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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**SUPPLEMENTAL SECURITY INCOME  
APPLICANTS WITH EARNINGS RECEIVED AFTER  
THEIR DISABILITY ONSET DATES AND BEFORE  
FAVORABLE HEARING DECISIONS**

October 2012

A-02-10-20128

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**AUDIT REPORT**

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## **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.**

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- 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.**

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## MEMORANDUM

Date: October 26, 2012

Refer To:

To: The Commissioner

From: Inspector General

Subject: Supplemental Security Income Applicants with Earnings Received After Their Disability Onset Dates and Before Favorable Hearing Decisions (A-02-10-20128)

## OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) appropriately addressed earnings received by Supplemental Security Income (SSI) applicants after their disability onset dates and before favorable hearing decisions.

## BACKGROUND

The SSI program is a national Federal cash assistance program administered by SSA that provides a minimum level of income to financially needy individuals who are aged, blind, or disabled.<sup>1</sup> To be considered disabled for SSI, a person must be unable to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.<sup>2</sup> SSA defines SGA as the performance of significant physical or mental activities in work for pay or profit or in work of a type generally performed for pay or profit.<sup>3</sup>

The Office of Disability Adjudication and Review administers the hearings and appeals program for SSA. An applicant who is denied benefits at the initial and reconsideration

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<sup>1</sup> The *Social Security Act* § 1601 *et seq.*, 42 U.S.C. § 1381 *et seq.*

<sup>2</sup> The *Social Security Act* § 1614(a)(3)(A), 42 U.S.C. § 1382c(a)(3)(A).

<sup>3</sup> SSA, POMS, DI 24001.001 *Definition of Substantial Gainful Activity (SGA)* (May 13, 1999).

levels may request a hearing before an administrative law judge (ALJ).<sup>4</sup> ALJs review evidence and make an independent decision to allow or deny the applicant's disability claim.<sup>5</sup>

Under the *Social Security Act*,<sup>6</sup> SSA established a five-step sequential evaluation process for determining whether an individual is disabled.<sup>7</sup> The five steps determine whether the applicant is working; medical condition is severe; condition is a listed impairment under SSA regulation; applicant can perform past work; and applicant can perform other work. The steps are followed in order. If it is determined that the applicant is disabled or not disabled at a step in the evaluation process, the evaluation does not proceed to the next step.<sup>8</sup>

At step one, the ALJ must determine whether the applicant is engaged in SGA.<sup>9</sup> In 2012, the level of earnings that constituted SGA was \$1,010 per month for sighted individuals and \$1,690 for blind individuals.<sup>10</sup>

Generally, if an SSI applicant engages in SGA, he/she is not considered disabled for SSI eligibility purposes, regardless of how severe his/her physical or mental impairment is and regardless of his/her age, education, or work experience. If the individual is engaging in SGA, his/her medical condition, age, education, and work experience are not considered.<sup>11</sup>

From 2005 to 2010, there were approximately 1.2 million<sup>12</sup> fully favorable SSI disability hearing decisions. We identified 3,156 SSI recipients<sup>13</sup> in current pay status from 1 segment of the Supplemental Security Record (SSR) who had earnings after their

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<sup>4</sup> 20 C.F.R. §§ 416.1429 and 416.1430.

<sup>5</sup> 20 C.F.R. § 416.1453.

<sup>6</sup> The *Social Security Act* § 1614(a)(3)(B).

<sup>7</sup> 20 C.F.R. § 416.920(a).

<sup>8</sup> 20 C.F.R. § 416.920(a)(4).

<sup>9</sup> 20 C.F.R. § 416.920(b).

<sup>10</sup> See Appendix C for SGA Earnings Guidelines. Note - In determining whether an SSI applicant performed SGA, SSA subtracts the value of any subsidized earnings and the costs of any impairment-related work expenses from an applicant's gross earnings. The resulting amount is the amount used to determine whether an applicant has performed SGA. SSA, POMS, DI 10505.001.A (March 27, 2012).

