30747
126495

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Need To Strengthen Social Security's Beneficiary Reporting Requirements And Enforcement Authority

As of September 1984, retired and disabled beneficiaries and their dependents or survivors owed the Social Security Administration (SSA) about $2 billion because they had been paid more than they were entitled. This represented about 1.4 million overpayments. About 60 percent of such overpayments, representing two-thirds of all overpayment dollars, are caused by beneficiaries who misreport, report late, or do not report events that would reduce or eliminate benefits.

Most beneficiaries comply with reporting requirements. And most of those overpaid repay the overpaid amounts. Beneficiaries who do not comply, however, retain the use of overpaid amounts for extended periods and seldom are penalized, because either SSA does not often use existing penalty authority or the authority does not extend to all incidents that give rise to beneficiary-caused overpayments.

If SSA more fully exercised the penalty authority it has and this authority was extended to all circumstances that can affect payments, GAO believes that overpayments could be reduced and some of their cost shifted to the noncomplying beneficiaries. Therefore, GAO makes a number of recommendations to SSA to improve the process for assessing penalties and to the Congress to expand SSA penalty authority.

UNITED STATES GENERAL ACCOUNTING OFFICE

GAO/HRD-85-12
MARCH 22, 1985

031538

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. 20877

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".

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-217701

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

The failure of retired and disabled beneficiaries and their dependents or survivors to properly report benefit-affecting circumstances often causes overpayments that in the aggregate are costly to the Social Security Administration (SSA). We made this review to determine what portion of the overpayments are caused by beneficiaries and how effectively SSA is using its sanctions to prevent and minimize improper reporting. Conclusions drawn from our review have led us to make a number of recommendations to improve both the scope of and compliance with SSA reporting regulations.

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

Charles A. Bowsher

Comptroller General
of the United States

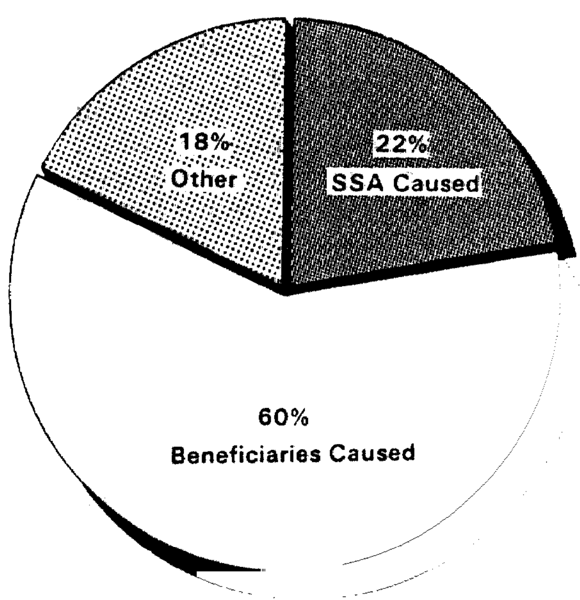
COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

NEED TO STRENGTHEN SOCIAL SECURITY'S BENEFICIARY REPORTING REQUIREMENTS AND ENFORCEMENT AUTHORITY

D I G E S T

As of September 1984, the Social Security Administration (SSA) estimated that current and former retired or disabled social security beneficiaries and their survivors or dependents owed SSA about $2 billion because they had received benefits to which they were not entitled. This represented about 1.4 million overpayments. (See p. 1.)

To examine this issue, GAO selected a random sample of 707 SSA beneficiary cases that contained 1,225 overpayments from the six SSA service centers. This was a representative sample that enabled GAO to estimate the overpayments by category, as shown in the following graph.



Tear Sheet

GAO/HRD-85-12
MARCH 22, 1985

BENEFICIARIES CAUSE MOST OVERPAYMENTS

While most of the 36 million retired and dependent beneficiaries comply with reporting requirements, 60 percent of overpayments--representing two-thirds of overpayment dollars--result from beneficiaries erroneously or improperly reporting. The remaining overpayments were caused by SSA error or processing delays (22 percent) or technical or legal issues (18 percent). (See p. 12.)

Most overpayments are caused by beneficiaries who do not (1) tell SSA that they have or will have annual earnings above the amount that requires their benefits to be reduced or stopped or (2) report other changes in circumstances that can affect their benefits.

Social Security retirement and disability benefits may be stopped or curtailed for a number of reasons, including (1) earning more than the law allows; (2) working (or being able to work) while receiving disability benefits; or (3) marrying while entitled to a child's, widow's, widower's, parent's, or divorced spouse's benefits.

If these circumstances are misreported, reported late, or not reported, chances are that SSA will overpay the recipient for an extended time. Whenever the overpayment is detected, the recipient will be asked to pay it back to SSA. SSA usually requests immediate payment in full but most often agrees to a negotiated payment schedule. In either case, SSA does not charge interest on overpayments.

Estimated earnings understated or not reported

Beneficiaries under age 70 are asked but not required to give SSA an estimate of annual employment earnings for the coming year. Also, these beneficiaries are asked but not required to tell SSA when the estimate needs to be revised. SSA uses the estimate to adjust current benefits if warranted.

Overpayments result when future wages are underestimated or not estimated and benefits are received while earnings over the maximum amount allowed are realized. In GAO's sample 36 percent of the overpayments (441 cases) occurred because beneficiaries either did not provide an earnings estimate (129 cases) or provided a low estimate (312 cases). Of those beneficiaries filing low estimates, less than 10 percent submitted a revision.

Requiring, rather than merely requesting, beneficiaries to submit an estimate or revise it when the annual exempt amount will be or is being exceeded could result in increased compliance.

Changes in circumstances reported late

SSA advises beneficiaries that events affecting their entitlement to Social Security benefits must be reported "promptly." However, the Social Security Act sets specific reporting time requirements for only three events--the annual earnings report, and changes involving caring for minor children and employment outside the country.

The annual earnings report must be filed by April 15 of the year after the earnings have been received. Of the beneficiaries in GAO's sample who had earnings above the maximum, 42 percent did not comply with the reporting requirement. These reports were filed an average of 18 months late.

The other two events that can cause overpayments must be reported before the receipt of the second check issued after the event occurred, which in effect allows the beneficiary 30 to 60 days to report.

The law does not prescribe a specific deadline within which changes must be reported for other events. For its analysis, GAO assumed 30 days after an event to be a reasonable deadline because the reporting of the events involves only notifying SSA, and not any time-consuming actions, such as obtaining and delivering documents involving third parties.

Of the overpayments caused by a change in circumstances (involving other than earnings above the maximum), over 60 percent were reported more than 30 days after the event, and 56 percent more than 60 days after. SSA learned of the events, on average, about 7 months after they occurred. (See pp. 16 and 17.)

SSA'S PENALTY AUTHORITY SHOULD BE EXPANDED AND ITS PENALTY ASSESSMENT PROCESS AND SANCTIONS STRENGTHENED

SSA has authority, in addition to collecting the overpayment, to assess penalties on beneficiaries who fail to meet the reporting requirements for the three events that must be reported. The penalty for not reporting these events, as established by law, is the lesser of the amount overpaid or 1 month's benefits up to a maximum of 3 months' benefits for repeated noncompliance. (See p. 21.)

Penalty authority seldom used

Under SSA regulations, beneficiaries may avoid a penalty by showing that their failure to report was a result of "good cause," which includes such conditions as serious illness or death.

SSA seldom uses its penalty authority. Further, penalty decisions are made without up-to-date knowledge of the beneficiary's compliance history. Also, penalty decisions are neither adequately documented nor in most cases reviewed by supervisors. The lack of penalty imposition may arise in part from these reasons and from the harshness and inflexibility of the penalty required--generally 1 month's benefits with no option to reduce the penalty--and in part from the fact that some reporting violations are subject to penalty and others are not. (See pp. 22 and 23.)

Of the overpayments in GAO's sample, 195 (16 percent) met SSA's current penalty criteria. SSA assessed a penalty in nine of these cases. For 69 of the other 186 cases, the file contained information that suggested a "good cause" determination. In the other 117 cases (63 percent), GAO was unable to determine why SSA did not assess a penalty because SSA did not document its reasons. (See p. 24.)

Based on that sample of undocumented cases, GAO estimates that SSA could have assessed penalties for 119,235 overpayments during 1982 compared to the 7,843 overpayments where SSA assessed penalties. GAO's estimates are based on the assumption that, if there was no evidence in the file as required for good cause, such as an earnings report or estimate or correspondence regarding earnings, or a statement by the person making the penalty decision, good cause did not exist. (See p. 25.)

Penalty authority limited

When SSA assesses a penalty, the amount may be uncollectible or deferred for long periods. The act provides that penalties can be collected only from individuals currently receiving benefits. In GAO's sample, 124 of 195 beneficiaries who were potentially liable for a penalty were no longer receiving benefits.

In addition to the 195 sample overpayments that met SSA's penalty criteria, 234 others (19 percent) involved beneficiaries who reported their change in circumstances an average of 7 months after they occurred but who could not be penalized because SSA has not established reporting times for these events. (See p. 26.)

SSA's existing penalties can be made more equitable

The current penalty structure does not relate directly to the lateness of the report or the size of the overpayment. A beneficiary who reports a month late incurs the same penalty as one who reports a year late.

GAO believes a new structure should be adopted to provide a more equitable balance between the severity of the violation and the amount of the penalty. GAO's suggested approach would be similar to that used by the Internal Revenue Service to assess penalties on delinquent federal income tax payments.

COLLECTING INTEREST ON OVERPAYMENTS

Whenever an overpayment is detected, the recipient will be asked to pay it back and generally does. On the average, however, individuals receiving overpayments because of a failure to meet reporting requirements had use of overpayments for 3 years before they are repaid. (See pp. 33 and 34.)

SSA's attempts to establish a policy to charge interest, which began in 1981, ended because of congressional concerns expressed during deliberations on the Debt Collection Act of 1982. At that time, concern was expressed about the effect of collecting overpayments from social security beneficiaries by private collection agencies. (See p. 31.)

Even though additional moneys could be collected by charging interest on overpayments, GAO believes taking such action now is premature. SSA does not pay interest when it is responsible for underpayments. In GAO's view, as a matter of equity SSA needs to have a coordinated interest policy on all erroneous payments.

RECOMMENDATIONS TO THE CONGRESS

GAO recognizes that some reporting deficiencies are unintentional and that paying penalties or even simple repayment of debt may, for some beneficiaries, be a financial hardship. Nevertheless, GAO believes that a greater effort should be made to prevent overpayments and to minimize their costs and that this can be achieved without inflicting undue hardship on beneficiaries.

GAO recommends that the Congress:

--Require all circumstances that affect benefit entitlement to be reported to SSA within established time frames and provide authority for SSA to assess penalties where beneficiaries do not make timely reports.

--Require that penalties be collected from persons no longer receiving benefits.

--Make the penalty structure more equitable by relating it more to the amount of the overpayment and, if feasible, the lateness of the report.

--Provide authority for the Secretary of HHS to waive penalty charges.

MATTERS FOR CONSIDERATION BY THE CONGRESS

If the Congress believes interest should be charged for erroneous payments, GAO believes it should first consider directing SSA to review the underpayment issue to provide information necessary to assess the reasonableness of present delays in reimbursing beneficiaries for underpayments. After reviewing those results, the Congress should consider developing a coordinated interest policy on all erroneous payments.

RECOMMENDATIONS TO THE SECRETARY OF HHS

To improve management of the current penalty process, GAO recommends that the Secretary of HHS, the Department with oversight responsibility over SSA, direct the Commissioner of Social Security to:

--Assure that repayment history and other data needed to make the decision to assess a penalty are available at the time the initial decision is made and that penalty decisions are documented.

--Review all penalty decisions before they become finalized to identify and correct inconsistent application of the penalty procedures.

AGENCY COMMENTS

HHS was concerned that GAO suggested the Congress consider charging interest on overpayments without explicitly recognizing that SSA also has significant underpayments. GAO agrees that in deciding any policy on interest, the Congress needs to consider both overpayments and underpayments, and GAO has made this more explicit in the report.

HHS indicated that SSA was implementing a payment history system and developing a debt management system that would enable improved management of the penalty process. HHS also said that it was acting to improve beneficiary compliance with earnings reporting requirements by identifying prior "nonreporters" and "low estimators" and requesting at mid-year information on any changes to their estimates. These improvements should help HHS implement GAO's recommendations. (See pp. 42 to 44 and app. IX.)

Contents

ILLUSTRATIONS

ABBREVIATIONS

GAO	General Accounting Office
HHS	Department of Health and Human Services
IRS	Internal Revenue Service
SSA	Social Security Administration
SSI	Supplemental Security Income

CHAPTER 1

INTRODUCTION

The Social Security Administration's (SSA's) overpayments to individuals who receive retirement, survivors, and disability insurance benefits have escalated in recent years. At the end of fiscal year 1984, overpaid individuals owed SSA over $1.9 billion. This figure is more than eight times the debt owed SSA at the end of fiscal year 1978, and it represents over 1.4 million cases where persons received benefits to which they were not entitled. Although this represents a small segment of the 36 million beneficiaries who receive about $171 billion in annual benefits, the costs borne by the Social Security trust funds and SSA in lost interest revenue, bad debts, and expenses to recover overpayments are high.

In fiscal year 1982 alone, the Social Security retirement and disability trust funds spent or lost $288 million because of overpayments--$140 million in lost interest income because the amounts overpaid were not available for trust fund investment and therefore did not earn interest, $124 million in administrative costs to collect overpayments, and $24 million written off as bad debts.

Although overpayments can result from mistakes by SSA, the integrity of the Social Security program depends to a large extent on beneficiaries voluntarily reporting income and other eligibility data to SSA. Failure to promptly and accurately report such data can result in overpayments.

