
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**IMPLEMENTATION OF PHASE I
OF THE MARTINEZ SETTLEMENT
AGREEMENT**

February 2011

A-01-10-10160

AUDIT REPORT



Mission

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- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
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SOCIAL SECURITY

MEMORANDUM

Date: February 25, 2011

Refer To:

To: The Commissioner

From: Inspector General

Subject: Implementation of Phase I of the Martinez Settlement Agreement (A-01-10-10160)

OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) implementation of Phase I of the Martinez Settlement agreement.

BACKGROUND

The *Social Security Act* prohibits the payment of Old-Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments to a beneficiary who is "fleeing" to avoid prosecution, custody, or confinement for a felony, unless the Agency determines that good cause exists for paying such benefits.¹

The Martinez class action lawsuit² challenged SSA's fugitive felon policy of basing payment suspensions solely on the existence of an outstanding felony arrest warrant rather than developing information to ensure that the individual was "fleeing." As a result, the parties reached a settlement in September 2009 in which SSA changed its policy to suspend OASDI benefits and deny SSI payments only if the outstanding felony warrant for the individual was for one of three National Crime Information Center Uniform Offense Classification Codes:

- Escape (Offense Code 4901);
- Flight to avoid prosecution, confinement, etc. (Offense Code 4902); and
- Flight-Escape (Offense Code 4999).

¹ The *Social Security Act* §§ 202(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), 42 U.S.C. §§ 402(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), as amended by § 203(a) of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203 § 203(a), March 2, 2004, and the *Social Security Act* §1611(e)(4), 42 U.S.C. § 1382(e)(4), as amended by § 203(b) of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203 § 203(b), March 2, 2004.

² *Martinez v. Astrue*, No. 08-4735 CW, a case in the U.S. District Court for the Northern District of California.

SSA is fulfilling the terms of the settlement agreement in four phases. The Agency implemented Phase I in December 2009, which affected about 30,000 Martinez class members whose OASDI benefits SSA staff suspended after 2006. For these individuals, SSA reinstated benefits and paid any benefits withheld as of the first month of suspension. Additionally, the Agency repaid any sums collected on an overpayment if these individuals were assessed an overpayment based on SSA's previous fugitive felon policy and another basis for suspending payment did not apply. For additional background information, see Appendix B.

METHODOLOGY

To accomplish our review, we obtained a file of 30,156 Martinez cases from SSA's Fugitive Felon Control File where the Agency applied Martinez Settlement relief as of May 2010. We randomly selected 275 cases for detailed review. (See Appendix C for details about our scope and methodology.)

RESULTS OF REVIEW

Despite the complexities of these cases, SSA provided appropriate settlement relief to about 91 percent of the Phase I class members.³ Specifically, based on our sample, we estimate SSA provided settlement relief totaling approximately \$321.6 million in Phase I of the Martinez Settlement implementation. SSA appropriately provided relief to about 27,524 (91 percent) OASDI class members. However, approximately

- 1,864 (6 percent) received about \$14.3 million more settlement relief than was due, and
- 768 (3 percent) did not receive about \$828,600 in settlement relief that was due.⁴

Overall, about 2,632 individuals did not receive the accurate amount of settlement relief due them. The net result was that SSA provided about \$13.5 million more in settlement relief than was due.

³ The District Court approved the Martinez Settlement in September 2009, and the Agency began processing Phase I settlement cases in December 2009—3 months after approval of the settlement. For purposes of this review, we use the term "settlement relief" to indicate how SSA compensated these individuals under the Martinez Settlement. For detailed information regarding how SSA provided settlement relief, see the section of this report titled "Complexity of Processing Martinez Cases."

⁴ To be conservative, we did not include in our estimate the amount for one case, which was \$34,653. This amount was significantly more than the other cases in our sample.