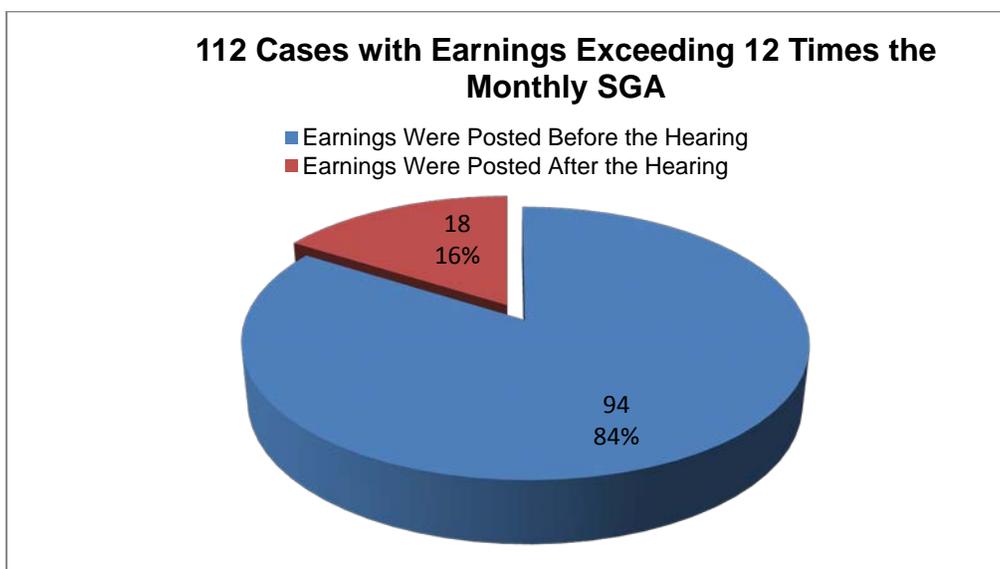
<sup>11</sup> 20 C.F.R. §§ 416.2210(a), 404.1571-1573 and 416.971-973.

<sup>12</sup> This figure includes both SSI and concurrent decisions. This figure includes all disability decisions, including disabled child claims for Fiscal Years 2005 through 2010. Our review of one segment did not include disabled child claims and was for Calendar Years 2005 through 2010.

<sup>13</sup> One segment of the SSR represents 5 percent of the total population of SSI recipients.

established disability onset date<sup>14</sup> but before a favorable decision at the hearing level. We determined the amount of earnings and its relation to SGA for each of these recipients. For those recipients who had earnings in more than 1 year during this period, we reviewed the year in which they had the highest earnings. Of the 3,156 recipients, 112 had earnings exceeding 12 times the monthly SGA limit in the year we reviewed. Another 1,873 individuals had earnings of more than 1 but less than 12 times the monthly SGA limit. The remaining 1,171 recipients had earnings of less than 1 time the monthly SGA limit.

For our review, we focused on the 112 recipients with earnings exceeding 12 times the monthly SGA in a year after their disability onset dates and before a favorable hearing decision. Their earnings most likely affected the recipients' SSI eligibility and payment amounts. In 94 of the 112 cases, we found that the earnings<sup>15</sup> were posted<sup>16</sup> on the individuals' earnings records before their hearing date. We reviewed the ALJ rationales to determine whether they fully addressed these earnings. In the remaining 18 cases, the earnings were posted after the hearing. For these cases, we determined whether SSA considered the effect of the earnings on the recipients' disability onset dates and SSI payments.



<sup>14</sup> The disability onset date, or established onset date, is the date the disability adjudicator determines the applicant's disability began based on the medical and other evidence in the case record. SSA, POMS, DI 25501.001.E.3 (May 11, 2012). The disability onset date for SSI only claims is usually the date of filing (or protective filing date) if supported by the medical evidence. SSA, POMS, DI 25501.051.A (June 12, 2008).

<sup>15</sup> We use the term "earnings" generically in this report to refer to earnings received after an SSI recipient's disability onset date and before the hearing date.