SSA has authority to assess penalties on beneficiaries who fail to promptly and accurately report certain data affecting benefits. Individuals who owe SSA for overpayments are not charged interest on their debt unlike many who owe money to the federal government. When SSA began developing a policy to charge interest and strengthen collection activity under its existing authority, the Congress, by exempting SSA from the provisions of the Debt Collection Act of 1982, signaled SSA not to do so without further study (see pp. 30 and 31).

OBJECTIVES, SCOPE, AND METHODOLOGY

Because overpayments can be costly to SSA, we attempted to identify the distribution of the different types of overpayments to retirees and the disabled and their survivors and dependents, the amount of overpayments to such beneficiaries annually, and the part of the problem that can be attributed to the beneficiaries and to SSA. We did not review overpayments to Supplemental

Security Income (SSI) beneficiaries because the SSI program is a needs-based program with different eligibility and reporting requirements.

Our review was designed to develop information for the Congress to use in considering whether legislation is needed to change current statutes that limit the events for which SSA may impose penalties.

We selected a random sample of cases from the universe of all known retirement and disability program overpayment cases as of May 1982, the most recent month for which data were available when we started our work. SSA's data base of overpaid beneficiaries is all inclusive and cannot be segmented by year of occurrence. We therefore reviewed retirement and disability overpayments that occurred after January 1, 1976, and before 1983. We selected a random sample of 707 cases[1] which contained 1,225 overpayments (some cases contained more than 1 overpayment) from a universe of 785,100 cases. We selected our sample of cases from the six SSA program service centers and developed a data collection instrument to ensure that consistent data were collected. All cases were shipped to the Northeast Program Service Center in New York City for our review. SSA staff assisted us to ensure that we clearly understood the contents of the case files. From the data in the case files, we determined

--amount of overpayments,

--causes of overpayments,

--what type of beneficiaries were overpaid,

--frequency of use of penalty authority, and

--rate of overpayment recovery.

This gave us a representative sample which allowed us to estimate the number of overpayments by specific category of overpayment and determine to what extent overpayments were caused by beneficiaries who did not report or accurately estimate employment earnings, or who failed to properly and accurately report changes in circumstances.

---

[1]This statistically valid sample enables us to make estimates within a 95-percent confidence limit. For information on the precision of the estimates in this report, see appendix VIII.

We sought to determine how SSA's penalty and interest authority was being used in cases where the overpayment was caused by the beneficiary's failure to report accurately or timely. Because SSA's authority is limited, we reviewed methods other federal agencies used to assess penalties and interest and estimated the revenues that would accrue to SSA if it could use such methods. We then discussed these methods and discarded certain alternatives as either unfair, impractical, or infeasible.

During our study we addressed a congressional concern expressed during hearings before the House Ways and Means Committee on the Debt Collection Act of 1982 that more information was needed regarding the causes of overpayments. For example, the Congress was concerned that most of the overpayments might be caused by SSA and not the beneficiary. Although the Committee was also apparently concerned about charging interest to SSI beneficiaries, our study and our recommendations are limited to recipients of retirement and disability benefits.

We reviewed SSA policies and procedures and the Social Security Act, including the legislative history of the penalty provisions. In addition, we did research to identify what penalty authority other agencies, such as the Internal Revenue Service (IRS), the Railroad Retirement Board, and the Office of Personnel Management, had for similar situations.

We interviewed officials at SSA headquarters in Baltimore, Maryland; the Northeast Program Service Center in New York City; and district offices in Schenectady and New York City, New York.

We requested official comments from the Department of Health and Human Services (HHS) on a draft of this report, and those comments (see app. IX) have been reflected in our final report where appropriate. Our review was conducted in accordance with generally accepted government auditing standards except that we did not evaluate the accuracy or completeness of SSA's Master Beneficiary Record from which we selected our sample cases. These records, which contain demographic information and payment history data on each beneficiary, serve as the basis for SSA retirement and disability benefit payments.

CHAPTER 2

BENEFICIARY REPORTING:

THE REQUIREMENTS AND SANCTIONS

Social Security beneficiaries may lose their eligibility or otherwise have their benefit amounts affected if they have earnings above the amount permitted by law or if they experience certain changes in circumstances. If such changes are not reported to SSA, they can result in overpayments to beneficiaries. To help prevent and minimize such overpayments and encourage beneficiaries to comply, SSA is authorized to assess penalties in some, but not all, situations where beneficiaries do not report accurately and timely.

Is it reasonable to expect people to report to SSA circumstances that could affect their benefits and are penalties a reasonable approach to dealing with noncompliance? This chapter explains why we believe the answer to these questions is "yes." Chapter 3 describes the extent and impact of beneficiaries not reporting, chapter 4 discusses why we believe SSA's penalty authority and structure should be revised, and chapter 5 discusses the pros and cons of assessing interest on the repayment of overpayments caused by beneficiaries.

WHAT EVENTS CAN AFFECT PAYMENTS TO BENEFICIARIES?

SSA relies on beneficiaries or their survivors to voluntarily report events that can change their entitlement to benefits. The following events should be reported:

--Employment that can be expected to result in earnings over the limits allowed by law.[1]

--Returning to work after a disability or an improvement in a recipient's health condition as evidenced by a medical report that would allow a return to work.

---

[1]Social Security benefits are meant to replace, in part, earnings lost to an individual or family because of retirement, death, or disability. Therefore, the amount of Social Security benefits that a beneficiary (and the beneficiary's entitled family group) may receive each year depends on whether the beneficiary has earnings. One dollar is deducted from benefits for each $2 earned over the annual exempt amount ($7,320 in 1985 for beneficiaries 65 to 70 and $5,400 for those under 65).

--The receipt of benefits for a child beneficiary age 18 or older, who is neither disabled nor attending school full time.

--The end of child care by a person entitled to a spouse's or a parent's benefit because of caring for a minor child.

--Employment of a beneficiary outside the United States for more than 45 hours in a job not covered by Social Security.

--Marriage of a person entitled to child's, widow's, widower's, or parent's benefits or benefits as a divorced spouse.

--Death of a beneficiary.

SSA advises beneficiaries that these events must be reported promptly. Beneficiaries are informed of this requirement when they apply for benefits, when they receive an award letter, and sporadically thereafter, such as through notices that come with their benefit checks and through public service announcements.

WHAT EVENTS ARE BENEFICIARIES REQUIRED TO REPORT?

The Social Security Act requires reporting of and sets specific reporting time requirements for only three events--(1) the annual earnings report, (2) no longer caring for minor children, and (3) employment outside the United States. The annual report of earnings is to be filed by April 15th in the year after the income was earned. For no longer caring for a minor child and for employment outside the United States, the report is to be filed "prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such events occurred."

SSA has required reporting of other events as mentioned above but has not established specific reporting time frames for these other events. Consequently, except for the three events required by law, SSA does not inform beneficiaries or their heirs how soon after the event they must report. The benefit application form advises the beneficiary to report changes but does not say how quickly. The "Rights and Responsibilities" booklet that accompanies the benefit award letter says ". . . it's important to notify us [SSA] promptly about changes that could affect your checks . . ." but gives no deadlines for the other events. SSA has elected not to establish reporting time frames for these other events. The law does not specify time frames or give SSA sanction authority to enforce time frames if SSA established them by regulations.

WHAT CAN HAPPEN TO BENEFICIARIES IF THEY DO NOT PROMPTLY REPORT AN EVENT CAUSING AN OVERPAYMENT?

Beneficiaries can be penalized for not promptly reporting the three events specified under the Social Security Act. If these events are not reported within the prescribed time frames, the beneficiary may be penalized 1 month's benefits for the first violation, with a maximum penalty of 3 months' benefits for three or more violations. SSA regulations provide that violations may be excused for a "good cause," including situations in which the beneficiary is confused by the law, or when the violations result from fault or misleading action by SSA.

As discussed in chapter 3, most overpayments resulting from beneficiaries not reporting involve not reporting earnings that exceed the maximum allowed.

REPORTING ACTUAL AND ESTIMATED EARNINGS

The events that historically have most frequently affected a beneficiary's benefits are earnings realized in excess of the maximum allowed. SSA attempts to prevent overpayments caused by earnings by requesting beneficiaries to provide estimates of their coming year's earnings if such earnings are expected to exceed the maximum allowed by law. SSA attempts to identify past years' earnings that exceeded the maximum allowed by requiring all beneficiaries to report such earnings after the end of the year. SSA should eventually learn of such earnings, even if unreported, after it receives and records all wage reports (W-2's) from employers and self-employment income reported to IRS. However, it usually takes up to 2 years after the earnings are realized before SSA posts the unreported earnings and can detect potential overpayments. These long delays in posting earnings information to individuals' earnings records have occurred because of SSA's antiquated computers and problems SSA encountered in reprogramming computers to implement legislated program changes.

Reporting last year's earnings

To detect overpayments caused by earnings that exceed the maximum allowable in a year as soon as possible, the Social Security Act requires beneficiaries to file an annual earnings report when employment earnings exceed the maximum amount for the past year. The report is used to establish the amount of overpayments. If the report is not filed on time, determining improper benefits and returning overpayments to the trust fund are delayed.

Similar to a personal income tax return, the annual earnings report must be filed not later than April 15th following the year in which the earnings were made. Beneficiaries are informed of their earnings reporting requirements on the initial benefit application, in a booklet sent with their award letter, and each January through a "check stuffer." SSA also sends an annual report form to beneficiaries who submitted an earnings estimate, filed an annual report the prior year, or were working, according to SSA information.

Estimating this year's earnings

To prevent overpayments caused by earnings that exceed the maximum allowable in a year, beneficiaries are asked, but not required, to estimate annual employment earnings for the coming year.

SSA uses the estimate to adjust current benefits if warranted. If the estimate exceeds the annual exempt amount, SSA will reduce current year benefits ($1 for each $2 estimated to be earned above the maximum amount) that have not been paid to prevent an overpayment. Also, beneficiaries are asked but not required to tell SSA when there is a need to revise the estimate.

A package containing instructions for filling out both the annual report of earnings and the earnings estimate is mailed in January to each beneficiary who had earnings in a prior year and is provided throughout the year to beneficiaries who request it. The annual earnings report form contains blocks for earned income for the past year and an earnings estimate for the current year. The diagram below illustrates the different time periods covered by the annual earnings report and the earnings estimate.

Periods of Time Covered by Annual Earnings Report and Earnings Estimate

Annual Earnings Report

Jan. 1 — Dec. 31
past year

Earnings Estimate

Jan. 1 — Apr. 15 — Dec. 31
current year

Annual report
filed for past year
earnings and to estimate
current year earnings

IS IT REASONABLE TO EXPECT PEOPLE TO REPORT TO SSA?

As stated above, SSA directly informs beneficiaries about their reporting responsibilities. It also uses the media and senior citizen and other interest groups to convey the requirements for reporting earnings and changes in circumstances. In addition to being informed of their responsibilities at the time they apply and again when they receive the award, beneficiaries can learn of the requirements by reviewing the booklet they receive at the time of award, by hearing of it from the various retired person and senior citizen groups that are provided reminders by SSA each year, or by seeing it in the newspapers or hearing it on television or radio through public service announcements. Further, SSA provides all persons the annual earnings report and estimate form during their first year on the rolls and automatically in later years if earnings are realized while receiving benefits.

Although SSA data cannot show conclusively the extent to which people are complying with each of the reporting requirements, available data indicate most people do comply. For example, a GAO study of beneficiary reporting of certain events (death, marriage, and school attendance cessation) affecting entitlement in 1981 showed that 93 percent of the events were reported within 2 months.

Comparing SSA earnings enforcement data, which identify beneficiaries with earnings above the maximum allowed, to the universe of persons who reported earnings to SSA as required shows that about 75 percent reported their 1982 earnings to SSA as required in 1983.

Why do some people not report? While most people have probably heard of the reporting requirements, some could have forgetten the requirement. Our study did not seek to determine why beneficiaries do not report, and ascertaining the true reasons for all nonreporting would be difficult.

One area where reporting is not currently required, but where SSA requests a report, is the estimate of future earnings. An estimate of such earnings is especially helpful to SSA because it can preclude an overpayment by allowing SSA to adjust a beneficiary's payment at the time the earnings maximum is exceeded. Some, however, believe that most beneficiaries may have difficulty accurately estimating such earnings, particularly considering the part-time nature of many retirees' work.

While precise estimates of future earnings for some retirees may not be possible, they are not necessary. One only needs to provide an estimate if expected earnings will exceed the maximum allowed by law. (In 1985, this will be $7,320 for beneficiaries age 65 to 69 and $5,400 for those under 65.) If one is uncertain whether that amount would be attained, no estimate need be provided. However, it would not appear unreasonable for such a beneficiary to keep track of such earnings (some employers provide a summary of wages earned to date with paychecks), and if during the year the beneficiary can see that such earnings have exceeded or will exceed the maximum, SSA could be advised at that time. This still accomplishes the objective of identifying for SSA the need for a benefit adjustment at the time the earnings exceed the maximum rather than months or years later.

Such a requirement to estimate earnings would be similar to that in the tax laws, which require appropriate individuals to estimate their earnings and to make estimated tax payments periodically during the tax year to ensure current payment of income taxes if such taxes are not collected through withholding. The general rule is that at least 80 percent of an individual's final income tax is to be paid through either withholding or estimated tax payments.

SHOULD PEOPLE BE PENALIZED FOR NOT REPORTING?