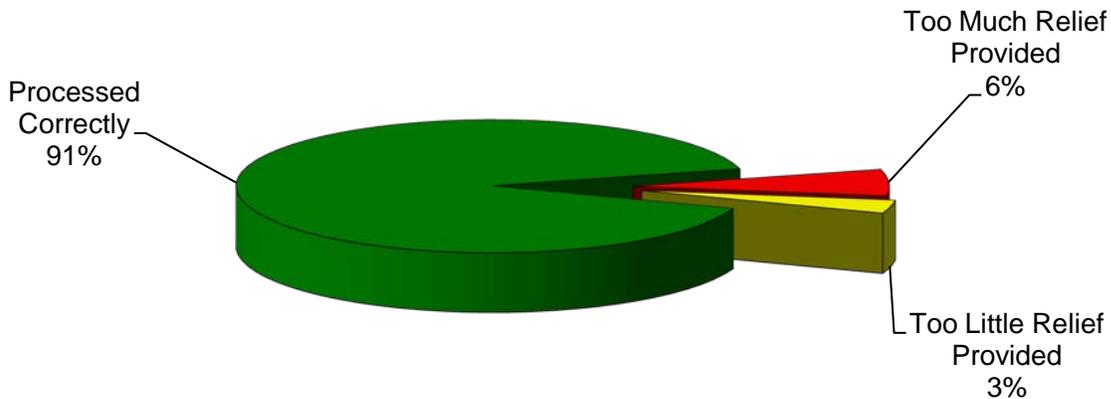
SAMPLE RESULTS

We sampled 275 individuals whose SSA records indicated they were Martinez Settlement class members. In August 2010, we referred cases from our sample to SSA. In October 2010, the Agency notified us that it took corrective action on these cases where necessary.

We found

- 251 (91 percent) were processed correctly and received settlement relief totaling \$2,531,831;
- 17 (6 percent) received \$130,858 more relief than they were due; and
- 7 (3 percent) did not receive \$42,210 that they were due.

Chart 1: SSA's Implementation of the Settlement



COMPLEXITY OF PROCESSING MARTINEZ CASES

Because of the complexities of the Martinez Settlement cases, the Agency is implementing the Settlement in four phases. In general, for Phase I cases, SSA reinstated OASDI benefits and paid any previously withheld benefits as of the first month of fugitive felon suspension or denial. Additionally, had SSA recovered any overpayments related to SSA's prior fugitive policy, the Agency paid these funds to the beneficiary as part of the Settlement agreement.

To determine whether an individual was due Settlement relief in Phase I, SSA had to do the following.

- Determine whether the warrant (or warrants since some class members had multiple warrants) was subject to the Martinez settlement agreement.
- Determine whether the Agency had suspended the individual's benefits because of the warrant, and if so, calculate the benefits overpaid and withheld because of SSA's previous fugitive felon policy.
- Determine whether a higher priority suspension event (for example, prisoner suspension) superseded the fugitive felon suspension period.⁵ (If there were a higher priority suspension, settlement relief would not apply for that period.)
- If benefits were overpaid, determine whether any or all of the fugitive felon overpayments were waived or deleted—to ensure the individual was not paid these funds a second time in a settlement payment.
- Once SSA calculated the settlement relief amount, the Agency had to determine whether there were any outstanding overpayments (unrelated to the prior fugitive policy), past-due Medicare premiums, or past-due garnishments, to which SSA would apply the settlement relief before issuing the individual the remaining balance.
- Before issuing a settlement payment, the Agency had to determine whether the individual was in current payment status and determine the appropriate relief.

In Phase I Martinez Settlement cases, the Agency issued settlement relief by

- paying the individual benefits withheld or recovered because of the fugitive felon warrant;
- applying the settlement amount to recover any outstanding overpayment(s);
- using the settlement amount to collect past-due Medicare premiums;
- paying garnishments (for example, child support) that were past due on behalf of the individual scheduled to receive settlement relief;
- posting a pending underpayment (if the individual was not in a current payment status); or
- any combination of the above.

⁵ For a priority list of events that cause OASDI terminations/suspensions or deduction of benefits, see SSA, Programs Operations Manual System (POMS), GN 02602.025.

CASES PROCESSED CORRECTLY

SSA correctly processed 251 (91 percent) of our 275 sample cases and provided these individuals settlement relief totaling about \$2.5 million.

For example, for one individual, SSA suspended benefit payments under the prior fugitive felon policy in June 2007, which resulted in a \$6,670 overpayment from January through May 2007. Additionally, because of the suspension, the Agency withheld \$4,002 of benefits from June through August 2007. As of December 2009, this individual had repaid \$2,700 of the \$6,670 overpayment—leaving a balance of \$3,970. As a result of the Martinez Settlement, SSA considered the benefits withheld from June through August 2007 due and no longer considered this individual overpaid from January through May 2007. Therefore, the Agency

- removed the overpayment balance of \$3,970—funds the beneficiary had already received and
- issued the beneficiary a payment for \$6,702—the amount the Agency had withheld (\$4,002) plus the amount the beneficiary had repaid (\$2,700).

In another case, SSA suspended benefit payments from May 2007 through September 2008 and posted a \$1,370 overpayment to the record under its prior fugitive felon policy. As a result of the Martinez Settlement, SSA removed the overpayment balance of \$1,370 and calculated that \$10,435 in benefits was withheld under the prior policy. However, because this individual was in prison, the Agency could not issue a payment for the withheld benefits because of the *No Social Security Benefits for Prisoners Act of 2009*.⁶ SSA posted a pending \$10,435 underpayment to the individual's record. When this individual is released from prison, SSA can issue the settlement payment.