<sup>16</sup> SSA records contain electronic and microfilm records of *Federal Insurance Contribution Act* (FICA) wage reports; electronic records of self-employment data provided by the Internal Revenue Service (IRS) from Schedule SE of income tax returns; non-FICA earnings for workers in noncovered employment; and private pension information provided by IRS for workers who have vested rights to a future pension.

We provided the results of our review to SSA. We requested that SSA determine whether the earnings we identified constituted SGA. SSA forwarded the cases to field office staff for development.<sup>17</sup> We adjusted our findings based on its comments.

## RESULTS OF REVIEW

SSA did not always address earnings on the records of SSI applicants who had 12 times SGA in a year after their disability onset dates and before favorable hearing decisions. Additionally, SSA did not always evaluate the effect of earnings posted to recipients' records after hearings on their eligibility or SSI payment amount. Specifically, we found that ALJ decisions did not address the recipients' earnings on the record before a favorable decision in 56 (60 percent) of 94 cases. Also, SSA did not consider the effect of earnings posted after a favorable hearing decision on the recipients' eligibility or SSI payment amount in 14 (78 percent) of 18 cases. Had SSA considered the earnings, it would have determined the individuals were either ineligible for SSI or had a later disability onset date. We estimate that SSA made improper payments of almost \$5.6 million because it did not appropriately address the earnings. See Appendix B for our scope, methodology, and sample results.

We recognize the number of cases of recipients with earnings between their disability onset dates and favorable hearing decisions was relatively small when compared to the number of favorable decisions overall.<sup>18</sup> Nevertheless, SSA is missing the opportunity to prevent improper payments when it has the information it needs to do so. Additionally, our findings may understate the full effect of this issue. We based our findings on an analysis of the 112 recipients from 1 segment of the SSR who had more than 12 times SGA between the recipients' disability onset date and a favorable hearing decision. We also identified an additional 1,873 individuals from 1 segment of the SSR who had earnings of more than 1, but less than 12, times the monthly SGA limit. These earnings may have also affected applicants' disability onset dates or SSI eligibility.

## EARNINGS POSTED BEFORE A HEARING

We found that earnings exceeding 12 times the SGA limit were posted on 94 of the 112 individuals' records we reviewed in a year before their hearing dates. SSA policy states that before an adjudicator issues a favorable decision, they must develop all work activity after potential onset dates.<sup>19</sup>

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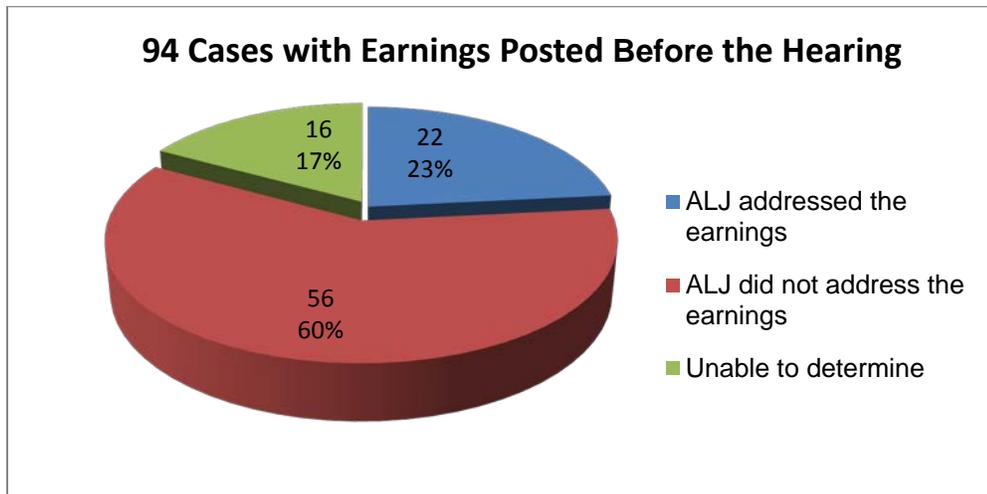
<sup>17</sup> To determine whether work performed constituted SGA, SSA considered factors such as unsuccessful work attempts, impairment-related work expenses, and subsidized earnings received by the applicants.