Because Social Security beneficiaries represent a potentially economically vulnerable segment of the population, some might question whether penalties for nonreporting are appropriate. While the Congress has established penalties for not reporting certain events to SSA, it has not done so for others, and we are aware of no clear rationale for the exceptions. Further, not every federal program with similar reporting requirements is authorized to assess penalties for noncompliance. For example, the Railroad Retirement Board, which pays retirement, survivors, and disability benefits to rail workers and their dependents, has penalty authority; but the Office of Personnel Management, which administers a similar program for federal workers and their dependents, does not. Persons who do not report to IRS as required by tax laws can be penalized, including those who do not pay their taxes on a current basis based on estimated annual earnings.

While they are primarily punitive, penalties can serve two other purposes. They can encourage compliance, and they can recoup for the trust funds some of the additional costs incurred from collecting the overpayment and some of the revenue lost from the interest that would have been earned had the overpaid funds been held by the trust fund rather than the beneficiary. Assessing penalties also appears to be justified in that it differentiates between those who comply with reporting requirements and those who do not. If penalties were not assessed and no one complied with reporting requirements, the results would adversely affect the trust funds to the detriment of all taxpayers and future beneficiaries.

While no data exist on the income levels of those not complying with Social Security reporting requirements, our study indicated (see p. 12) that most noncompliance involves beneficiaries not reporting their annual earnings that are high enough to cause their benefits to be reduced. For persons whose economic situation would make the payment of a penalty difficult, waivers of such penalties, after assessed, could be considered.

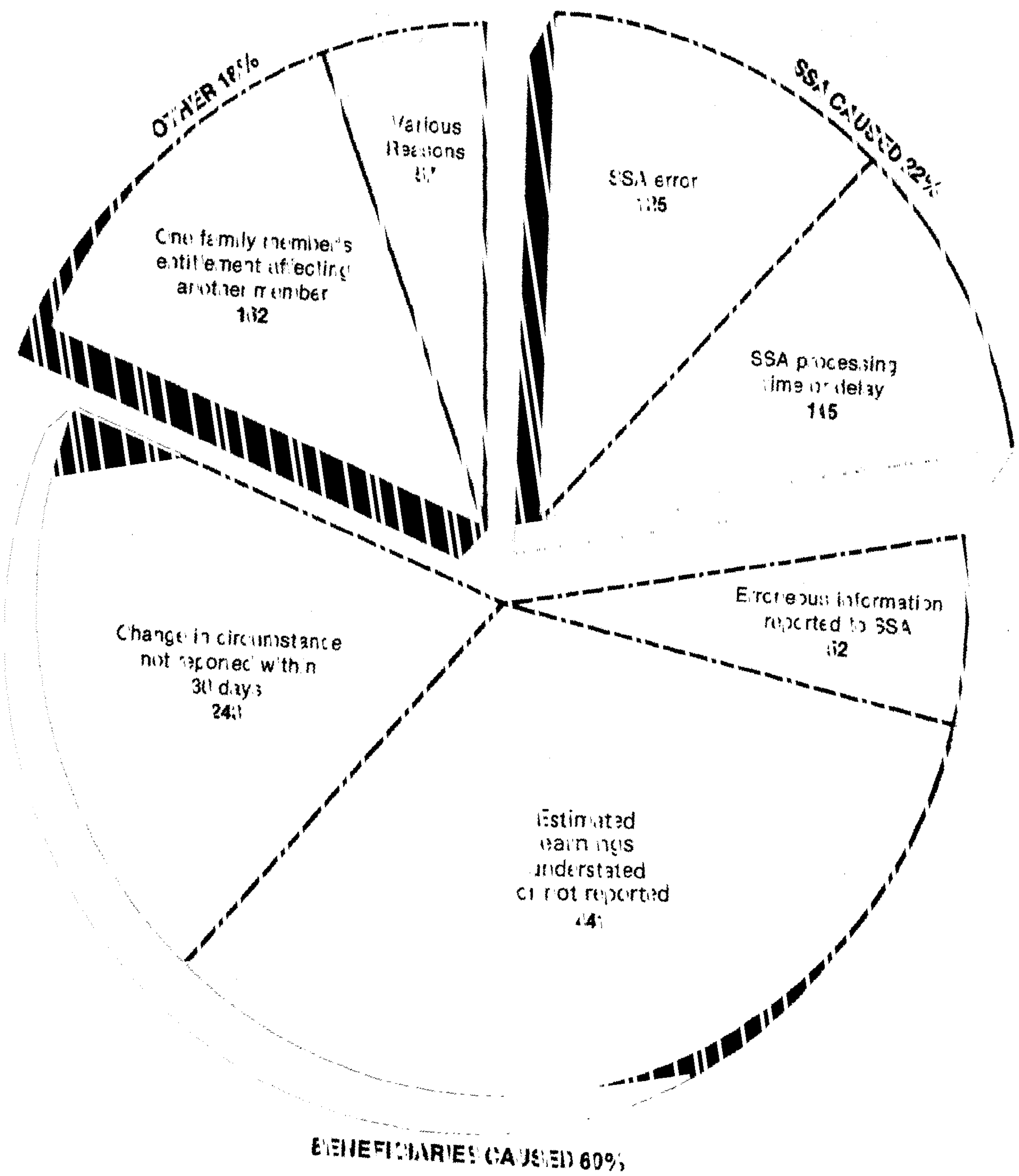
CHAPTER 3

BENEFICIARIES CAUSE MOST OVERPAYMENTS

Nearly three out of five overpayments to retirement, survivor, and disability beneficiaries, representing about 67 percent of the total amount overpaid in our sample, resulted because individuals did not promptly and accurately estimate earnings from employment; did not promptly and accurately report a change in their circumstances affecting eligibility, such as marriage, disability cessation, or a child dropping out of school; or reported erroneous information to SSA. Mistakes SSA made accounted for about 12 percent of the total overpayment amount. These and other overpayment categories are shown in table 1 on page 13.

WHY OVERPAYMENTS OCCUR

Overpayments in our sample generally occurred when beneficiaries either did not accurately estimate employment earnings or did not promptly or accurately report changes in circumstances that caused their benefits to be reduced or terminated. Sometimes even when a beneficiary reported promptly, processing delays or SSA errors caused overpayments. The following chart shows the distribution by cause of the 1,225 overpayments in our sample.


OTHER 18%
Various Reasons
One family member's entitlement affecting another member
SSA CAUSED 22%
SSA error
SSA processing time or delay
Erroneous information reported to SSA
Change in circumstance not reported within 30 days
Estimated earnings understated or not reported
BENEFICIARIES CAUSED 60%

The following table shows the amount of overpayment by category for the 1,225 overpayments in our sample.

Table 1

Overpayment category	Amount overpaid	Percent of dollars overpaid[a]
Estimated earnings not accurate or not reported	$326,415	36
Change in circumstances not reported within 30 days	230,563	25
SSA error	107,905	12
SSA processing time or delay[b]	77,969	9
Various other reasons	63,087	7
Erroneous information reported to SSA	53,346	6
One family member's entitlement affected another member	53,035	6
Total amount overpaid	$912,320	100

[a]Does not add to 100 percent due to rounding.

[b]The time it takes for SSA to adjust the payment record after being told by the beneficiary of an event affecting payment. Until the adjustment is made, payments automatically continue at the amount appropriate before the event.

SSA has no data showing the extent to which beneficiaries report events in a timely manner. In an earlier report, Social Security Could Improve Its Management and Detection of Post-entitlement Changes by Using Postadjudicative Appraisal Data (GAO/HRD-84-27, Jan. 20, 1984), our analysis of three reportable events--marriage, death, and cessation of school attendance--showed that when reported, most of these events were reported promptly. Although not reporting or reporting late are major reasons for overpayments, only a small percentage (less than 1.5 million of 36 million beneficiaries) are causing the overpayments. The overpayment categories into which our sample cases fell are discussed further below.

Estimated earnings too low or not reported

Overpayments result when future wages are underestimated or not estimated and benefits are received while earnings in excess of the maximum are realized. In our sample, 441 overpayments occurred because beneficiaries had earnings in excess of the maximum, but either had not provided SSA with an estimate of these earnings (129 cases) or provided an estimate that was low (312 cases). Consequently, SSA did not reduce the benefits when the excess earnings were being realized.

The following two examples illustrate how overpayments occurred. In 1981 a beneficiary did not file an estimate of annual earnings. The beneficiary earned $13,916 that year. The beneficiary should have received reduced benefits, but did not and as a result was overpaid $2,891. In 1980 a beneficiary estimated earnings of $5,000, but actually earned $20,120 that year and was overpaid $3,197.[1]

Although SSA requests beneficiaries to submit revised earnings estimates when actual or anticipated earnings exceed or are expected to exceed the original estimated amount, less than 10 percent of the beneficiaries who filed low estimates submitted a revision. Requiring, rather than merely requesting, beneficiaries to submit a revised estimate when actual earnings exceed estimated earnings or exceed the estimate by a certain amount or percentage could result in increased compliance. We did not analyze the significance of the difference between estimated and actual earnings and the effect on benefits to determine at what point or threshold such a revised estimate should be required. Such an analysis by SSA could help establish an earnings amount or a percentage increase over estimated earnings at which beneficiaries could be required to adjust the original estimates to more accurately reflect actual earnings.

An SSA official stated that SSA's Office of Assessment had sufficient data available to perform a study of the variance between estimated and actual earnings. Determining a threshold for a revised estimate would depend on the results of the study of the variance. In addition, in commenting on a draft of this report, SSA stated that it is in the process of gathering more information on a high-risk group of beneficiaries targeted as "nonreporters" or "low estimators." Each individual in the group will receive a "mid-year mailer" requesting return information on

---

[1]These overpayments resulted from excess earnings that were not deducted from benefits. Excess earnings are earnings in excess of the annual exempt amount, $5,000 in 1980 and $5,500 in 1981, for retired individuals 65 or older. This means that $1 is to be deducted from benefits for each $2 earned over the annual exempt amount. However, because of prior year adjustments, continuing adjustments to benefits paid, and payment of spouses' benefits, the amount overpaid in our examples does not reflect a precise $1 deduction for each $2 earned over the annual exempt amount.

changes in his/her earnings estimate. SSA plans to analyze the data to determine what actions or direction it should take in this area.

In contrast to the earnings estimate, which is prepared before or while earnings are realized, the annual earnings report of the prior year's earnings is completed after the earnings have been received; thus, the report can identify but cannot prevent overpayment. Identifying and collecting an overpayment are delayed when a beneficiary's annual report of prior year's earnings is filed late. The following table shows the overpayments in our sample that resulted from excess earnings and whether the annual report was filed and whether on time or late.

Table 2

	Number of overpayments	Average amount overpaid	Total amount overpaid
Annual report filed on time but low or no prior estimate	255	$806	$205,475
Annual report filed late or not filed	186	650	120,940
	441[a]	$740	$326,415

[a]Effective January 1, 1982, the age where the annual earnings test no longer applies was lowered from 72 to 70. In our sample, 20 earnings overpayments totaling $14,468 occurred in the year a beneficiary turned 70. These overpayments, however, accounted for only 1.6 percent of our sample events and total overpayments and did not affect our conclusions.

In 42 percent of the overpayments due to excess earnings, the beneficiaries who had earnings above the maximum amount filed their reports late or not at all. These reports were filed an average of 18 months late. In 105 of the 186 overpayments, no report had been filed until SSA learned of the unreported earnings by matching an employer's earnings report to SSA beneficiary payment data.

SSA calls these computer matches earnings enforcement runs. Enforcement runs also are used to verify the amount of earnings reported on the annual report. In mid-1983, SSA was matching 1981 earnings data. Although SSA has improved enforcement run timeliness, it is still 18 months behind the annual report due date. Enforcement runs will continue to lag because of the time required to post annual wages after they are received and the number of enforcement actions to be processed after all posting is completed.

While we were preparing this report, the Congress enacted the Deficit Reduction Act of 1984, which contains a provision to prevent overpayments due to beneficiaries' failure to report earnings information. Section 2602 requires the Secretary of HHS to develop and implement procedures to avoid paying more than the correct amount of benefits to any individual under the federal old-age, survivors, and disability insurance program as a result of the individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories or individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions on account of earnings or wages. SSA's initiative to identify nonreporters and low estimators and target them for mid-year mailers is a step toward meeting that objective.

Change in circumstance
not reported within 30 days

SSA also requires beneficiaries to promptly report other events that will affect benefits. The law requires that the change be reported before receipt of the second check in the following circumstances: (1) when a child is no longer in care and (2) when there is work activity outside the United States. This in effect allows the beneficiary from 30 to 60 days to report. The law does not prescribe a specific deadline within which changes must be reported for other events. For our analysis, we assumed 30 days after an event to be a reasonable deadline. The reporting of an event simply requires the beneficiary to notify SSA and does not involve any time-consuming requirement, such as obtaining and delivering documents involving third parties. More than 60 percent of the overpayments caused by a change in circumstance were reported more than 30 days after the event occurred, as the following table shows. About 56 percent were caused by changes reported after 60 days.

Table 3

	Number of over- payments	Average amount overpaid	Total amount overpaid
Change in circumstance not reported within 30 days	243	$949	$230,563
Change in circumstance reported within 30 days	145	538	77,969
	388	$795	$308,532

For the 243 overpayments resulting from changes in circumstances not reported within 30 days, SSA learned of the events, either by the beneficiary eventually reporting or through other means, on average, about 7 months after they occurred. Of these 243 overpayments, 167 involved students who did not report that they were no longer attending school full time. They were overpaid $130,167 and accounted for 14 percent of the number and amount of overpayments in our sample. Most such cases will be eliminated when student benefits are phased out under the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).[2] The other 76 changes in circumstance cases included the events of marriage, death, and no longer having a child in care.

