



SOCIAL SECURITY
Office of the Inspector General

March 17, 2010

The Honorable Sam Johnson
Ranking Member, Subcommittee on
Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Johnson:

In an October 22, 2009 letter, you asked that we review issues relating to the Social Security Administration's application of the good cause provision in the Agency's fugitive felon program.

Thank you for the opportunity to provide the Committee with the requested information. To ensure the Agency is aware of the information provided to your office, we are forwarding a copy of this report to the Agency. I have also sent a similar response to Chairman Pomeroy, Ranking Member John Linder of the Subcommittee on Income Security and Family Support, and Member Wally Herger of the Committee on Ways and Means.

If you have any questions, please call me, or have your staff contact Misha Kelly, Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr." with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Michael J. Astrue
Earl Pomeroy
John Linder
Wally Herger

CONGRESSIONAL RESPONSE REPORT

The Good Cause Provision Under the Fugitive Felon Program

A-01-10-21052



March 2010

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

Background

OBJECTIVE

Our objective was to evaluate the Social Security Administration's (SSA) use of the good cause provision for fugitive felons and probation or parole violators.

BACKGROUND

On October 22, 2009, Sam Johnson, Ranking Member, Committee on Ways and Means, Social Security Subcommittee; John Linder, Ranking Member, Committee on Ways and Means, Income Security and Family Support Subcommittee; and Wally Herger, Member, Committee on Ways and Means, asked us to review SSA's application of the good cause provision in the Agency's fugitive felon program.¹

Specifically, the Members requested the following.

- (1) The step-by-step procedures by which the Agency determines whether good cause exists.
- (2) How often the Agency found good cause in the fugitive felon program.
- (3) Fugitive cases where good cause was not found and whether it appeared the person met the good cause criteria (for example, the offense was non-violent and not drug-related).
- (4) Based on this preliminary review, whether the Agency is effectively administering the good cause provisions in the fugitive felon program.

The *Social Security Act* prohibits the payment of Title II and XVI benefits to a beneficiary who is fleeing to avoid prosecution, custody, or confinement for a felony—and to a beneficiary who is violating a condition of probation or parole—unless the Agency determines that good cause exists for paying such benefits.²

Before SSA takes action to suspend benefit payments, it sends the beneficiary a notice about the warrant information the Agency has received and the impact it may have on benefit payments. The notice also advises the beneficiary of his or her rights to file an appeal or request a waiver. Finally, the letter informs the beneficiary of the conditions that must be met for the Agency to find there is good cause to continue the benefit payments.

See Appendix B for additional background information on SSA's fugitive felon program and Appendix C for our scope, methodology, and sample results.

¹ The fugitive felon program also includes probation or parole violators.

² 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.

Results of Review

Generally, SSA administered the good cause provision effectively when individuals requested exemption under the good cause provision. SSA informs beneficiaries of the good cause provision, but the Agency only reviews cases for possible good cause exemptions when requested by the beneficiary. Responses to the specific information Congress requested are below.

Step-by-Step Procedures by which the Agency Determines Whether Good Cause Exists

SSA obtains the names, dates of birth, and Social Security numbers of individuals with outstanding warrants from law enforcement agencies. SSA verifies the individuals' identities through its Enumeration Verification System, and the Office of the Inspector General (OIG) confirms the warrants are still valid. The information is then recorded in the Agency's Fugitive Felon SSA Control File (FFSCF).³

Before SSA takes action to suspend benefit payments, it sends the beneficiary a letter about the warrant information it has received and the impact the unsatisfied warrant(s) may have on benefit payments. The notice explains how benefits could continue under the good cause provisions of the fugitive program. (If an individual is not receiving benefits, a notice of suspension is not sent. However, if benefits that should have been withheld because of fugitive status were paid before benefits were suspended or terminated, SSA sends an overpayment notice that tells the beneficiary he or she can appeal the overpayment.) The burden to establish good cause is on the beneficiary.