<sup>18</sup> Between Fiscal Years 2005 and 2010, ALJs made about 1.2 million fully favorable SSI disability hearing decisions. We identified 3,156 recipients between Calendar Years 2005 and 2010 who had earnings after their disability onset dates and before favorable hearing decisions.

<sup>19</sup> 20 C.F.R. §§ 416.2210(a), 404.1571-1573 and 416.971-973.

Of the 94 cases, we found the following.

- The ALJ decisions addressed the earnings after disability onset in 22 cases.
- The ALJ decisions did not address the earnings after onset and their potential impact on disability entitlement in 56 cases.
- We were unable to determine whether the ALJs addressed the earnings for 16 cases<sup>20</sup> because SSA could not locate the ALJ decisions.



### Unresolved Work Activity Within 12 Months of Onset

Per SSA policy, an applicant's claim should be denied if they had SGA less than 1 year after disability onset since it may indicate that the 12-month duration requirement for disability was not met.<sup>21</sup> The duration requirement for disability<sup>22</sup> begins at the time an applicant is continuously unable to engage in SGA because of a medically determinable impairment(s) that must last or be expected to last for a continuous period of not less than 12 months.<sup>23</sup>

<sup>20</sup> Of the 94 cases, SSA could not locate 20 ALJ decisions for our review. We were able to make determination for 4 cases based on other developments by SSA.

<sup>21</sup> SSA, POMS, DI 13010.110.B.1 (March 20, 2012).

<sup>22</sup> SSA, POMS, DI 25505.025.D (March 5, 2012).

<sup>23</sup> "Applicant" refers to an adult over the age of 18. SSA, POMS, DI 25505.025.B (March 5, 2012).

If the applicant returned to SGA less than 12 months after onset, but the work activity later stopped, SSA policy states that a later onset date should be considered.<sup>24</sup> The disability onset date should not be established before the last day of the most recent period of SGA.<sup>25</sup>

In 29 of the 56 cases with unaddressed earnings, the applicants returned to work less than 12 months after disability onset and earned more than the SGA limit. The work activities stopped before their hearing dates. In these cases, the ALJs made a summary finding that the applicant did not engage in SGA after the disability onset dates despite the fact that the earnings records indicated work activities.

The ALJs should have considered a later disability onset date after the date the recipients stopped SGA. The disability onset date is important since it determines when an applicant begins receiving benefits and the amount of benefits due the applicant.

Of the 29 applicants who returned to work at the SGA level within 12 months of onset, we found that 19 received \$147,900 in improper SSI payment months earlier than they should have because ALJs did not properly consider their earnings after disability onset.

### **Unresolved Work Activity After 12 Months of Onset**

In 27 of the 56 cases with unaddressed earnings, the applicants returned to work more than 12 months after disability onset and stopped working before their hearing dates. SSA concluded that the work activities after 12 months of onset did not affect the recipients' disability onset dates. Per SSA policy, if there was no SGA for 12 consecutive months from the date the applicant stated he became unable to work, the disability adjudicator can establish onset in that period if the evidence of record supports it.<sup>26</sup>

While work activity that began more than 12 months after the disability onset date and later stopped may not affect SSI eligibility, any income earned through work may affect a recipient's SSI payment amount. We found that 3 of the 27 recipients were improperly paid \$30,692 because of the earnings on their records.

### **EARNINGS POSTED AFTER A HEARING**

In 18 of the 112 cases we reviewed, we found that earnings exceeding the SGA limit were posted after the date of their hearings. In these cases, the ALJs could not have addressed the earnings in their decisions because the earnings were not on the record at the time of the hearing. SSA should have addressed the earnings once they were