SSA processing time or delay

As table 3 shows, overpayments can occur even when beneficiaries report a change within 30 days. This is due to SSA's processing time requirements. SSA must adjust payment records by the middle of the month so that a proper payment can be made at the beginning of the following month. If an event is not reported by about the middle of the month--when SSA adjusts payment records--an overpayment will occur and will continue until payment records are adjusted. Although 145 of our sample overpayment cases involved changes that were reported to SSA within 30 days, they nevertheless resulted in overpayments because a check was issued before SSA made the change.

[2]Only students enrolled full time in a postsecondary school before May 1982 are eligible for benefits. Beginning with the 1982-83 school year and ending with the 1984-85 school year, benefits will be reduced until, in April 1985, there will no longer be benefits for postsecondary students. High school students will remain eligible for benefits until they graduate or turn age 19, whichever occurs first. Otherwise children's benefits will end when the child turns age 18.

Erroneous information reported to SSA

In 52 overpayments we sampled, beneficiaries provided SSA incorrect information on which to determine benefits. These overpayments totaled about $53,000 and averaged $1,026.

For 31 of the 52 overpayment cases, data in the files showed the errors to be unintentional, but for the remaining 21 cases, data were not sufficient for us to make a judgment. In these latter cases the amount overpaid totaled $33,394 and averaged $1,590. The following is an example of reporting that could have been either a mistake or intentional misreporting. A beneficiary said that he did not receive a November 1980 check for $346; at his request he then received a duplicate check. SSA later established that the beneficiary received and cashed both checks.

One family member's entitlement affected another family member

A family member's benefit may depend upon the entitlement of the wage earner or other family members collecting benefits under the same account. Consequently, a change in entitlement affecting one member's benefit may cause another member to be paid incorrectly. Our sample included 162 such overpayments totaling $53,035 in excess benefits. Frequently these overpayments mean that underpayments in the same amount were made to other family members. This happens because there is a legal maximum amount that can be paid to a family regardless of the number of beneficiaries entitled on the wage earner's account. This family maximum[3] usually is divided equally among the beneficiaries entitled on that record. When a change occurs in one family member's entitlement, SSA may adjust benefits retroactively. This can cause the other family members to have an overpayment, as the following case illustrates.

--A parent and child each receive an equal benefit payment. A second child becomes entitled, requiring the family amount to be divided three ways instead of two. The new beneficiary may receive retroactive benefits, causing the

[3]The family maximum ranges from 150 percent of the Primary Insurance Amount for the low wage earner to 175 percent of the Primary Insurance Amount based on maximum benefits. The Primary Insurance Amount is the amount that determines monthly benefits, and it depends upon the individual's covered wages during years of employment. For 1985, the maximum individual monthly benefit for a 65-year-old is $717.20, and the maximum family benefit is $1,255.

parent and first child to be overpaid the amount of the retroactive payment made to the second child.

SSA errors

SSA errors accounted for 10 percent of the sample overpayment cases. SSA errors include instances where SSA miscomputed benefits or did not take action to stop or adjust payments although a change had been reported. The average overpayment caused by SSA errors was about $862, and they accounted for $107,905 in overpayments.

Various other reasons

This category consists mainly of cases (27 of 57) where current year earnings estimates have caused incorrect payments because of SSA's administrative procedures for adjusting and recovering overpayments caused by excess earnings. In five instances we were unable to determine the reason for the overpayment because the file was incomplete. The remaining cases represented several different types of overpayments.

As discussed, beneficiaries are asked to provide an earnings estimate for the current year. If estimated earnings exceed the annual exempt amount, benefits for the current year are reduced $1 for every $2 over the exempt amount to prevent a future overpayment. SSA procedures provide that this reduction be made at the beginning of the year. However, if SSA has made payments to a beneficiary during the current year, before it determined that estimated earnings exceeded the exempt amount, some or all of the payments made would be incorrect. These incorrect payments should be recovered by withholding future benefits. The following is an illustration of this process.

--A beneficiary estimated that 1983 (current year) earnings will be $8,400. Estimated earnings are $1,800 greater than the exempt amount for beneficiaries 65 or older ($6,600). Because benefits are reduced $1 for each $2 in estimated excess earnings, SSA will withhold $900 from benefits. Assuming the beneficiary receives SSA benefits of $300 a month, SSA will have withheld benefits for January through March (3 months at $300) and then resumed regular benefit payments. However, if SSA did not receive the annual report until after the January through March benefits had been issued, these 3 months' benefits become an incorrect payment of $900 (3 months at $300). To recover this amount, SSA will withhold the next 3 months of benefits (April through June) before resuming payment in July.

RECIPIENTS OF OVERPAYMENTS

The largest overpaid group (almost half) consisted of children, although they represent only 11 percent of the beneficiary population we sampled. Benefits can be paid to the dependent, unmarried child of a retired or disabled worker entitled to benefits. They can also be paid to the dependent unmarried child of a deceased insured worker if the child is under age 18 (or age 18 or older if the child has a disability that began before age 21). In nearly half of these overpayments, the children were overpaid because adult beneficiaries did not report changes in circumstances accurately or on time. Children may become overpaid, for example, because their parents earn too much, or because a change in circumstance of one family member affects the entitlements of other members. The next largest group of overpaid children were students who stopped attending school. The next largest beneficiary group after children (almost one-third) of overpaid beneficiaries consisted of retirees between the ages of 62 and 72. The following table shows our sample composition.

Table 4

Type of beneficiary	Number of overpayments in sample	Percent of sample cases	Average amount overpaid	Percent of overpaid dollars[a]
Children	563	45.9	$ 622	38.4
Retirees	376	30.7	745	30.7
Spouse with a child beneficiary in care	204	16.7	779	17.4
Disabled	77	6.3	1,554	13.1
Other	5	.4	715	.4
	1,225	100.0	$ 745	100.0

[a]Total sample overpayments were $912,320.

CHAPTER 4

EXPANDING AND REVISING SSA'S PENALTY AUTHORITY AND STRUCTURE

SSA rarely assesses penalties when beneficiaries do not comply with reporting requirements. Although SSA can choose not to assess a penalty when the beneficiary provides an acceptable reason for not reporting, SSA files often contain no evidence of or a reason for not assessing penalties and SSA generally does not assess penalties for late reporting. When penalties are assessed, they are not collected from persons no longer on the rolls because SSA is not permitted by law to do so.

The penalty amount required by law--the lesser of the amount overpaid or 1 month's benefits for the first offense up to a maximum of 3 months' benefits for the third offense--is another factor that some believe may be inhibiting SSA's use of penalties. Such a penalty amount could be viewed as harsh when the amount equals or is large in comparison to the amount overpaid.

Expanding SSA's penalty authority to apply in all instances when beneficiaries (1) do not report events affecting their payments within an established time frame or (2) fail to file an earnings estimate would be a fairer approach to assessing penalties and should result in more equitable treatment of all beneficiaries whose failure to report results in an overpayment. Revising the penalty structure by relating the amount assessed to the size of the overpayment would be more equitable than the present structure and could also encourage more use of the penalty provision. Proper application of fair penalty provisions--with no penalty assessed in situations where beneficiaries did not report for "good cause"--could encourage more compliance with reporting requirements and would shift some of the costs of overpayments to those responsible for them. Ensuring that persons making penalty decisions explain their reasons for the decision in writing (which they are required to do but generally do not) would enable managers to assess the appropriateness and fairness of such decisions.

SSA'S CURRENT PENALTY AUTHORITY, PROCEDURES, AND PRACTICES

SSA has authority to assess penalties on beneficiaries who fail to

--file an annual report of excess earnings by April 15 in the year after the income was earned,

--report that a minor child has left the care of a parent, or

--report work outside the United States.

Such cases represented 16 percent (195 overpayments) of our sample of all overpayments.

Reporting requirements and penalty assessment criteria have been established by law for these circumstances. The amount of the penalty is based on the individual's benefit. Penalties may be assessed as follows:

--Beneficiaries who earn over the annual exempt amount are required to submit an annual report by April 15th following the year earnings were made. Under section 203(h) of the Social Security Act, beneficiaries who did not file this annual report on time may receive a first-time penalty equal to the amount of benefits received during the last month of the year the earnings were made or the amount of excess earnings, whichever is less. The minimum penalty is $10.

--Reporting requirements and penalties for "no child in care" and "foreign work" are similar. Under section 203(g) of the Social Security Act, beneficiaries are required to report these events "prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred." The first time penalty equals the amount of the benefit received in the earliest month the report was late.

SSA procedures

Beneficiaries usually report matters affecting their eligibility to 1 of the 1,300 SSA district offices. Claims representatives usually make the penalty decision in cases where a penalty can be assessed. Penalties are not automatic. SSA regulations let claims representatives decide whether to assess a penalty. The beneficiary has the opportunity to show there was good cause for not reporting a matter subject to a penalty. In deciding if there was good cause, the claims representative considers such circumstances as whether the failure to report was due to a person's serious illness or death, a serious illness in his or her immediate family, or confusion resulting from legislative or program changes. SSA's regulations provide that good cause normally cannot be established if the person, after having been found to have a good cause for failure to file a timely report for one period, again fails to file a timely report for a later period under similar circumstances.

The claims representative, however, usually makes the initial penalty decision without reviewing the beneficiary's compliance history. This is in the individual's case file, which is maintained at one of SSA's six program service centers. If the claims representative decides not to assess a penalty, no review is made of the decision. If a penalty is recommended, the final decision is made at the program service center. The information and the decision are then filed in the beneficiary's case folder at the service center.

The inadequacy of the penalty decision process is acknowledged and reflected in the guidance offered in an SSA Region II Program Circular to claims and service representatives:

> "If the interviewer is completely convinced of the innocence of the beneficiary and this is the first time he had to file an annual report, the interviewer should complete the good cause determinations and code the Late Report Indicator field 'N.' If, however, the beneficiary has been on the rolls for a longer period and has filed <u>other annual reports, there is no way to discover from a query whether an earlier annual report had also been delinquent. Because [district offices] will not normally know when a second or third violation occurs, they will have to assume in the absence of evidence to the contrary, that the same reason for good cause was not previously given</u>." (Emphasis added.)

In other words, because the district office does not have the beneficiary's file at the time a penalty decision is made, such decisions do not reflect the beneficiary's past compliance history.

In responding to a draft of this report, SSA said that it had initiated a payment history update system in February 1984, which includes data on payments to beneficiaries and beneficiary repayments. The system should enable claims representatives to determine if the beneficiary has received overpayments in the past and could indicate whether the overpayment was caused by the beneficiary's not reporting information to SSA. When SSA's debt management system[1] is fully implemented in September 1986, it will include other data that will assist the claims representative in making penalty decisions. SSA also said that its managers responsible for penalty decisions will be reminded to make spot checks of technicians' completed cases to ensure that

---

[1]The debt management system is an automated, detailed accounting system which will enable SSA to better manage debts owed it by beneficiaries. (See p. 37.)

penalty procedures are being followed. Although SSA has similarly expected such procedures to be followed in the past, they have not been. We believe that if SSA emphasized the importance of reviewing penalty decisions by requiring such periodic reviews by managers, it would improve the likelihood they will be done regularly.

Penalties are assessed infrequently

SSA assessed a penalty in only 9 of the 195 overpayment cases where penalties met the criteria noted on pages 21 and 22. All nine penalties were due to an individual's failure to file an annual earnings report by April 15. Almost all of the potential penalty cases (186 of 195) involved that violation. The other nine cases involved a parent's failure to report that he or she no longer had a child in his or her care. In our sample, there were no instances of work in a foreign country.

Although SSA procedures require persons making penalty decisions to explain in writing on the data sheet being processed why a penalty was not assessed, this was not being done. In 117 of the 186 cases (63 percent), we were unable to determine why SSA did not assess a penalty. For 69 overpayments, the file contained information that might have suggested a good cause determination. This frequently involved a copy of earnings estimates or reports or other correspondence that indicated that the beneficiary was working. Even though filed late, SSA apparently considered such filing "a good cause effort" and did not penalize.

We spoke with several SSA officials, including the Director, Division of Benefit Continuity, and the Branch Chief of Beneficiary Reporting, who could only speculate why no penalties were assessed when there was no evidence in the file to support a good cause determination. SSA officials told us that they believed that penalties probably often were not assessed because many overpayments result from beneficiaries' excess earnings and often it is the beneficiary's first time to file the earnings report. However, a 1983 study by SSA's Office of Insurance Program Quality showed that most beneficiaries who did not file an annual earnings report on time were not first year beneficiaries. Based on the study, SSA estimated that in a given year the percentage of first year beneficiaries in the late reporting group would be about 24 percent. Other reasons offered by SSA personnel for the infrequent assessment of penalties were the low priority given to assessing penalties, the fact that decisions to not assess a penalty are not reviewed, and the harshness of the possible penalty amount--generally 1 month's benefits for the first offense. There was no consensus as to why penalties were not more frequently assessed.

Missed penalty opportunities

As stated above, 195 (16 percent) of the overpayments in our sample involved situations for which a penalty could be assessed. SSA does not compile data on the number of potential penalty situations it considers and the number and amount of the penalties assessed. However, based on our sample, we estimate that SSA could have assessed up to $18.8 million in additional penalties for 111,392 outstanding overpayments as of May 1982. It assessed only about $1.5 million in an estimated 7,843 overpayments.