The Agency will determine that good cause exists and continue benefit payments if a court of competent jurisdiction found the person not guilty, dismissed the charges, vacated the warrant for arrest, or issued any similar exonerating order. SSA will also find good cause to continue or repay benefits if the beneficiary was erroneously implicated in the criminal offense because of identity fraud.⁴ Beneficiaries may request good cause for these reasons at any time.

Additionally, the Agency can determine that good cause exists and continue benefit payments if the criminal offense – or in the case of probation or parole violators, both the violation and the underlying offense – was non-violent and not drug related, and

³ The FFSCF is used to establish, monitor, and control warrant information SSA receives from warrant sources and ensure SSA reacts timely to the warrant information.

⁴ 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.

certain mitigating factors exist.⁵ Beneficiaries may request good cause for these reasons up to 12 months from the date of SSA’s letter, and they have 90 days after requesting good cause to provide sufficient evidence.

The mitigating factors SSA considers are as follows.

- The beneficiary had not been convicted of any subsequent felony crimes since the warrant was issued, and the law enforcement agency that issued the warrant will not extradite the fugitive felon or is unwilling to act on the warrant.
- The beneficiary had not been convicted of any subsequent felony crimes since the warrant was issued; the warrant is/was the only existing warrant and was issued 10 or more years before the date SSA processed the current warrant information; and the beneficiary is incapable of managing payments, resides in a long-term care facility, is legally incompetent, or lacks the mental capacity to resolve a warrant.

If sufficient evidence is not provided to SSA, it will not find good cause.

How Often the Agency Found Good Cause in the Fugitive Felon Program

SSA made good cause determinations for 21,542 beneficiaries from a population of more than 400,000 individuals with warrants. As shown in Table 1, the Agency found good cause in 20,174 cases and did not find good cause in 1,368 cases.

Table 1: Good Cause Decisions	Number of Beneficiaries	Portion
SSA found good cause	20,174	93.6%
SSA did not find good cause	1,368	6.4%
TOTAL	21,542	100%

Fugitive Cases Where Good Cause Was Not Found and Whether the Person Appeared to Meet the Good Cause Criteria

Based on our sample, in most of the 1,368 cases where good cause was not found, the beneficiary did not meet the good cause criteria. We estimate the Agency properly did not find good cause for about 1,040 individuals. However, we could not determine whether the good cause denial decision was proper in about 301 cases.

Specifically, we analyzed a random sample of 50 of the 1,368 individuals to whom SSA did not find good cause. We determined in

- 38 cases (76 percent), the final determination made by SSA appeared to be proper;⁶

⁵ Id.

⁶ In one case, SSA did not find good cause, but the individual appealed SSA’s determination to the administrative law judge level. The judge decided good cause should be found, and SSA restored the benefits.

- 11 cases (22 percent), we could not determine whether the denial was appropriate based on the documentation and information available in SSA's systems; and
- 1 case (2 percent), the denial appeared to be improper. In this case, the individual's offense was non-violent and not drug-related, the individual had not been convicted of any subsequent felonies, no other warrants existed, and the warrant was issued more than 10 years before it was matched to the beneficiary's SSA record. Additionally, SSA's records indicated the individual lacked the mental capacity to resolve the warrant—one of the mitigating good cause criteria. Therefore, it appeared good cause criteria had been met.

Whether the Agency Is Effectively Administering the Good Cause Provision in the Fugitive Felon Program

We found the Agency generally administered the good cause provision in the fugitive felon program effectively.

We analyzed a sample of 275 individuals from a population of 454,756 individuals with warrants as of October 2009. We reviewed records on SSA's system and found in

- 154 cases (56 percent), no evidence that a good cause exemption was requested.⁷ In 20 of these cases, SSA's records indicated the individual lacked the capacity to resolve a warrant,⁸ yet the individual did not have a representative payee.⁹ We sent cases needing action to SSA.
- 104 cases (38 percent), good cause did not apply; and¹⁰
- 17 cases (6 percent), good cause was determined. SSA properly did not find good cause in 2 cases and the Agency found good cause in 15 cases. Good cause appeared to be properly found in 13 of these cases¹¹ and not properly found in 2 cases.¹²

⁷ Twelve beneficiaries were still within the due process time period to request a good cause exemption.