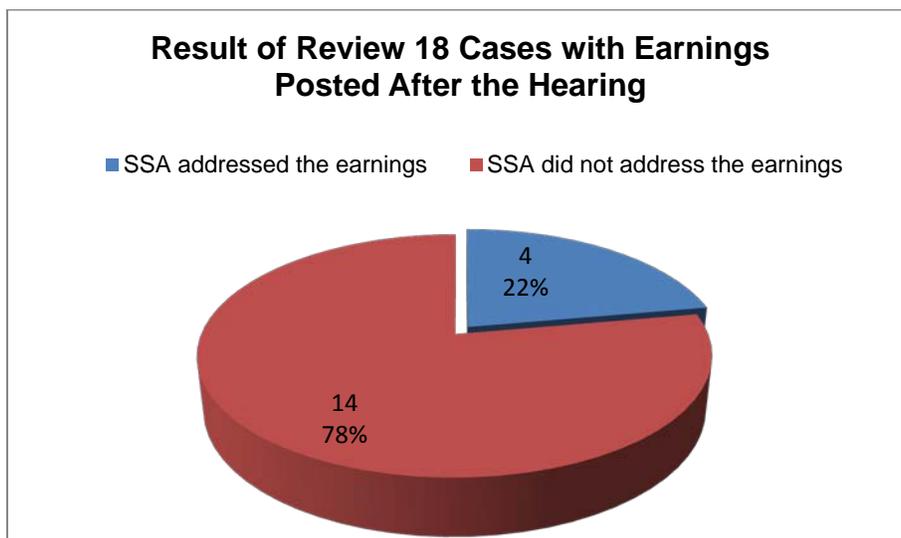
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<sup>24</sup> SSA, POMS, DI 13010.110B.1 (March 20, 2012).

<sup>25</sup> SSA, POMS, DI 25501.011B.1 (January 11, 2012) and DI 24005.001D.8 (June 1, 2010).

<sup>26</sup> SSA, POMS, DI 25501.011.B.2 (January 11, 2012).

recorded, which it did for 4 of the 18 cases. The Agency did not consider the effect of the earnings on disability onset and SSI payments for the other 14 cases.



### Unaddressed Earnings Within 12 Months of Onset

If an applicant returns to work at the SGA level within 12 months of onset, it may indicate that the 12-month duration requirement for disability was not met and the disability claim should be denied. If the claim has already been adjudicated, it could indicate that the prior favorable determination should be reopened and revised to a denial or a later onset date if SGA stopped.<sup>27</sup>

In 11 of the 14 cases, the applicants received earnings in excess of the SGA limit within 12 months of onset. The earnings were posted after the applicants received fully favorable hearing decisions. SSA did not evaluate the effect of the earnings on disability onset. The applicants' onset dates should have been later than originally determined at the hearing level. Of the 11 applicants, 10 were improperly paid almost \$92,000 because they received SSI payments for months before they became disabled based on the definition of SSI disability.

### Unaddressed Earnings After 12 Months of Onset

In 3 of the 14 cases, the wages on the earnings record were for a period more than 12 months after the date of disability onset. SSA did not consider the earnings when computing the recipients' retroactive SSI payment amounts. One applicant was improperly paid almost \$9,300. The other two applicants stated that the earnings after disability onset did not belong to them, but SSA had not yet removed the earnings from their earnings records.

<sup>27</sup> SSA, POMS, DI 13010.110.C.1 (March 20, 2012).

## CONCLUSIONS AND RECOMMENDATIONS

Our review found that SSA did not fully address income earned by SSI applicants after their disability onset dates and before favorable hearing decisions. In 56 of the 94 cases with earnings posted before their hearings, the ALJs did not address the earnings in their written decisions. In 14 of the 18 cases with earnings information posted after the hearings, SSA did not address the effect of the earnings on disability entitlement. We estimate that SSA improperly paid SSI recipients almost \$5.6 million because ALJs or SSA staff did not address the impact of earnings on their SSI disability entitlement.

We also identified 1,873 cases from 1 segment of the SSR where the recipients received earnings of more than 1 but less than 12 times the monthly SGA limit. Although our analysis focused on the 112 recipients with the highest earnings amounts, the earnings for these 1,873 recipients need to be reviewed by SSA to determine whether the earnings affect the recipients' disability entitlement. We have forwarded these cases to SSA for review.