Our estimate is based on the assumption that, if there was no evidence in the file as required for good cause, such as an earnings report, an estimate or correspondence regarding earnings, or a statement by the person making the penalty decision, good cause did not exist. Conversely, if the file contained any information provided to SSA by the beneficiary regarding the matter in question, regardless of how late submitted, we accepted SSA's decision that the good cause criteria had been met even though penalties could be assessed for lateness as well as nonreporting. While there is no practicable way to determine the extent to which cases with no documentation to support good cause might really have been good cause cases, and therefore not subjected to penalty, we noted that our estimate, on an annual basis, was less than half of an earlier SSA estimate. Data provided by SSA's Office of Insurance Program Quality showed that from a sample of enforcement cases in 1978 and 1979, SSA projected that 500,000 overpayment cases involved a potential penalty for those years.[2]

Even when SSA assesses a penalty, the amount may be uncollectible or deferred for long periods. The act provides, in effect, that penalties can be assessed on beneficiaries, but collected only from those currently receiving benefits. In our sample, 124 of 195 beneficiaries who were potentially liable for a penalty were no longer receiving benefits, making any penalty uncollectible. These beneficiaries were no longer receiving benefits for various reasons--they were no longer disabled, had dropped out of school, or had married. None of the 124 former beneficiaries in our sample were deceased at the time they left the benefit rolls. Consequently, the penalty could be collected only if the 124 beneficiaries became entitled to benefits again.

---

[2]SSA's confidence limits are ±2 percent at the 95-percent confidence level.

We found no indication in the legislative history to show why the Congress decided that penalties should be assessed only on individuals receiving benefits. The law states that penalties are deductions from benefits. SSA interprets this to require that an individual be in current payment status before a penalty can be collected (through a deduction). Just as overpayments may be recovered from persons no longer on the rolls, we believe that penalties should be collected along with the overpayment regardless of current pay status.

EXPANDING PENALTY AUTHORITY

In addition to the 195 sample overpayments for which a penalty could have been assessed under current law, 234 other overpayments (19 percent) related to beneficiaries who reported, but did not do so within 30 days, those circumstances that caused their benefits to be reduced or terminated. This involved situations where SSA has not established a reporting time frame or where a legal reporting requirement does not exist. These circumstances were reported an average of 7 months after they occurred. We applied 1 month's benefit as the amount of the penalty (the amount currently required by law for those events that the law requires beneficiaries to report) to these cases and estimated that the average hypothetical penalty was $215. Based on our sample data, we estimate that assessing penalties for similar cases in the universe could yield revenues (if not waived for good cause) of $48 million ($\pm$ $21 million, see app. VIII).

If the alternative penalty structure discussed on the following pages were used instead, revenues from such penalties would be less. Also, because our estimate does not consider the extent to which some cases might be found to contain conditions for "good cause" determination and not result in a penalty assessment, it should be viewed as a rough estimate only and not the probable amount to be realized.

An alternative penalty structure

The current penalty structure does not relate directly to the lateness of the report or the size of the overpayment. All other things being equal, a beneficiary who reports a month late is liable for the same penalty as someone who reports a year late. Also, because of different benefit amounts, penalty amounts vary for the same reporting offense.

Because the current penalty structure is unrelated to the amount of the overpayment and the length of delay in reporting, we believe that the structure should be altered. A new structure should provide a more equitable balance between the amount of the penalty and severity of the violation.

Equity suggests that penalties be based on some percentage of the overpayment. For each month a report is late, the penalty can be calculated as a percentage of the overpayment, with a maximum percentage as a limit to the amount of the penalty. This approach is similar to the penalty that IRS can assess on delinquent federal income tax payments.

Although many variations of this concept are possible, we developed and analyzed an alternative penalty structure using the same percentages and maximum penalty as IRS to show the effect of an alternative that is now in use. Under this structure, the penalty equals 5 percent of the overpaid amount for each month the report is late to a maximum of 25 percent of the overpaid amount if 5 months or more late.

A hypothetical example would illustrate the difference in approach. A beneficiary currently receiving $400 per month who was 3 months late in reporting a change in circumstance that resulted in an overpayment of $500 would be penalized 1 month's benefit--the full $400--for reporting 3 months late for the first offense. However, under our alternative approach, the penalty would be $50 (10 percent of $500).

The following table compares possible penalties under SSA's current authority with the hypothetical penalties under our suggested alternative approach and IRS' percentage and maximum for the estimated overpayments in the universe and assumes penalties are assessed and collected in all cases. The data, and those in tables 6 and 7, are not intended to suggest the amount of potential penalties that would be realized, as that would require a more thorough analysis of SSA's "good cause" determinations for not assessing penalties. The data are intended to show the relative difference in penalties under the two approaches.

Table 5

Comparison of Potential Penalty Amounts for Events Covered Under Current Penalty Authority

Penalty structure	Average	Annual projected penalties
Current	$169	$18,787,080
Alternative	130	14,378,930

As the data show, the alternative approach would result in a lower average penalty. Under the alternative approach, beneficiaries with the higher overpayment amount would pay a relatively higher penalty.

We made a similar analysis for the 234 overpayments involving beneficiaries who reported events that caused their benefits to be reduced or terminated but who reported late. If the penalty criteria were to be expanded as we suggest, these individuals would be penalized for late reporting. The following table shows the estimated maximum amounts that these beneficiaries could be penalized under the current structure and the proposed alternative approach (assuming no cases contained circumstances warranting a determination resulting in no penalty assessment).

Table 6

Comparison of Potential Penalty Amounts for Late Reporting of Events Not Covered Under Current Penalty Authority

Penalty structure	Average	Annual projected penalties
Current	$215	$48,760,440
Alternative	209	47,619,100

Table 7 adds the amount that we estimated could be assessed under the current penalty criteria in table 5 to the amount that we estimated could be assessed under our proposed expanded penalty criteria in table 6, showing that the alternative approach would yield less:

Table 7

Comparison of Potential Penalty Amounts for Nonreporting and Late Reporting of Events That Could Be Covered by Penalty Authority

Penalty structure	Annual projected penalties
Current	$67,547,420
Alternative	61,998,030

The alternative we developed would potentially produce less revenue, but would be more equitable, than the current structure. The amount of the penalty would be more directly related to the amount and duration of the overpayment and the resultant effect on SSA and the trust funds. Also, a penalty equivalent to 1 month's benefits, as currently required, may in some cases be too harsh for the offense, and could serve as a disincentive to assess a penalty.

We recognize that circumstances may exist that would warrant waiving a penalty once assessed. For example, waiving the penalty amount might be appropriate if the payment of the penalty would deprive the beneficiary of income needed for ordinary and necessary living expenses or otherwise involve a hardship for the beneficiary. To the extent that such waivers are requested and granted once penalties are assessed, penalty amounts collected would be less than shown.

CHAPTER 5

SHOULD BENEFICIARIES NOT COMPLYING WITH REPORTING REQUIREMENTS PAY INTEREST WHEN REPAYING OVERPAYMENTS?

Many overpayments continue for a long time before being detected and go even longer before being fully repaid. Most of these overpayments are caused by beneficiaries not reporting or reporting late circumstances that affect their entitlement. Such amounts represent dollars that are the Social Security trust funds' and are in the possession of the beneficiary because in many cases he or she did not comply with the law. It is thus fair to ask whether the beneficiary, regardless of whether assessed a penalty, should pay interest on the overpayment. While penalties would charge beneficiaries for their failures to report and could thereby encourage better compliance with reporting requirements, charging interest could encourage prompter repayment of amounts outstanding and also serve to deter noncompliance with reporting requirements.

CURRENT INTEREST AUTHORITY

The government has long asserted its right to assess interest, without the need for specific statutory authority. The Supreme Court has recognized this right. Billings v. United States, 232 U.S. 261 (1914); Royal Indemnity Co. v. United States, 313 U.S. 289 (1941). The Federal Claims Collection Standards, statutory regulations promulgated under the 1966 Federal Claims Collection Act, include assessing interest as a key element of the government's debt collection program. Consequently, persons owing money to the federal government generally are charged interest on their outstanding debt.

More recently, the Debt Collection Act of 1982, which amended the Federal Claims Collection Act, includes a provision, section 11, directing agencies to assess interest, administrative costs, and penalties (31 U.S.C. 3717). Section 11, however, does not apply to claims arising under the Social Security Act (31 U.S.C. Section 3701(d)). This does not mean that SSA lacks authority to charge interest. Section 11 does not prohibit the charging of interest when authorized under some other statute or principle of common law.

Although SSA has had the authority to charge interest, it did not seek to establish a policy to charge interest until 1981. Prompted by the increasing amount of overpayments, SSA began developing regulations and policies for charging interest on delinquent debts and on debts repaid through installments. SSA's interest-charging policy was intended to encourage prompt repayment, compensate for lost investment income, and defray the cost of borrowing funds. Charging interest was also intended to encourage prompt reporting of events affecting benefits, thereby preventing or reducing the amounts of some overpayments. SSA's attempt to charge interest stopped with the passage of the Debt Collection Act of October 1982 because of concerns of the Congress.

Congressional concerns

During the legislative deliberations on the Debt Collection Act, the Chairman, House Committee on Ways and Means, expressed concern with the broader provisions of the Senate debt collection bill. The Senate bill contained several provisions that differed from the House bill, including authorizing the use of private debt collection agencies to collect federal overpayments, allowing administrative offset of overpayments and debts against Social Security benefits, and assessing interest on overpayments. Thus, he proposed an amendment to exclude SSA from the act's provisions. Specifically, he intended to forestall SSA from collecting interest.

To clarify the amendment the Chairman, in a letter to the Commissioner of Social Security, stated that hearings in September 1982 before the Subcommittee on Social Security provoked substantial interest and concern among Subcommittee members over the debt collection initiatives SSA was undertaking, particularly the use of collection agencies. The Chairman felt that it was inappropriate for these provisions, which affect Social Security beneficiaries, to become law without first being studied.

During the September hearings, witnesses had related instances when SSA's debt collection techniques appeared overly zealous. They raised concerns about collectors threatening or coercing debtors, especially SSI recipients. Consequently, it appears that the congressional concern was extended to possible future abuses if SSA charged interest.

Although SSA was excluded from the act's provisions, it appears from comments made in the House and Senate and in the letter from the Chairman, House Ways and Means Committee, to SSA, that the Congress was not necessarily opposed to the concept of charging interest but rather wanted more data about the causes of overpayments.

SHOULD BENEFICIARIES PAY INTEREST ON OUTSTANDING DEBTS?

There are reasons arguing for and against requiring interest on overpayments.

The reasons for are, as stated earlier, that the trust funds lose revenues while the overpayment is outstanding and that therefore it is appropriate that such lost revenues (in terms of interest the trust fund could have earned on the overpayment amount) be recovered. Since the beneficiary in many instances did not comply with the law, it could be considered appropriate that the beneficiary, not the trust funds' taxpayers, bear such a loss. Also, in similar situations, other federal agencies charge interest on outstanding debts owed by individuals.

On the other hand, it could be argued that it would not be appropriate for SSA to assess interest on overpayments because it does not pay interest to beneficiaries when they are underpaid due to SSA errors or processing delays.[1] It could also be argued that, given the limited fixed-income status of many SSA beneficiaries, interest charges could provide a hardship for them. Also, if SSA were to assess interest on overpayments, it might appear unfair to assess interest on an overpayment for periods for which the beneficiary may not have been aware of the overpayment and therefore had no opportunity to repay.

While these are legitimate concerns for the SSA program, they are equally applicable to other federal programs. Currently, the federal government does not pay interest on underpayments it makes and, when assessing interest on overpayments, generally begins assessing interest only on the period the amount was outstanding after the person was notified. Interest is charged regardless of who caused the debt to occur or the income status of the individuals, although debts can be waived when the debtors are unable to pay.

---

[1]SSA estimated that in fiscal year 1982, such errors and delays caused about $758 million in underpayments. Also, a GAO report estimated that based on 1979 and 1980 earnings that had not yet been entered into the beneficiaries' benefit calculations, at least 2.5 million beneficiaries were underpaid by at least $1.98 billion, an average of $724, or $23 per month over an average of 34 months, before SSA identified, calculated, and paid the amount due. Delays in Recomputing Social Security Benefits Cause Underpayments for Extended Periods (GAO/HRD-84-71, Sept. 13, 1984.)

Because the Congress, in excluding SSA from the requirements of the Debt Collection Act, indicated a willingness to consider treating SSA beneficiaries differently from others who owe debts to the government, the question remains--what interest policy is appropriate for SSA beneficiaries?

Although we have not studied the alternative options to determine which would be most appropriate, we identified one option that would limit SSA's assessment of interest to those beneficiaries who cause overpayments to occur. The remainder of this chapter discusses this option for the Congress to consider as an alternative to charging interest on all beneficiaries, or continuing to not charge any interest.

COLLECTING INTEREST ON OVERPAYMENTS

The rationale for collecting interest on overpayments is to encourage prompt repayment and to allow for recovery of the government's cost of carrying and collecting delinquent debts. Our sample has shown that a small percentage of beneficiaries cause most of the SSA overpayments. However, all Social Security taxpayers bear the burden of financing the additional costs of carrying and collecting debts. Until fully collected, overpayment amounts result in lost investment income to the Social Security trust funds because the amounts are not available for investments and subsequent realization of interest.

Overpayments to beneficiaries in our sample who failed to report earnings or changes in circumstances on time went undetected on average for about 7 months. An additional 3 months passed until the beneficiary was notified of the overpayment. During this time SSA verified the event's occurrence if SSA had discovered the event by other than a beneficiary report. SSA usually requests immediate payment in full but most often agrees to a negotiated payment schedule. Nine more months elapsed on average before a beneficiary made any repayment. During this time SSA attempted to explain the overpayment or negotiate repayment. An average of 20 months passed from the time an event initiating the overpayment occurred before repayment began or was agreed upon. All averages refer to our sample of data.

In our sample, once a beneficiary began repaying an overpayment, the average time to fully repay was about 16 months. However, in about 40 percent (496) of the overpayments, repayment was irregular; often no payment had been made even after several months had passed.