⁸ Per SSA's POMS, GN 02613.910, specific medical impairment codes on a beneficiary's record indicate the person lacks the mental capacity to resolve a warrant.

⁹ Some individuals cannot manage their finances because of their youth, mental and/or physical impairments. Congress granted SSA the authority to appoint representative payees to receive and manage these individuals' Social Security benefits.

¹⁰ Of these 104 individuals, 76 did not receive benefits while having an unsatisfied warrant, 22 did not have a period of fugitive suspense after the good cause provision became effective, and 6 had misdemeanor—not felony or probation or parole violation—warrants.

¹¹ In two of these cases, the determinations appeared proper; however, SSA did not repay the individuals all funds it had recovered as fugitive overpayments. We did not evaluate whether SSA held the funds because of another nonpayment provision of the *Social Security Act*.

¹² Good cause was not properly found in these cases because the offenses were violent or drug-related.

Conclusion

Generally, SSA administered the fugitive good cause provision effectively when individuals requested exemption under the good cause provision. SSA informs beneficiaries of the good cause provision, but the Agency only reviews cases for possible good cause exemptions when requested by the beneficiary.

The burden is on the beneficiary to request a good cause exemption and provide evidence to support the good cause determination.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Additional Background

APPENDIX C – Scope, Methodology, and Sample Results

Acronyms

FFSCF	Fugitive Felon SSA Control File
NICMS	National Investigative Case Management System
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SSA	Social Security Administration
U.S.C.	United States Code

Additional Background

GOOD CAUSE PROVISION

The *Social Security Act* prohibits payment of benefits to individuals fleeing to avoid prosecution, custody, or confinement for felonies or violating a condition of probation or parole under Federal or State law. It also provides for the Social Security Administration (SSA) to continue payments to beneficiaries who have unsatisfied warrants if there is good cause to do so.¹

Before SSA takes action to suspend benefit payments, it sends the beneficiary a notice about the warrant information the Agency has received and the impact it may have on benefit payments. The notice also advises the beneficiary of his or her rights to file an appeal or request a waiver. Finally, the letter informs the beneficiary of the conditions that must be met for the Agency to find that there is good cause to continue the benefit payments. The burden for good cause is on the beneficiary.

THE GOOD CAUSE PROCESS

The Agency will determine that good cause exists and continue benefit payments if²

- a court of competent jurisdiction found the person not guilty of the criminal offense or probation or parole violation, dismissed the charges relating to the criminal offense or probation or parole violation on the unsatisfied warrant, vacated the warrant for arrest for the criminal offense or probation or parole violation, or issued any similar exonerating order or has taken similar exonerating action or
- the individual was erroneously implicated in the criminal offense or a probation or parole violation based on identity fraud.

If neither of these conditions apply, Agency policy indicates it will give the beneficiary the opportunity to establish good cause based on mitigating circumstances if (1) the criminal offense or probation/parole violation on which the beneficiary was charged or convicted was non-violent and not drug-related, and, in the case of probation or parole violators, the original offense was also non-violent and not drug related; (2) the beneficiary was not convicted of any subsequent felony crimes since the warrant was

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 SSA, POMS GN 02613.025 B.1.

issued; and (3) other mitigating factors exist, as set forth below under Option A or Option B.³ For a finding of good cause in these circumstances, all the factors in either Option A or Option B must be met.

Additionally to Meet Option A

- The law enforcement agency that issued the warrant reports it will not extradite the fugitive felon or is unwilling to act on the warrant.