CASES PROVIDED MORE RELIEF THAN DUE

We found 17 individuals (6 percent) in our sample received \$130,858 more in settlement relief than they were due. Table 1 summarizes the reasons SSA provided too much settlement relief.

⁶ Pub. L. No. 111-115. For additional information regarding the *No Social Security Benefits for Prisoners Act of 2009*, see Appendix B of this report and/or our May 2010 report, *Martinez Settlement Benefits Withheld Under the No Social Security Benefits for Prisoners Act* (A-01-10-20112).

Table 1: Reasons SSA Provided Too Much Settlement Relief	Amount of Relief	Number of Cases	Percent
Relief provided for deleted overpayment balance	\$45,735	10	59%
System limitation on overpayment recovery	\$68,100	4	23%
Incorrect computation	\$992	2	12%
Open probation/parole warrant during period of Martinez warrant ⁷	\$16,031	1	6%
Total	\$130,858	17	100%

Relief Provided for Deleted Overpayment Balance—Case Example

In 2008, SSA learned that a beneficiary had an outstanding felony warrant from March through May 2007. Therefore, SSA posted a \$5,160 overpayment for this period. As of February 2009, the individual had repaid \$1,759 of his overpayment to SSA, and the Agency had deleted the remaining balance of \$3,401.

As a result of the Martinez Settlement, SSA no longer considered this individual overpaid for the period March through May 2007. In December 2009, the Agency processed settlement relief in the form of a payment to the individual for \$5,160. However, SSA should have only issued a \$1,759 settlement payment because the remaining overpayment amount had been deleted.

We referred this case to SSA in August 2010, and the Agency took corrective action by posting an overpayment of \$3,401 to the individual's record on September 22, 2010. SSA planned to start collecting this overpayment in December 2010. Essentially, SSA had paid this individual \$3,401 twice—once under the prior fugitive policy and again as a settlement relief payment.

System Limitation on Overpayment Recovery—Case Example

In 2008, under its prior fugitive felon policy, SSA suspended benefit payments for one individual and posted a \$24,808 overpayment for August 2006 through September 2008. Additionally, SSA withheld \$1,945 in benefit payments for October and November 2008.

The beneficiary began repaying the overpayment by having the Agency withhold \$20 from her monthly benefit payment. As of December 2009, the individual had repaid \$60. However, because of SSA systems limitations, the overpayment balance on the record reflected only the \$9,620 that could be collected through the year 2049. SSA

⁷ The Martinez settlement agreement does not apply to parole or probation warrants.

staff members stated they established manual controls for the \$15,128 no longer shown on the record in the balance amount.⁸

As a result of the Martinez Settlement, SSA no longer considered this individual overpaid \$24,808 and considered the withheld benefits, totaling \$1,945, due. To implement the settlement agreement, SSA relied largely on automated processes. We found in this case the overpayment balance reflected only \$9,620 of the actual \$24,808, and the system treated the \$15,128 difference as if it had been withheld from the beneficiary or already been repaid to SSA.⁹ It therefore issued a payment for \$17,133—the \$1,945 that had never been paid, plus \$60 that had been repaid, plus the \$15,128 not reflected in the overpayment balance. However, the individual had not repaid the \$15,128. Therefore, when SSA paid the settlement relief, it resulted in an overpayment of \$15,128.

We referred this case to SSA in August 2010. In September 2010, the Agency took corrective action by posting an overpayment of \$15,128 to the individual's record. As of February 2011, SSA was collecting this overpayment from her current benefit payment.

CASES PROVIDED LESS RELIEF THAN DUE

Seven individuals (3 percent) in our sample did not receive \$42,210 in settlement relief they were due. All seven of these cases were complex and involved SSA reviewing several years of information to determine the settlement relief due.

For example, one individual had two warrants, issued in May and October 2006. Per SSA's records, the individual was to receive settlement relief based on the warrant issued in May 2006, which ended in June 2007. From May 2006 through June 2007, the individual was in fugitive felon suspension, which resulted in \$6,125 in benefits overpaid and withheld, and this was the amount of settlement relief due.¹⁰ However, in January 2010, the individual received settlement relief of \$5,264, which was \$861 ($\$6,125 - \$5,264 = \$861$) less than was due. The Agency withheld \$861 of the settlement for October and November 2006 because this was the period of fugitive suspension for the warrant issued in October 2006; however, per the Martinez Settlement, the individual was due settlement relief for those 2 months.