Of the overpayments we analyzed

--564 (46.0 percent) had been fully repaid,

--161 (13.1 percent) had been partially repaid,

--170 (13.9 percent) had been partially repaid but there had been no payment within the last 6 months,

--326 (26.6 percent) remained fully unpaid,[2] and

--we could not determine the recovery status in 4 cases.

Beneficiaries who had not reported earnings or changes in circumstances on time had a higher failure to repay rate than those who reported on time. This group did not pay any of their debt 31.4 percent of the time versus 23.4 percent for the remainder of the sample.

In this study, we used our sample data on beneficiary compliance with reporting requirements to estimate the potential revenues from charging interest on the repayment of overpayments. We initially considered several alternatives for charging interest on overpayments. The variables involved in developing the alternatives included the date on which interest begins to run, the specific reporting circumstances, and whether interest should be charged if the overpayment occurred for a reason other than failure to report. The alternatives follow:

--Charge interest from the date the debt was incurred on all overpayments.

--Charge interest on the 31st day after notification on all overpayments.

--Charge interest from the date the debt was incurred involving overpayments relating to a beneficiary's failure to report earnings and changes in circumstances in a timely manner.

--Charge interest only on the unpaid balance of the overpayment beginning with the 31st day after notification for overpayments relating to beneficiaries' failure to report earnings or change in circumstances in a timely manner.

---

[2]There are a number of reasons for overpayments remaining unpaid, including beneficiaries being noncooperative, applying for a waiver, negotiating a repayment schedule, and protesting the overpayment.

--Charge interest from the date the debt was incurred involving overpayments relating to both beneficiaries' failure to report earnings and changes in circumstances in a timely manner and inaccurate or unsubmitted earnings estimates.

--Charge interest only on the unpaid balance of the overpayment beginning with the 31st day after notification for overpayments relating to both beneficiaries' failure to report earnings and changes in circumstances in a timely manner and inaccurate or unsubmitted earnings estimates.

In deciding which alternatives we would use in developing estimates, we considered the following.

Should beneficiaries have to pay interest on the overpayment for the entire period it was being paid? Probably not. Because due process requires that beneficiaries receive notification of indebtedness and because it seems unfair to charge interest retroactively, we eliminated the alternatives that call for charging interest from the date the debt was incurred. We reasoned, however, that charging interest on the unpaid balance starting 30 days after the beneficiary was notified of the amount due would offset some of the administrative costs of recovery and some of the interest income lost during the period of overpayment and could encourage more timely repayment. While charging interest only on repayments not made within 30 days could tend to favor those most able to repay by allowing them to escape interest payments, we concluded that timely repayment was an appropriate objective and that persons unable to pay the interest could request a waiver.

Could interest also be charged on the amount not repaid within 30 days after SSA notifies the beneficiary of the overpayment, in those cases where estimated earnings were not reported? We say yes, because such failure to report causes overpayments. However, we acknowledge the need for waiver authority when the nature of the employment may have precluded estimating earnings. The estimates become relevant only when the earnings are expected to exceed the maximum amount allowed. We believe it reasonable for persons to account for their earnings and, if such amount is exceeded, to advise SSA at that time of their best estimate of earnings for the remainder of the year.

Consequently, to determine the amount of revenues the trust funds could realize if interest were charged on overpayments, we analyzed the effects of our sample of two alternative plans. Each involves charging interest only on the unpaid balance of the overpayment beginning with the 31st day after SSA's notifying the beneficiary of the overpayment. Under one alternative, we assumed the charges would apply only to overpayments relating to beneficiaries' failure to report earnings and changes in circumstances in a timely manner.

Under the other alternative, we assumed the charges would apply both to the overpayments relating to beneficiaries' failure to report earnings and changes in circumstances in a timely manner and to overpayments resulting from inaccurate or unsubmitted earnings estimates.

Our calculation for each alternative assumed:

--Simple interest starting with the 31st day after the overpayment notice date and ending when repayment was completed or supposed to be completed according to a repayment agreement.

--Interest rate established by the Department of the Treasury. The rate was 13 percent for the quarter April-June 1983 (the same rate authorized by the Debt Collection Act).

--The repayment period was based on the actual payback period for debts that were settled; the period agreed to in a repayment agreement; and in instances where repayment had not been agreed to, the payback experience was for similar size overpayments. (The average payback period was 16.5 months.)

We calculated that charging interest under the two alternatives could generate estimated annual revenues to the trust fund of up to $231 million and $279 million, respectively. However, because of the large variability among the days the overpayments are outstanding and the dollar amount of the overpayments, the estimate could be significantly higher or lower (±$184 million in the former and ±187 million in the latter, see app. VIII). Although our sample resulted in a high sampling error, we chose not to reduce it through additional sampling because this would have required significantly more time and resources. For example, to reduce the variable to a ±$100 million would have required a sample size three times larger. We also recognize that a portion of the potential revenue generated from interest charges will not be collected. SSA waives and writes off as uncollectible about 5.6 percent of its debts cleared. We believe that this percentage would also apply to interest charges.

We did not estimate what effect allowing beneficiaries 30 days to repay without interest would have on repayment patterns. In our sample, 153 overpayments (12.5 percent) were fully repaid within 30 days of the overpayment notice date. The percentage of debts fully repaid within 30 days of an overpayment notice could increase if a 30-day interest-free period existed. Also, some individuals would likely accelerate repayment to avoid interest charges. While prompt debt repayment would reduce potential revenues from interest charges, SSA would have these funds available to earn investment income for the trust funds. In developing our estimate, we also assumed compliance with a repayment schedule. Missed or late payments would increase the amount of interest charged.

PAYING INTEREST ON SSA UNDERPAYMENTS

We did not assess the extent of SSA underpayments and whether interest should be paid to beneficiaries in such instances. SSA data indicate that most of the underpayments occur after the most recent year a person had wages and before SSA receives and records the earnings data and recalculates a higher benefit. Such underpayments are potentially unavoidable, but how long they continue depends on how quickly SSA processes the information and determines and pays the retroactive amount due. SSA acknowledges that delays in identifying and processing underpayments have been excessive and is implementing plans to modernize its data processing system to improve timeliness. This is a complex task, and we cannot predict when and to what extent SSA's efforts will influence processing time.

Our review was directed toward compliance with SSA's reporting requirements. Nevertheless, we believe that it is appropriate for SSA to have a coordinated interest policy on erroneous payments. To help in establishing such a policy, there is a need for an independent study to focus on the underpayment issue. Such a study should include identifying the causes of underpayments and documenting fully SSA's process for handling recent earnings data to calculate and recompute benefit amounts. The latter should include identifying and deciding on acceptable processing norms for SSA's automated system.

NEW DEBT MANAGEMENT SYSTEM COULD INCORPORATE INTEREST AND PENALTY CHARGES

SSA has recognized the need for a debt management system to help resolve debts owed the agency by current and former beneficiaries. A project to implement the system has begun, and a plan has been developed. SSA is evaluating contractors' plans for the system; implementation is scheduled for 1986.

The new system will track established debt, carry out detailed accounting statement billings and remittance processing, provide accounting reports and management information reports, and interface with existing external systems. In addition, the system will be required to be flexible to handle certain processes not yet authorized or in effect. This includes the capability to calculate and bill interest and penalties. Thus, according to SSA officials, including interest-charging features in the system would not be a significant burden or cost.

Additional administrative costs would be incurred from charging interest. In 1982 an SSA official estimated that this cost would be about $3.5 million if interest was to be charged on all overpayment recipients. Under a more restrictive interest policy, additional administrative costs would be incurred. There also could be an increased number of challenges and appeals. We were unable to estimate the amount of additional costs. However, according to SSA, such costs should be small in relation to increased revenue. SSA has commented that "while costs/savings data are not available at this time, savings will clearly be far greater than costs."

Although we have not studied the issue involved in SSA's paying interest on underpayments it makes, any such payment would partially offset interest collected from beneficiaries for overpayments.

CHAPTER 6

CONCLUSIONS, AGENCY COMMENTS, RECOMMENDATIONS,

AND MATTERS FOR CONSIDERATION BY THE CONGRESS

CONCLUSIONS

Social Security overpayments to retirement and disability program beneficiaries continue to increase annually in number and amount. Because of collection costs, bad debts, and lost interest income, the Social Security trust funds are adversely affected. While most of the 36 million beneficiaries comply with SSA reporting requirements, a small segment cause most overpayments because they do not promptly inform SSA of changes in matters that affect their benefits.

Some overpayments cannot be avoided. Although a matter may be reported promptly, payment records cannot always be corrected in time or SSA can make a mistake. An overpayment will occur and will have to be collected. Most overpayments, however, could be avoided or reduced if beneficiaries made timely and accurate reports of prior and estimated current year earnings and changes in eligibility.

Most overpayments result from beneficiaries earning more than the maximum allowed. Our analysis showed that 36 percent of the overpayments resulted because the beneficiary either provided a low earnings estimate or failed to provide an estimate. Earnings estimates are important in preventing overpayments and should be required when a beneficiary's earnings are expected to exceed the maximum allowed. In addition, revised estimates should be required once a beneficiary's earnings exceed the original estimate. In commenting on a draft of this report, SSA stated it is attempting to obtain more information on a high-risk group of beneficiaries targeted as "nonreporters" or "low estimators." GAO believes that as part of its analysis, SSA should determine the feasibility of establishing a threshold for when an estimated earnings report should be adjusted. If the data are sufficient for such a determination, a threshold should be established.

Other overpayments may result from a lack of specific reporting time frames. We recognize that SSA could set reporting requirements for these events by regulation. However, in this report we are suggesting changing and expanding the current penalty authority to include all reporting events and changing certain existing reporting requirements that are established under the law. For the sake of consistency, we believe the reporting requirements for all events that can affect beneficiary payments should be set by law.

The effectiveness of penalties as an SSA debt management tool has been restricted by both their infrequent use and the limited number of situations where they can be used. We believe that SSA's authority for assessing penalties should be expanded to all reportable events that affect benefit payments. We recognize, however, that circumstances may exist that warrant forgiveness or waiver of the penalty once assessed.

We could not determine why penalties were not more frequently assessed in situations where they could have been. Required documentation was often lacking. In addition, SSA personnel responsible for making the initial penalty decision did not obtain data from the beneficiary's payment record that would show the beneficiary's compliance history. Further, only decisions to penalize are reviewed by management. We believe SSA's management of, and procedures for, assessing penalties should be strengthened, and penalties should be assessed in all instances (except where there is a good cause for not assessing the penalty) where beneficiaries do not report within established time frames.

We also believe that the penalty assessed should be based on the overpayment amount and reporting delinquency. Under the current penalty structure, a person who reports 1 month late, causing a few hundred dollars overpayment, could be penalized equally or more than one who is a year late in reporting, causing significantly higher amounts in overpayments.

Legislation does not allow SSA to collect a penalty from beneficiaries no longer entitled to benefits. About 60 percent of the sample beneficiaries potentially liable for a penalty were no longer receiving benefits for various reasons, such as they had recovered from a disability, were no longer in school, or had married. We believe that SSA should be allowed to collect all penalties assessed regardless of the payment status of the beneficiary, except where there is good cause for not assessing the penalty.

Like penalties, charging interest on the beneficiaries' repayment of the overpayment, if not fully paid within 30 days, could contribute to reducing overpayments and encourage prompt repayment and would also allow for recovery of the cost of carrying and collecting the debt. Although SSA could exercise its common law authority to assess interest, it has not done so. In 1982 when SSA was working toward implementing procedures for assessing interest, it stopped because of concerns raised by the Congress. While a restricted interest policy (assessing interest when beneficiaries fail to timely and accurately report infractions that cause overpayments) may be more appropriate for SSA, the Congress should consider whether such action would be appropriate and, if so, direct SSA through legislation.

Because nearly 70 percent of the overpayment dollars go to individuals who did not promptly or accurately inform SSA of an event that reduced or terminated their benefits, it may be especially appropriate to charge interest on these overpayments. Our analysis showed these beneficiaries had use of these funds interest free for about 3 years, on the average. However, because due process requires that beneficiaries be notified of indebtedness, it would appear that interest, if charged, should be charged only on the amount outstanding 31 days after the beneficiary has been notified of the amount to be repaid, until such amount is repaid or waived. Because of the need for administrative flexibility, the Secretary of HHS should be granted authority to waive interest and penalty charges.

Administrative costs that might result from charging interest, and an increased number of challenges and appeals, could reduce the revenue generated by interest charges. We were unable to estimate the amount of such additional administrative costs because they would depend on the extent of future noncompliance and the number and extent of challenges and appeals; however, SSA believes that such costs should be small when compared to the additional revenue. Also, we believe some beneficiaries would more likely repay overpayments more quickly to avoid interest. As with penalties, we recognize that there may be situations where waiver of interest charges would be appropriate.

Although it may be appropriate to assess interest when beneficiaries do not comply with reporting requirements and do not repay the overpaid amount within 30 days, it may not be appropriate for SSA to assess interest on such overpayments because it does not pay interest to beneficiaries when they are underpaid due to SSA errors or processing delays. We believe SSA should have a coordinated interest policy on erroneous payments. To help establish such a policy, SSA should identify the causes of underpayments and determine what is a reasonable time for processing retroactive payments.

Although SSA appears to take reasonable steps to ensure beneficiaries are aware of their responsibilities, the adequacy of such communication with the public will become even more important if SSA expands its penalty authority and charges interest. SSA should examine the adequacy of its information efforts if it moves toward greater use of penalties and interest.

Although it is not possible to estimate the precise effect of increased penalty and interest authority on future voluntary compliance with SSA reporting requirements, and its resultant cost/benefit implications, we believe significant benefits would accrue through increased compliance.

