, and Disability Insurance, amounts of SSI benefits paid for the same period for which the retroactive title II payment is eventually made. The retroactive payment would be reduced by the amount of the SSI benefits which would not have been paid had there been timely payment made under title II, and the reduction will go to reimburse the general funds for expenditures for those excess SSI payments. \* \* \*

"\* \* \* In situations where State supplementary payments were also made, but would have been smaller (or zero) had the title II payment been made on a monthly basis from the time of first entitlement, the Secretary will reimburse (or credit) the State for its prorata share of the adjustment. \* \* \*" 1/

This proposal, if enacted, would eliminate windfall benefits to SSI recipients receiving retroactive social security benefits after receiving SSI benefits for the same period. However, it would not prevent windfall benefits when a retroactive social security payment is received before a retroactive SSI payment for the same period. It also would not prevent windfall benefits to SSI recipients receiving retroactive income from other sources, such as veterans' pension or compensation, or railroad retirement.

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1/Report of the House Committee on Ways and Means, H.R. 4904 (H. Rept. 96-451, pp. 173 and 174.)

An identical provision to section 303 was passed by the House of Representatives on September 6, 1979, and by the Senate on January 31, 1980, as section 501 of the Social Security Disability Amendments of 1979 (H.R. 3236).

Representatives from SSA's Offices of Legislative and Regulatory Policy, Systems, and HEW's General Counsel agreed that the proposed section 303 amendment would not deal with the windfall benefits problem when a retroactive social security payment is received before a retroactive SSI payment. However, they believe this problem could be handled administratively by changing the process of concurrently filed claims by paying SSI first.

### CONCLUSIONS

A continuing cause of overpayments and windfall benefits results when SSI recipients receive retroactive income, including social security benefits, for the same period for which SSI benefits are received. In our February 1978 report to Congresswoman Holtzman, we estimated that windfall benefits of \$31 million annually were paid to SSI recipients receiving a retroactive social security payment after receiving SSI benefits. We recently identified an estimated \$12.6 million of additional windfall benefits paid in fiscal year 1977 to recipients with initial retroactive SSI payments of \$1,000 or more who previously had received a retroactive social security payment.

Windfall benefits can occur when a person receives for all or part of the same period:

- SSI payments on a current basis and retroactive benefits from other sources, such as social security, the Veterans Administration, and railroad retirement.
- Retroactive payments from both the SSI program and other sources.

The present Social Security Act only permits SSI payments to be reduced for the calendar quarter that other income is actually received. Therefore, windfall benefits occur when the retroactive income from other sources, such as social security, veterans' pension or compensation, or railroad retirement, exceeds the current quarter's SSI payments, since there are insufficient SSI payments to permit

full recoupment of the retroactive income amounts. Furthermore, legislation authorizing other Federal benefit programs does not provide for reducing retroactive benefits paid to individuals receiving SSI to offset windfall benefits.

To provide equal treatment to all SSI recipients, the combined retroactive SSI and other income benefits should be limited to that which the individual would have been entitled had the other income payments been current. While the proposed legislation would eliminate windfall benefits to SSI recipients who later receive retroactive social security payments, it would not prevent windfall benefits if the retroactive social security benefit or other source of retroactive income is received first.

Although Social Security officials believe many windfall benefits resulting from retroactive social security payments can be handled administratively if proposed legislation is enacted, some cases will continue to occur when SSI retroactive payments are made after retroactive social security payments.

HEW should determine the extent of windfall benefits that occur when SSI recipients receive retroactive payments from other Federal benefit-paying programs, such as VA and railroad retirement, and if significant, assess the need for additional legislation to prevent windfall payments from occurring.

RECOMMENDATIONS TO THE  
SECRETARY OF HEW

If the proposed legislation presently pending before the Congress is passed, we recommend that the Secretary direct the Commissioner of Social Security to

- take the necessary administrative action to change processing of concurrently filed claims to reduce the number of windfall benefits paid to SSI recipients receiving retroactive social security payments before retroactive SSI payments and
- advise the Congress whether additional legislation is needed to eliminate all windfall benefits to (1) SSI recipients who receive retroactive social security benefits before retroactive SSI benefits and (2) SSI recipients who receive retroactive benefits from other Federal benefit-paying programs, such as VA or the Railroad Retirement Board.

RECOMMENDATION TO THE CONGRESS

We recommend favorable consideration of the proposed section 303 (H.R. 4904) allowing the Secretary to offset excess SSI windfall benefits against retroactive social security benefits. An identical provision was passed by both Houses of the Congress when it considered the Social Security Disability Amendments of 1979 (H.R. 3236).