We referred this case to SSA in August 2010. In September 2010, the Agency took corrective action and provided this individual the additional \$861 in settlement relief that was due.

⁸ At the time SSA took this action, the beneficiary had repaid \$60 in monthly installments. Thus, the \$24,808 overpayment less the \$60 repaid equaled \$24,748, less the \$9,620 that could be collected through the year 2049 at the installment rate, equaled \$15,128.

⁹ There were three additional cases in our sample that had the year 2049 systems limitation.

¹⁰ The \$6,125 comprised a \$3,458 overpayment from May through December 2006 and \$2,667 of benefits the Agency withheld because of the fugitive felon warrant.

CONCLUSION AND RECOMMENDATIONS

Overall, we estimate that SSA provided settlement relief of approximately \$321.6 million in Phase I of the Martinez Settlement implementation. Additionally, we estimate that about 2,632 individuals did not receive the settlement relief due them, resulting in the Agency providing approximately \$13.5 million more relief than due.

We recommend SSA:

1. Review and update its policies and procedures, where necessary, to ensure settlement relief is properly paid.
2. Correct the cases in the population that were incorrectly paid settlement relief.¹¹

AGENCY COMMENTS

SSA agreed with the recommendations. See Appendix D.



Patrick P. O'Carroll, Jr.

¹¹ On February 3, 2011, we provided SSA 2,078 cases that need to be reviewed and possibly corrected.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Additional Background

APPENDIX C – Scope, Methodology, and Sample Results

APPENDIX D – Agency Comments

APPENDIX E – OIG Contacts and Staff Acknowledgments

Acronyms

OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code

Additional Background

The Martinez Settlement Agreement

On September 24, 2009, the U.S. District Court of Northern California approved a nation-wide class action settlement agreement in the *Martinez v. Astrue* lawsuit involving the Social Security Administration's (SSA) fugitive felon program. The Martinez Settlement changed the types of felony arrest warrants SSA uses to prohibit payment of Old-Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments. The settlement does not apply to persons whose benefits the Agency denied or stopped because of an arrest warrant for a parole or probation violation. Specifically, the agreement allows SSA to stop benefit payments to fugitive felons in only three Offense Code categories:¹

- Escape (4901);
- Flight to avoid prosecution, confinement, etc. (4902); and
- Flight-Escape (4999).

For class members

- whose benefits were suspended or denied or who had an administrative appeal determination on or after January 1, 2007 or
- who had an administrative appeal challenging the suspension of their benefits pending on August 11, 2008,

SSA will reinstate benefits and pay any benefits withheld as of the first month of suspension. The Agency will also repay any sums collected on an overpayment if these class members had been overpaid benefits based on SSA's previous policy. For class members who receive SSI, the Agency will first redetermine the individual's non-medical eligibility criteria under its usual policies.

For class members

- whose benefits were suspended or denied between January 1, 2000 and December 31, 2006 and who did not have administrative appeals pending on August 11, 2008, SSA will stop collecting overpayments and remove any remaining overpayment balances imposed based on the previous policy.
- who were not receiving benefits as of April 1, 2009 because of the application of the previous fugitive felon policy, a new application for benefits may be necessary.

¹ The three Offense Codes specified—4901, 4902, and 4999—are National Crime Information Center Uniform Offense Classification Codes.

Class members whose benefits were suspended or denied before January 1, 2000 can reapply for benefits under the new policy.

The Agency is fulfilling the terms of the settlement agreement as follows.

- Phase I: Individuals whose OASDI benefits were suspended after 2006. The Agency refers to this as Title II Post-2006 Relief.
- Phase II: Individuals whose SSI payments were suspended or denied after 2006. The Agency refers to this as Title XVI Post-2006 Relief.
- Phase III: Individuals whose OASDI benefits were suspended between January 1, 2005 and December 31, 2006. The Agency refers to this as Title II Pre-2007 Relief.
- Phase IV: Individuals whose SSI payments were suspended or denied between January 1, 2000 and December 31, 2006. The Agency refers to this as Title XVI Pre-2007 Relief.

Also, SSA plans additional work concerning settlement-related matters not addressed in the first four phases.

No Social Security Benefits for Prisoners Act of 2009

On December 15, 2009, the *No Social Security Benefits for Prisoners Act of 2009* became law.² Under this law, SSA will not pay retroactive benefits to individuals whose monthly OASDI benefits or SSI payments are suspended because they are a prisoner, fugitive felon (under the terms of the Martinez Settlement), or probation or parole violator. This includes Martinez Settlement relief. Once the individual is no longer a prisoner, fugitive felon, or probation or parole violator, SSA can pay retroactive benefits.