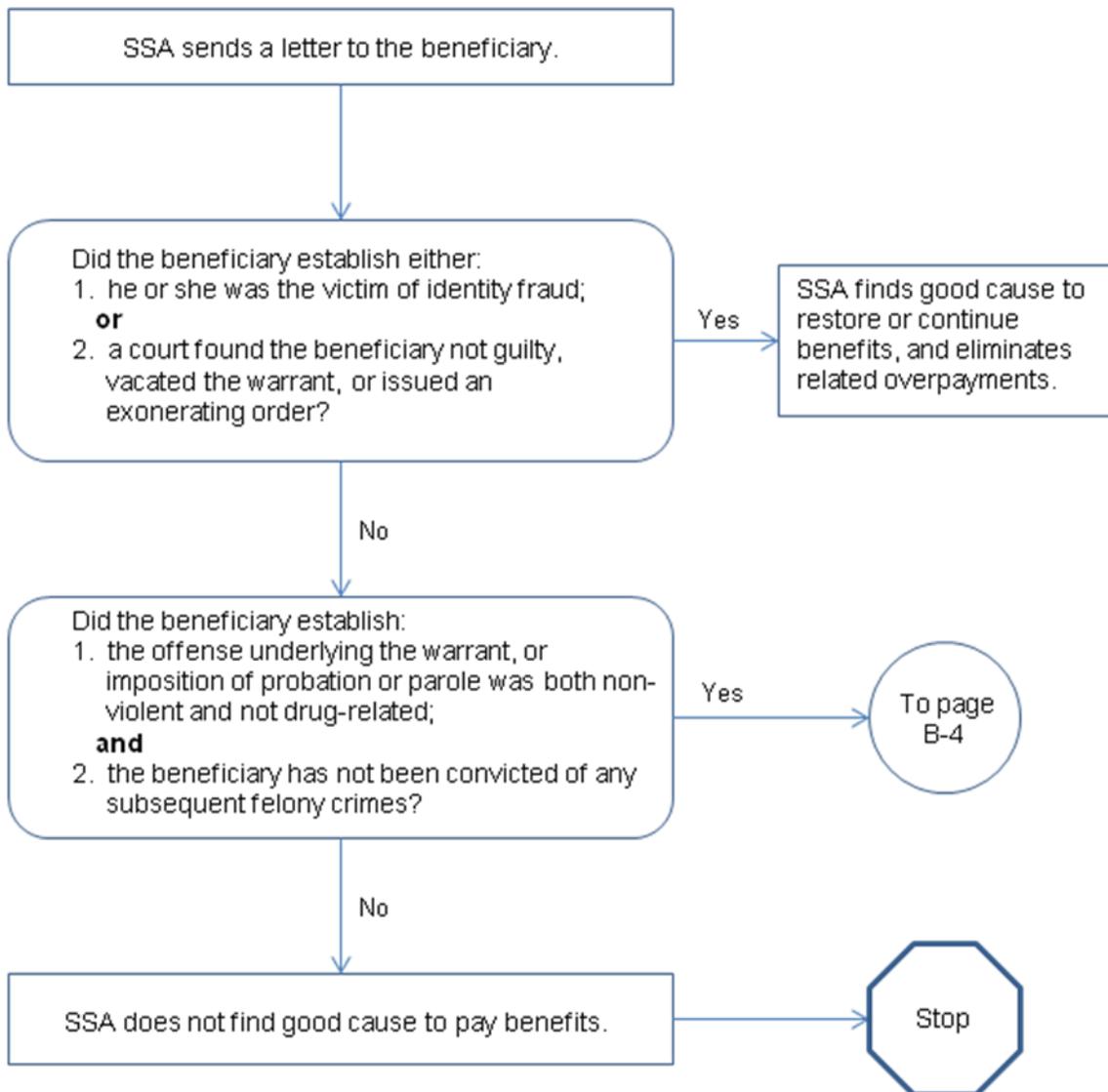
Additionally to Meet Option B

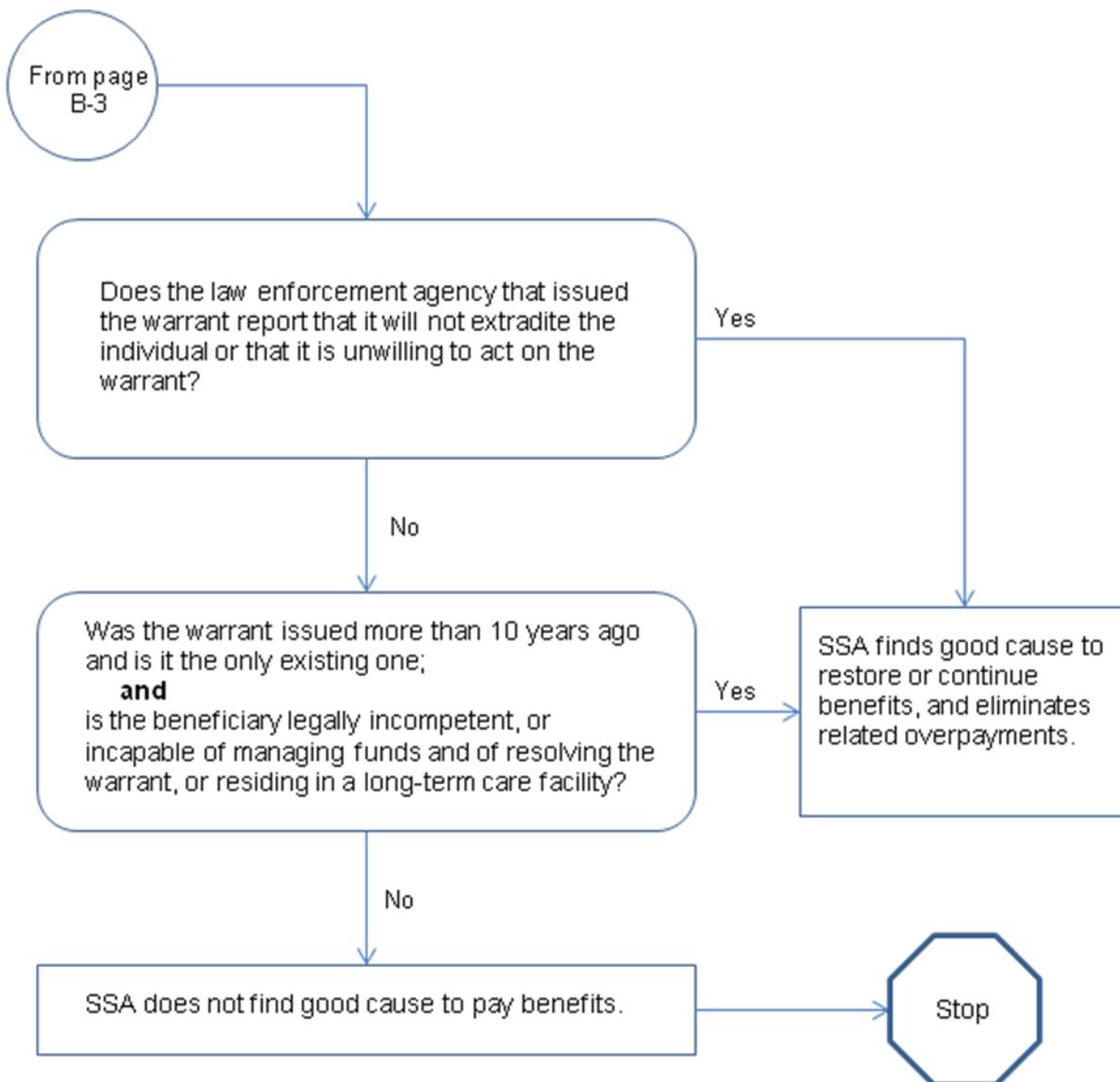
- The warrant is/was the only existing warrant and was issued 10 or more years before the date the Fugitive Felon Match processed the current warrant information and
- The beneficiary
 - ✓ lacks the mental capacity to resolve a warrant as evidenced by one of the diagnosis codes listed in a specific Agency policy,
 - ✓ is incapable of managing payments,
 - ✓ is legally incompetent,
 - ✓ has a representative payee appointed by SSA to handle payments, or
 - ✓ is residing in a long-term care facility, such as a nursing home or mental treatment/care facility.

Figure 1 illustrates the fugitive good cause process.

³ SSA, POMS GN 02613.025.B.2.a & b.