AGENCY COMMENTS AND OUR EVALUATION

We requested written comments from HHS on a draft of this report. In addition to written comments, HHS provided oral comments on the legislative proposals as they might affect SSA's operations (see app. IX). HHS suggested some technical changes to our proposed legislative language. We have made appropriate changes in the report to recognize these technical points.

HHS raised the question of paying interest on SSA underpayments if interest is to be collected on overpayments, stating that if interest were to be paid on underpayments, it would be administratively difficult and would at least partially offset the interest collected on overpayments. We agree with HHS that charging interest on underpayments is a valid issue--one that we did not examine in our study of beneficiary reporting. We believe it is an issue that should be addressed, and we modified our report to highlight this.

Regarding the penalty structure, HHS believes that the penalty should be a percentage of the overpayment amount and not be related to the lateness of a report. HHS points out that the requirement to make an exact determination of the degree of lateness would make it administratively complex and costly to develop a system to support the automated assessment of penalties. SSA has a project underway to automate the process of assessing penalties as part of its fiscal year 1985 Automatic Data Processing Plan.

We are not opposed to a penalty structure based solely on a percentage of the overpayment. As our proposal was only one example of a possible penalty structure, we believe that the merits of both penalty alternatives could be considered. However, we continue to favor a penalty structure related to the lateness of the report and believe a structure could be fashioned to allow for administrative flexibility in determining the degree of lateness.

In its comments, HHS noted that we proposed granting the Secretary broad authority to waive both interest and penalties, but did not provide any criteria for defining acceptable uses of that authority. HHS stated that, as a result, it is not clear what due process rights an overpaid beneficiary would have with regard to waiver. HHS noted that in light of the Califano v. Yamasaki[1] decision, it is possible that a personal conference would be required before a beneficiary's request for waiver of interest and/or penalties could be denied. If so, HHS believes that the exercise of these rights could further clog both SSA's already overburdened administrative appeals process and the federal court dockets.

The decision referred to by SSA requires SSA to provide personal conferences when persons request waivers of repayment of overpayments under section 204(b) of the act. Section 204(b) establishes the circumstances under which the Secretary is to waive repayment from individuals who, without fault, have been overpaid. The court concluded that in order to properly evaluate fault, some sort of personal conference or oral hearing is essential.

The Secretary should be given authority to promulgate regulations for waiving penalties and interest. (See app. V.) Just how the due process considerations raised in the Califano v. Yamasaki decision would affect waiver procedures for penalties and interest would depend on the criteria established. SSA could look for guidance in developing waiver criteria in the Federal Claims Collection Standards developed by GAO.

HHS also thinks that the waiver criteria for penalties and/or interest would have to be different from those applicable to overpayments. HHS believes two, or possibly three, different waiver decisions would increase SSA's administrative costs for overpayment recovery. For example, if a retiree and his spouse and dependent child are overpaid because the retiree had earnings above the maximum allowable amount, the overpaid amounts would be collectible from each individual, subject to requests for waiver. If a penalty is assessed, it would be assessed only on the wage earner retiree who caused the overpayment. Interest on any repayment could be assessed on each overpaid amount. Waivers could be requested in each of the above instances for any or all of the beneficiaries. Consequently, while the same criteria may be applied (e.g., Did the beneficiary cause the overpayment? Does the beneficiary have the ability to repay?), they might be applied differently to overpayment waiver requests and penalty waiver requests depending on the beneficiaries involved.

While we recognize that separate waiver decisions would be made for each element, the decisions will all be based on the same set of facts, and we believe that they can be arrived at

---

[1]442 U.S. 682 (1979).

during a single review process. This would minimize any additional administrative cost from the additional waivers that might be requested.

HHS stated that the legislative language we suggested in the draft report applied only to benefits authorized by section 202 and, therefore, did not cover the disability insurance beneficiary (section 223) or the special age 72 beneficiary (section 228). We have added to our legislative language to include the disability insurance beneficiaries. (See apps. VI and VII.) We have not included the special age 72 beneficiaries in our proposed legislative language because this category is a negligible portion of the SSA population.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress amend title II of the Social Security Act to:

--Require that beneficiaries who expect to earn more than the exempt amount submit an earnings estimate to SSA.

--Provide authority for SSA to assess penalties in cases where beneficiaries do not make reports within the prescribed time or fail to furnish an earnings estimate.

--Require penalties to be collected from persons no longer receiving benefits.

--Make the penalty structure more equitable by relating it to the amount of the overpayment and, if feasible, the lateness of the report.

--Provide authority for the Secretary of HHS to waive penalty charges.

Sections 203(g) and (h) and section 223 of the act would have to be amended and new sections of the act inserted (see apps. I through VII for examples of proposed amendments to the law).

MATTERS FOR CONSIDERATION BY THE CONGRESS

If the Congress believes interest should be charged for erroneous payments, we believe it should first consider directing SSA to review the underpayment issue to provide information necessary to assess the reasonableness of present delays in reimbursing beneficiaries for underpayments. Such information would include

(1) identifying the various causes of underpayments and

(2) determining what is a reasonable processing time for recalculating and paying any retroactive amounts.

SSA data indicate that most underpayments occur after the most recent year a person had wages and before SSA receives and records the earnings data and recalculates a higher benefit, and consequently some portion of such underpayments are unavoidable. Therefore, such analysis should include determining what is a reasonable processing time for identifying, recalculating, and paying such retroactive benefits once the earnings data are received from employers.

After reviewing those results, the Congress should consider developing a coordinated interest policy on all erroneous payments.

One possible option on overpayments could be authorizing SSA to charge interest on the repayment of overpayments when beneficiaries do not report promptly or accurately and the resulting overpayment is not repaid within 31 days after the beneficiary is notified.

Adopting this option would move SSA closer to that required of other federal agencies and would recover some of the revenue lost to the trust funds while stopping short of requiring all overpaid beneficiaries to pay interest on overpaid amounts.

For underpayments, the Congress could consider requiring SSA to pay interest to beneficiaries on underpayments it caused when such underpayments are not paid retroactively within a time determined to be reasonable after they are identified.

We realize that accurately estimating future earnings is difficult. Therefore, the Congress may wish to instruct the Secretary of HHS to examine SSA's experience with inaccurate estimates to determine whether a threshold--an earnings amount or a percentage increase over estimated earnings--should be established, beyond which a revised estimate would be required and assessing penalties would be appropriate if such a revision were not made.

RECOMMENDATIONS TO THE SECRETARY OF HHS

We recommend that the Secretary direct the Commissioner of Social Security to improve the management of the current penalty process. Specifically, SSA should

--assure repayment history and other data needed to make the decision to assess a penalty are available at the time the initial decision is made and that penalty decisions are documented and

--review all penalty decisions before they become finalized to identify and correct inconsistent application of the penalty procedures.

<u>TO ALLOW SSA TO COLLECT PENALTIES FROM PERSONS NO LONGER RECEIVING BENEFITS; TO RESTRUCTURE THE PENALTY IMPOSED AND THE TIME FRAMES FOR REPORTING THE OCCURRENCE OF CERTAIN EVENTS</u>

Section 203(g) of the Social Security Act, 42 U.S.C. 403(g), is amended as follows (new language is underlined, deleted language is bracketed):

"(g) Any individual in receipt of benefits subject to deduction under subsection (c) of this section, (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Secretary [prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred], shall suffer <u>penalties or</u> deductions in addition to [those] <u>the deductions</u> imposed under subsection (c) of this section as follows:

"[(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report though such failure is with respect to more than one month;

"(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

"(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

"except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report.]

"(1) if such individual fails to report the event within 30 days of its occurrence, such penalty shall be equal to 5 percent of the amount of the deduction imposed under subsection (c) for the period for which there is a failure to report;

"(2) if such individual fails to report the event within 31 to 60 days of its occurrence, such penalty shall be increased to 10 percent of the amount of the deduction imposed under subsection (c) for each period for which there is a failure to report;

"(3) if such individual fails to report the event within 61 to 90 days of its occurrence, such penalty shall be increased to 15 percent of the amount of deduction imposed under subsection (c) for each period for which there is a failure to report;

"(4) if such individual fails to report the event within 91 to 120 days of its occurrence, such penalty shall be increased to 20 percent of the amount of the deduction imposed under subsection (c) for each period for which there is a failure to report;

"(5) if such individual fails to report the event after 121 days of its occurrence, such penalty shall increase to 25 percent of the amount of the deduction imposed under subsection (c) for each period for which there is a failure to report;

"As used in this subsection, the term 'period for which there is a failure to report' with respect to any individual means the period for which such individual received and accepted insurance benefits under section 202 of this title without making a timely report and for which deductions are required under subsection (c) of this section regardless of whether such individual is currently eligible for such benefits."

TO IMPOSE A PENALTY FOR FAILURE TO FILE ESTIMATED EARNINGS; TO RESTRUCTURE THE PENALTY IMPOSED; AND TO ALLOW PENALTIES TO BE COLLECTED FROM PERSONS NO LONGER RECEIVING BENEFITS

Paragraphs (1) and (2) of section 203(h) of the Social Security Act, 42 U.S.C. 403(h), are amended as follows (new language is underlined, deleted language is in brackets):

(h) Report of earnings to Secretary

"(1)(A) If an individual is entitled to any monthly insurance benefit under section 202 of this title during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f) of this section, in excess of the product of the applicable exempt amount as determined under subsection (f)(8) of this section times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Secretary of his earnings (or wages) <u>and estimated earnings or wages</u> for such taxable year. [Such report] <u>The report of earnings</u> shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Secretary may by regulations prescribe. Such report need not be made for any taxable year (i) beginning with or after the month in which individual attained age 70 or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant a reasonable extension of time for making the report of earnings required in this paragraph if he finds that there is valid reason for a delay, but in no case may the period be extended more than three months.

<u>"(B) The estimated report of earnings, and any revision thereof, shall be made at such time or times as the Secretary shall specify. If an individual's earnings exceed the estimate provided creating</u>

an overpayment of $ or more, the Secretary shall impose a penalty of percent of the overpaid amount.

"[(B)](C) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this title on the basis of the same wages and self-employment income, files with the Secretary information showing that a benefit for such month is payable to such individual.

"(2) If an individual fails to make a report of earnings required under paragraph (1) of this subsection, within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) of this section by reason of his earnings for such year, he shall suffer additional deductions or penalties (irrespective of current eligibility) as follows:

"[(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202 of this title, except that if the deduction imposed under subsection (b) of this section by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 202 of this title, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) of this section but not less than $10;

"(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202 of this title;

"(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202 of this title;

"except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 202 of this title and for which deductions are imposed under subsection (b) of this section by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.]

"(A) if such individual fails to file a report of earnings within 30 days of the date on which it is due, such penalty or additional deduction shall be equal to 5 percent of the amount of the deduction imposed under subsection (b) of this section for each month after the reporting date for which there is a failure to report;

"(B) if such individual fails to file a report of earnings within 31 to 60 days of the date on which it is due, such penalty or additional deduction shall be increased to 10 percent of the amount of the deduction imposed under subsection (b) of this section for each month after the reporting date for which there is a failure to report;

"(C) if such individual fails to file a report of earnings within 61 to 90 days of the date on which it is due, such penalty or additional deduction shall be increased to 15 percent of the amount of the deduction imposed under subsection (b) of this section for each month after the reporting date for which there is a failure to report;

"(D) if such individual fails to file a report of earnings within 91 to 120 days of the date on which it is due, such penalty or additional deduction shall be increased to 20 percent of the amount of the deduction imposed under subsection (b) of this section for each month after the reporting date for which there is a failure to report;

"(E) if such individual fails to file a report of earnings after 121 days of the date on which it is due, such penalty or additional deduction shall be increased to 25 percent of the amount of the deduction imposed under subsection (b) of this section for each month after the reporting date for which there is a failure to report."

TO ALLOW A FINDING OF GOOD CAUSE FOR FAILURE TO MAKE REPORTS REQUIRED BY SECTION 203(m)

Section 203(l) of the Social Security Act, 42 U.S.C. 403(l), is amended as follows (new language is underlined, deleted language is in brackets):

> "(l) The failure of an individual to make any report required by subsection (g)[or], (h)(1)(A), or (m), of this section within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Secretary that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary."

TO ESTABLISH TIME FRAMES FOR REPORTING CHANGES IN CIRCUMSTANCES OF INDIVIDUALS ENTITLED TO A MONTHLY INSURANCE BENEFIT; TO IMPOSE PENALTIES FOR FAILURE TO COMPLY WITH TIME FRAMES; AND TO ALLOW PENALTIES TO BE COLLECTED FROM PERSONS NO LONGER RECEIVING BENEFITS

Section 203 of the Social Security Act, 42 U.S.C. 403, is amended by adding the following new subsection (m):

> "(m) Except as provided in subsections 403(g) and (h), an individual in receipt of a monthly insurance benefit under section 202 who fails to report to the Secretary the occurrence of any event that affects eligibility for receiving such benefit, or affects the amount of such benefit and such failure results in an overpayment, shall suffer the following penalties or deductions:
>
> > "(1) if such individual fails to report the event within 30 days of its occurrence, such penalty shall be equal to 5 percent of the amount overpaid for the period for which there is a failure to report;
> >
> > "(2) if such individual fails to report the event within 31 to 60 days of its occurrence, such penalty shall be increased to 10 percent of the amount overpaid for each period for which there is a failure to report;
> >
> > "(3) if such individual fails to report the event within 61 to 90 days of its occurrence, such penalty shall be increased to 15 percent of the amount overpaid for each period for which there is a failure to report;
> >
> > "(4) if such individual fails to report the event within 91 to 120 days of its occurrence, such penalty shall be increased to 20 percent of the amount overpaid for each period for which there is a failure to report;

"(5) if such individual fails to report the event after 121 days of its occurrence, such penalty shall be increased to 25 percent of the amount overpaid for each period for which there is a failure to report;

"As used in this subsection, the term 'period for which there is a failure to report' with respect to any individual means the period for which such individual received and accepted insurance benefits under section 202 of this title without making a timely report regardless of whether such individual is currently eligible for such benefits."