The new law does not limit SSA's authority to otherwise withhold, adjust, or recover benefits.³ For individuals receiving SSI, the Agency will first re-examine non-medical eligibility before reinstating payments.

² Pub. L. No. 111-115.

³ Pub. L. No. 111-115 § 2, 42 U.S.C. 404(a)(1)(B)(iii), and 42 U.S.C. 1383(b)(7)(B).

Scope, Methodology, and Sample Results

To accomplish our objective, we:

- Researched the Social Security Administration's (SSA) regulations, policies, and procedures related to the Martinez Settlement agreement and withholding of retroactive benefit payments under the *No Social Security Benefits to Prisoners Act of 2009*.
- Reviewed the Office of the Inspector General report, *The Social Security Administration's Fugitive Felon Program and the Martinez Settlement Agreement* (A-01-09-29177), October 2009.

In May 2010, we identified 30,156 potential Phase I class members—that is, individuals whose Old-Age, Survivors and Disability Insurance (OASDI) benefits had been suspended under the fugitive felon program after 2006 and who had at least one unsatisfied warrant for which benefits would no longer be suspended under the Martinez Settlement agreement. We analyzed a random sample of 275 of these cases to

- ✓ determine whether these individuals were properly included in the Phase I population,
- ✓ assess the appropriateness of any related reinstatement, and
- ✓ assess the appropriateness of payment of retroactive benefits.

We conducted our audit between May and October 2010 in Boston, Massachusetts. We tested the data we obtained and determined them to be sufficiently reliable to meet our objective. The entities reviewed were SSA's Office of Systems under the Deputy Commissioner for Systems; SSA's field offices, processing centers, and program service centers under the Deputy Commissioner for Operations; and the Office of Income Security Programs under the Deputy Commissioner for Retirement and Disability Policy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

SAMPLE RESULTS AND ESTIMATES/PROJECTIONS

Table C-1: Population and sample size	
Population Size	30,156
Sample Size	275

Table C-2: Individuals who had Martinez Settlement processed correctly	Number of Beneficiaries
Sample Results	251
Point Estimate	27,524
Projection Lower Limit	26,526
Projection Upper Limit	28,316

Note: All projections are at the 90-percent confidence level.

Table C-3: Individuals who received settlement relief	Dollars
Sample Results	\$2,932,387
Point Estimate	\$321,560,209
Projection Lower Limit	\$278,458,029
Projection Upper Limit	\$364,662,390

Note: All projections are at the 90-percent confidence level.

Table C-4: Individuals who received more settlement relief than they were due	Number of Beneficiaries	Dollars
Sample Results	17	\$130,858
Point Estimate	1,864	\$14,349,620
Projection Lower Limit	1,202	\$5,227,713
Projection Upper Limit	2,748	\$23,471,526

Note: All projections are at the 90-percent confidence level.

Table C-5: Individuals who received less settlement relief than they were due	Number of Beneficiaries	Dollars ¹
Sample Results	7	\$7,557
Point Estimate	768	\$828,643
Projection Lower Limit	364	\$257,222
Projection Upper Limit	1,422	\$1,400,064

Note: All projections are at the 90-percent confidence level.

¹ To be conservative, we did not include the amount for one case, which was \$34,653, in our estimate. This amount was significantly more than the other cases. However, for our estimate of the number of beneficiaries who received less settlement relief than they were due, we included this individual.

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: February 4, 2011 Refer To: S1J-3

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

From: Dean S. Landis /s/
Deputy Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Implementation of Phase I of the Martinez Settlement Agreement" (A-01-10-10160)—INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Chris Molander, at (410) 965-7401.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“IMPLEMENTATON OF PHASE I OF THE MARTINEZ SETTLEMENT
AGREEMENT” (A-01-10-10160)**

Thank you for the opportunity to review the subject report. We offer the following responses to your recommendations.

Recommendation 1

Review and update its policies and procedures, where necessary, to ensure settlement relief is properly paid.

Response

We agree. We have routinely updated Phase I policies and procedures since first issuing them in December 2009. We will continue that practice.

Recommendation 2

Correct the cases in the population that were incorrectly paid settlement relief.

Response

We agree. We will take appropriate corrective action on all cases referred for correction.

OIG Contacts and Staff Acknowledgments

OIG Contacts

Judith Oliveira, Director, Boston Audit Division

David Mazzola, Audit Manager

Acknowledgments

In addition to those named above:

Kevin Joyce, IT Specialist

Frank Salamone, Senior Auditor

David York, Program Analyst

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