Figure 1: The Good Cause Process





Scope, Methodology, and Sample Results

To accomplish our objective, we:

- Researched the *Social Security Act*, the *Social Security Protection Act of 2004*,¹ and the Social Security Administration's (SSA) regulations, policies, and procedures related to good cause in the fugitive felon program.
- Reviewed Office of the Inspector General reports related to fugitive felons and probation or parole violators. Specifically, we reviewed the following reports.
 - ✓ *Title II Benefits to Fugitive Felons and Probation or Parole Violators* (A-01-07-17039), July 2008.
 - ✓ *The Social Security Administration's Fugitive Felon Program and the Martinez Settlement Agreement* (A-01-09-29177), October 2009
 - ✓ *Semiannual Report to Congress, October 1, 2008 – March 31, 2009*.
- Obtained a data file of 454,756 fugitives and probation or parole violators in the Office of the Inspector General's National Investigative Case Management System (NICMS) as of October 2009.² We analyzed a random sample of 275 cases from this file to determine whether good cause had been requested and assess SSA's good cause determinations.
- Obtained a data file of 483,966 individuals with warrants in the Fugitive Felon SSA Control File (FFSCF) as of December 2009.³ We analyzed these data and identified 21,542 individuals whose records indicated SSA found or did not find good cause. The Agency found good cause in 20,174 cases and did not find good cause in 1,368 cases. We analyzed a random sample of 50 of 1,368 cases in which SSA did not find good cause to determine whether this was proper.

¹ Pub. L. No. 108-203.

² NICMS is a centralized information system that contains warrant data, in addition to other information.

³ FFSCF houses felony-type and probation or parole warrant information received from law enforcement agencies through computer matching, and from the public.

We performed our review October 2009 through January 2010 in Boston, Massachusetts. We tested the data used and determined them to be sufficiently reliable to meet our objective. The entities reviewed were the Deputy Commissioner for Systems and SSA field offices and program service centers under the Deputy Commissioner for Operations. We conducted our review in accordance with the President's Council on Integrity and Efficiency's *Quality Standards for Inspections*.⁴

SAMPLE RESULTS FOR INDIVIDUALS IN THE FFSCF FOR WHOM SSA DID NOT FIND GOOD CAUSE

Table C-1: Population and Sample Size	
Population size	1,368
Sample size	50

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

Table C-2: Good Cause Properly Not Found	Number of Beneficiaries
Sample Results	38
Point Estimate	1,040
Projection Lower Limit	879
Projection Upper Limit	1,168

Table C-3: Unable to Determine Whether Good Cause Was Properly Not Found⁵	Number of Beneficiaries
Sample Results	11
Point Estimate	301
Projection Lower Limit	178
Projection Upper Limit	459

⁴ In January 2009, the President's Council on Integrity and Efficiency was superseded by the Council of the Inspectors General on Integrity and Efficiency, *Inspector General Reform Act of 2008*, Pub. L. No. 110-409 § 7, 5 U.S.C. App. 3 § 11.

⁵ To determine whether good cause was properly not found, we reviewed the information on SSA's benefit payment records, FFSCF, and electronic documentation systems. In these 11 cases, we could not determine from this information if SSA properly did not find good cause.

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Social Security Advisory Board

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The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

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OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Office of the Counsel to the Inspector General

OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

Office of External Relations

OER manages OIG's external and public affairs programs, and serves as the principal advisor on news releases and in providing information to the various news reporting services. OER develops OIG's media and public information policies, directs OIG's external and public affairs programs, and serves as the primary contact for those seeking information about OIG. OER prepares OIG publications, speeches, and presentations to internal and external organizations, and responds to Congressional correspondence.

Office of Technology and Resource Management

OTRM supports OIG by providing information management and systems security. OTRM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, OTRM is the focal point for OIG's strategic planning function, and the development and monitoring of performance measures. In addition, OTRM receives and assigns for action allegations of criminal and administrative violations of Social Security laws, identifies fugitives receiving benefit payments from SSA, and provides technological assistance to investigations.