TO AUTHORIZE DEPOSIT OF PENALTY PROCEEDS IN THE

FEDERAL OLD AGE AND SURVIVORS INSURANCE TRUST FUND

OR THE FEDERAL INSURANCE DISABILITY TRUST FUND;

TO ALLOW THE SECRETARY OF HHS TO WAIVE PENALTIES CHARGED

Section 203 of the Social Security Act, 42 U.S.C. 403, is amended by adding the following new subsection (o):

"(o)(1) Penalties collected pursuant to subsections (g), (h) and (m) of section 203 of this title shall be deposited in either the Federal Old Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund depending upon the source of the insurance benefit payment.

"(2) The Secretary may promulgate regulations identifying circumstances appropriate to waive collection of penalties imposed pursuant to subsections (g), (h) and (m) of section 203. Waivers in accordance with such regulations shall constitute determinations of compliance with the requirements of such subsections."

TO ESTABLISH TIME FRAMES FOR REPORTING CHANGES IN CIRCUMSTANCES OF INDIVIDUALS ENTITLED TO A MONTHLY DISABILITY BENEFIT; TO IMPOSE PENALTIES FOR FAILURE TO COMPLY WITH TIME FRAMES; AND TO ALLOW PENALTIES TO BE COLLECTED FROM PERSONS NO LONGER RECEIVING BENEFITS

Section 223 of the Social Security Act, 42 U.S.C. 423, is amended by adding the following new subsection (h):

"(h) An individual in receipt of a monthly disability insurance benefit under subsection (a) who fails to report to the Secretary that he or she has returned to work, has increased the amount of work being performed, or has received an increase in earnings, and such failure results in an overpayments, shall suffer the following penalties or deductions;

"(1) if such individual fails to report the event within 30 days of its occurrence, such penalty shall be equal to 5 percent of the amount overpaid for the period for which there is a failure to report;

"(2) if such individual fails to report the event within 31 to 60 days of its occurrence, such penalty shall be increased to 10 percent of the amount overpaid for each period for which there is a failure to report;

"(3) if such individual fails to report the event within 61 to 90 days of its occurrence, such penalty shall be increased to 15 percent of the amount overpaid for each period for which there is a failure to report;

"(4) if such individual fails to report the event within 91 to 120 days of its occurrence, such penalty shall be increased to 20 percent of the amount overpaid for each period for which there is a failure to report;

"(5) if such individual fails to report the event after 121 days of its occurrence, such penalty shall be increased to 25 percent of the amount overpaid for each period for which there is a failure to report;

"As used in this subsection, the term 'period for which there is a failure to report' with respect to any individual means the period for which such individual received and accepted disability benefits under section 223 of this title without making a timely report regardless of whether such individual is currently eligible for such benefits."

TO AUTHORIZE DEPOSIT OF PENALTY PROCEEDS IN THE FEDERAL INSURANCE DISABILITY TRUST FUND; TO ALLOW THE SECRETARY OF HHS TO WAIVE PENALTIES CHARGED

Section 223 of the Social Security Act, 42 U.S.C. 423, is amended by adding the following new subsection (i):

> "(i)(1) Penalties collected pursuant to subsections (h) of section 223 of this title shall be deposited in the Federal Disability Insurance Trust Fund.
>
> "(2) The Secretary may promulgate regulations identifying circumstances appropriate to waive collection of penalties imposed pursuant to subsection (h) of section 223. Waivers in accordance with such regulations shall constitute determinations of compliance with the requirements of such subsection."

DATA PROJECTIONS

Because we reviewed a statistical sample of SSA's outstanding overpayment cases, each estimate from the sample has a measurable precision or sample error. The sampling error is the maximum amount by which the estimate obtained from a statistical sample can be expected to differ from the true universe characteristics (value) we are estimating. Sampling errors are usually stated at a certain confidence level--in this case 95 percent. This means the chances are 19 out of 20 that, if we reviewed the universe of all outstanding overpayment cases, the results of such a review would differ from the estimates obtained from our sample by less than the sampling errors of such estimates.

Using the appropriate statistical techniques, we developed estimates from the sample data. The table below provides the data projections and the sampling error.

Lines 1 through 6 refer to projections in table 5, lines 6 through 10 refer to projections in table 6, and lines 11, 12, and 13 refer to interest projections on page 36.

	Category	Estimate	Sampling error (+)
1.	Number of penalties actually assessed		a
2.	Amount of penalties actually assessed	$1,478,844	$571,514
3.	Number of potential penalties assessed	111,392	19,840
4.	Amount of potential penalties assessed	$18,787,080	$2,131,517
5.	Number of penalties assessed under alternative approach	110,520	19,782
6.	Amount of penalties assessed under alternative approach	$14,378,930	$3,315,833
7.	Number of penalties assessed under expanded criteria, current structure	226,877	27,106
8.	Amount of penalties assessed under expanded criteria, current structure	$48,760,440	$3,547,237
9.	Number of penalties assessed under expanded criteria, alternative structure	227,748	27,138
10.	Amount of penalties assessed under expanded criteria, alternative structure	$47,619,100	$9,339,768
11.	Charge interest on 31st day after notification for overpayments relating to beneficiaries' failure to report earnings and changes in circumstances in a timely manner	$231,128,800	$184,924,500
12.	Charge interest on 31st day after notification for inaccurate or unsubmitted earnings estimate	$48,219,470	$21,830,210
13.	Charge interest on 31st day after notification for overpayments relating to beneficiaries' failure to report earnings and changes in circumstances in a timely manner and for inaccurate or unsubmitted earnings estimate	$279,418,270	$187,006,937

[a]Binomial distribution estimates used. The range at the 95-percent confidence level is between 3,709 and 6,977.

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

SEP - 5 1984

Mr. Richard L. Fogel
Director, Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The Secretary asked that I respond to your request for the Department's comments on your draft report "Shifting the Cost of Erroneous Benefit Payments to Those Beneficiaries Responsible for Them." 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,

Bryan Mitchell
For Richard P. Kusserow
Inspector General

Enclosure

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES' COMMENTS ON THE GAO DRAFT REPORT, "SHIFTING THE COST OF ERRONEOUS BENEFIT PAYMENTS TO THOSE BENEFICIARIES RESPONSIBLE FOR THEM"

GENERAL

The majority of the recommendations in the report are legislative proposals directed to the Congress, relating to penalties and interest charging. HHS is commenting on these proposals because of their potential impact on processing Social Security overpayment cases; however, our remarks do not represent an official Administration position on the overall merits of the proposals. They have not been formally considered for inclusion in HHS' legislative program. Our comments on the recommendations addressed to HHS follow our general comments.

The report recommends that the Congress allow SSA to charge interest on delinquent debts. It also recommends assessing penalties on retirement and disability program beneficiaries when they do not report, or report late, those events which cause overpayments.

Charging Interest

1. GAO's report says interest should be charged "only to those individuals whose actions caused the overpayments" (page 38). Considering that SSA handles about 2 million overpayment actions per year, making a separate determination of whether the beneficiary was at fault in causing the overpayment in every case would pose a substantial administrative burden.

   We have discussed this problem with GAO staff and they have agreed to modify the final version of the report to recommend clearly that interest would be charged whenever the overpayment was the result of the beneficiary's failure to make a required report.

2. The proposed changes to the Social Security Act regarding when interest will begin to accrue on a debt (Appendix III) are inconsistent with proposals in the body of the report. The report explains (page 37) that under the Debt Collection Act of 1982 interest is assessed beginning with the 31st day following notification of the debt. Appendix III (pages 59 and 60) states that interest is to be charged beginning with the date of notification of the debt, but then waived if the debt is repaid within 30 days. GAO staff have agreed to modify the proposed language to state that interest would be charged beginning with the 31st day following notification of the debt.

3. Charging interest on delayed Social Security overpayment refunds may bring in to the public debate the question of paying interest on Social Security underpayments. The advantage to the Trust Funds of collecting interest could be at least partially offset by interest paid out. The administrative workload which would result from paying interest on underpayments would be extremely heavy. Depending on the specific provisions of the proposals, automation of the process would likely require extensive changes in current operating systems.

Penalties

1. We believe the assessment of penalties for late reports should be automatic and should not be related to the length of the delay. GAO staff have informally agreed to state in their report that penalties should be assessed whenever a beneficiary fails to report timely.

2. The legislative language should state specifically that where annual earnings are involved, or where other reporting events are involved, the penalty should be a percentage of the overpayment amount, not the amount of the deduction.

3. GAO recommends granting the Secretary broad authority to waive both interest and penalties, but does not provide any criteria for defining acceptable uses of that authority. Therefore, it is not clear what the due process rights of an overpaid beneficiary would be with regard to waiver. In light of the Califano v. Yamasaki decision, it is possible that a personal conference would be required before waiver of interest and/or penalties could be denied. If so, the exercise of these rights could further clog both SSA's already overburdened administrative appeal processes and the Federal court dockets.

   Additionally, we think that the waiver criteria for penalties and/or interest will have to be different from those applicable to overpayments. (For example, if an individual's benefits are reduced or suspended in order to recoup an overpayment incurred by another individual eligible for benefits on the same record, it seems doubtful that penalties and/or interest would be required, even if the overpayment itself could not be waived.) The need for two, or possibly three, different waiver decisions would increase SSA's administrative costs for overpayment recovery.

4. We believe the recommended GAO penalty structure poses serious problems:

   (1) The requirement to make an exact determination of the degree of lateness would make it administratively complex and costly to develop a system to support the automated assessment of penalties, (2) The penalty amount increases disproportionately to the amount of overpayment in nonearnings related overpayments as compared to earnings related overpayments.

   An equitable penalty structure should be based on a percentage of the amount of overpayment regardless of how late the report is made. In earnings related overpayments a penalty surcharge could be justified for failing to file any report of earnings.

5. The report does not take into account SSA debt management initiatives since January 1, 1982. An important example is the action SSA is taking to automate the process of assessing penalties. A project to automate the manual process of determining whether a penalty applies and to notify the beneficiary is part of SSA's FY 85 ADP Plan.

GAO RECOMMENDATIONS TO THE SECRETARY

Recommendation

That the Secretary direct the Commissioner of Social Security to improve the management of the current penalty process. Specifically, SSA should:

-- Assure repayment history and other data needed to make the decision to assess a penalty are available at the time the initial decision is made and that penalty decisions are documented.

-- Review all penalty decisions to identify and correct inconsistent application of the penalty procedures.

Department Comment

The Payment History Update System, implemented in February 1984, includes data on payments to beneficiaries and beneficiary repayments; other data needed will be available when the National Debt Management System, noted in the GAO report (pages 39 and 40), is implemented in September 1986. Controls to improve consistency in the way penalties are applied will be developed in conjunction with the project to automate penalty assessment (described above, number 5).

We also will remind the managers responsible for penalty decisions to make spot checks of technicians' completed work to ensure that penalty procedures are being followed.

Recommendation

That the Secretary study the feasibility of establishing a threshold--an earnings amount or a percentage increase over estimated earnings--for when an estimated earnings report should be adjusted to more accurately reflect the expected earnings.

Department Comment

SSA requires future year estimates of earnings from all claimants at the time of application and from beneficiaries who are required to submit an annual report. As noted in the report, SSA also advises beneficiaries of their responsibility to report to SSA any event, including changes in earnings, which may affect benefit payments.

SSA is taking action to improve beneficiary compliance by means of the Annual Earnings Test Direct Mail Followup (DMF). The DMF focuses on a high risk group of 700,000 beneficiaries targeted as "non reporters" or "low estimators." Each individual in the group will receive a "mid-year mailer" requesting return information on changes in his earnings estimate. If there is no change in the estimate, the beneficiary does not return the form. Based on an analysis of the returns, decisions will be made on whether to make the mailer an annual process, to expand or contract the target group, and to develop regulations or seek legislation to require a response from beneficiaries.

The Deficit Reduction Act of 1984 contains a provision to prevent overpayments due to failure to report which carries out the intent of the GAO recommendation. The legislation requires actions that SSA has already begun under the DMF. Section 2602 requires the Secretary to develop and implement procedures to avoid paying more than the correct amount of benefits to any individual under title II as a result of the individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories or individuals who are likely to be paid more than the correct amount of benefits, and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions on account of earnings or wages.

Legislative Language

The legislative language suggested in the report does not permit interest to be collected through the benefit adjustment process since it does not amend section 204 of the Social Security Act.

Also, the draft applies only to benefits authorized by section 202 and, therefore, does not cover the disability insurance beneficiary (section 223) or the special age 72 beneficiary (section 228).

The report recommends assessing penalties against individuals who no longer are in benefit status. However, the legislative language, (Appendix I), in the recommendation to Congress does not carry out this intent, because the penalty amount would be a percent of the deduction to be made and these individuals are not subject to deductions.

Technical comments relating to legislative language from our Office of the General Counsel, together with an OGC-annotated copy of the draft report, have been provided directly to the GAO auditors involved.

GAO note: Page references in this appendix may not correspond to page numbers in this final report.

(105166)

30745

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICAL BUSINESS
PENALTY FOR PRIVATE USE $300

BULK RATE
POSTAGE & FEES PAID
GAO
PERMIT No. G100