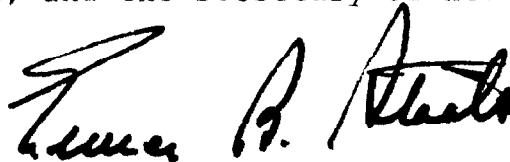
AGENCY COMMENTS

In a letter dated April 21, 1980 (see app. I), HEW generally agreed with our findings and recommendations. If the proposed legislation is enacted, HEW agreed to examine the administrative feasibility in concurrent cases of sequencing payments so that the SSI retroactive check will precede the retroactive social security check whenever the SSI payment is imminent, but indicated that some windfall payments could still occur.

With regard to our second recommendation, HEW said it would consider the need for additional legislation to eliminate windfall payments resulting from the sequencing process as well as those occurring when SSI recipients receive retroactive payments from other Federal benefit-paying programs. We believe that positive action by HEW is needed. If pending legislation discussed on pages 7 and 8 is enacted in its present form, many recipients will still continue receiving windfall benefits. Accordingly, HEW should complete its assessment on the need for additional legislation to eliminate this problem as soon as possible and report the assessment results to the Congress.

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We are sending copies of this report to the Director, Office of Management and Budget, and the Secretary of Health and Human Services.



Comptroller General  
of the United States



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20201

REFER TO:

OFFICE OF THE INSPECTOR GENERAL

APR 21 1980

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 report entitled, "Legislation Needed To Prevent Windfall Benefits To Supplemental Security Income Recipients." 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 B. Lowe III  
Acting Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ON THE GENERAL ACCOUNTING OFFICE'S DRAFT REPORT ENTITLED, "LEGISLATION NEEDED TO PREVENT WINDFALL BENEFITS TO SUPPLEMENTAL SECURITY INCOME RECIPIENTS"

General

GAO estimates that dually-entitled Supplemental Security Income/Retirement, Survivors and Disability Insurance (SSI/RSDI) recipients received \$43.6 million in "windfall" SSI benefits during FY 77 because retroactive RSDI payments-- which may represent a number of months' benefits--count as income against SSI eligibility amount only in the quarter in which they are actually received. Both Houses of Congress have now passed different bills containing an identical provision which would eliminate these windfall benefits to SSI recipients who receive retroactive RSDI benefits after receiving SSI benefits covering the same period. This provision, if enacted, would help solve much of the problem GAO describes, but it would not allow HEW to prevent the "windfall" GAO discusses in some current circumstances when the RSDI retroactive benefits are issued before SSI payments to the same individual. Thus the sequence in which the two types of benefits are paid to dually-entitled individuals will become especially important if the pending legislation is enacted.

GAO Recommendation

Upon passage of the proposed legislation presently pending before Congress, that the Secretary direct the Commissioner of Social Security to take the necessary administrative action to change processing of concurrently filed claims to reduce the number of windfall benefits paid to SSI recipients receiving retroactive social security payments before retroactive SSI payments.

Departmental Comment

We agree in principle with the recommendation.

If the provision cited above is enacted, we will examine the administrative feasibility in concurrent cases of sequencing payments. Under the sequencing the SSI retroactive check will precede the RSDI check whenever the SSI payment is imminent. However, where the processing of the SSI payment does not appear imminent, we believe that holding the RSDI retroactive payment for an eventual reduction for an undetermined period of time would not be equitable treatment for entitled beneficiaries.

GAO Recommendation

That the Secretary direct the Commissioner to advise the Congress whether additional legislation is needed to eliminate all windfall benefits to (1) SSI recipients who receive retroactive social security benefits before retroactive SSI benefits, and (2) SSI recipients who receive retroactive benefits from other Federal benefit-paying programs, such as VA or the Railroad Retirement Board.

Departmental Comment

We will consider the need for additional legislation taking into account final Congressional action on the pending legislation.

Department Comment on Other Matters in the Report

In our opinion the last paragraph on page 8 does not adequately state current law with regard to the handling of retroactive payments. A possible alternative follows: [See GAO note.]

"The present Social Security Act only permits SSI payments to be reduced for the calendar quarter that other income is actually received. Therefore, windfall benefits occur when the retroactive income from other sources such as social security, veterans' pension or compensation, or railroad retirement, exceeds the current quarter's SSI payments, since there is insufficient SSI payments to permit full recoupment of the retroactive income amounts. Furthermore, legislation authorizing other Federal benefit programs does not provide for reducing retroactive benefits paid to individuals receiving SSI to offset windfall benefits."

GAO note: We revised the last paragraph on page 8 to incorporate the suggested alternative language. The paragraph reference above has been changed to agree with the final report.

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