While the number of recipients with earnings between their disability onset date and favorable hearing decision is relatively small when compared to the number of favorable decisions overall, we believe SSA is missing the opportunity to use information at its disposal to prevent improper payments.

Accordingly, we recommend that SSA:

1. Remind ALJs to address earnings posted after an applicant's disability onset date and before his/her hearing date to determine whether the related work activity affects the applicant's disability onset date or SSI eligibility.
2. Assess the feasibility of a systems alert that identifies cases where significant earnings for work performed before the ALJ decision are recorded for an SSI recipient after issuance of a favorable hearing decision.

## AGENCY COMMENTS AND OIG RESPONSE

SSA agreed with Recommendation 1 and disagreed with Recommendation 2. Regarding the second recommendation, SSA stated it had tools in place to identify cases with significant earnings. While SSA reports having some tools, we suggest that it continue monitoring this issue and consider implementing an automated alert in the future if cases with earnings after disability onset are posted after a hearing decision continue to exist.

See Appendix D for the full text of SSA's comments.



Patrick P. O'Carroll, Jr.

# Appendices

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APPENDIX A – Acronyms

APPENDIX B – Scope, Methodology, and Sample Results

APPENDIX C – Substantial Gainful Activity Earnings Guidelines and Effective Dates  
Based on Year of Work Activity for Non-blind Individuals

APPENDIX D – Agency Comments

APPENDIX E – OIG Contacts and Staff Acknowledgments

## Acronyms

ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
FICA	<i>Federal Insurance Contribution Act</i>
IRS	Internal Revenue Service
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SGA	Substantial Gainful Activity
SSA	Social Security Administration
SSI	Supplemental Security Income
SSR	Supplemental Security Record
U.S.C.	United States Code

# Scope, Methodology, and Sample Results

To accomplish our objective, we:

- Reviewed the applicable section of the *Social Security Act* and other relevant legislation as well as the Social Security Administration's (SSA) regulations, rules, policies, and procedures.
- Selected 3,156 records of recipients in current pay status as of December 14, 2010 from 1 segment of the Supplemental Security Record (SSR).<sup>1</sup> These recipients had earnings after their disability onset dates, but before a favorable decision at the hearing level between Calendar Years 2005 and 2010.
- Determined the amount of earnings and its relation to substantial gainful activity (SGA) for each of these recipients. For those recipients who had earnings in more than 1 year during this period, we reviewed the year in which they had the highest earnings. Of the 3,156 recipients, 112 individuals had earnings exceeding 12 times the monthly SGA limit in the year we reviewed.
- Analyzed the 112 cases to determine whether SSA appropriately addressed earnings received by the individuals after their disability onset dates and before favorable hearing decisions.
- Reviewed queries from SSA's SSR, Master Earnings File, eView, and Claims File Records Management System for each sample item.
- Obtained the administrative law judge (ALJ) decision rationales for 87 of the 112 cases from SSA's records. SSA was unable to provide the rationale in 25<sup>2</sup> cases.
- Analyzed the decision rationales and requested that SSA confirm the results of our analysis. Specifically, we asked SSA to confirm whether the earnings we identified constituted SGA and the amount of related improper payments because of unaddressed earnings after onset. SSA forwarded the cases to field office staff for development.
- Analyzed SSA's results and incorporated its response in our analysis.

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<sup>1</sup> One segment of the SSR represents 5 percent of the total population of SSI recipients.

<sup>2</sup> In 5 of the 25 cases, we did not rely on the ALJ rationales for our analysis because the earnings were posted after the date of hearings.

We conducted our audit in the New York Audit Division between April 2011 and June 2012. We tested the data obtained for our audit and determined them to be sufficiently reliable to meet our objective. The entities audited were the Office of Disability Adjudication and Review and field offices under the Office of the Deputy Commissioner for Operations. 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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

### Overpayment Estimate

We reviewed 112 SSI recipients in 1 segment of the SSR who had annual earnings exceeding 12 times the monthly SGA limit in a year between their dates of disability onset and the dates of favorable hearing decisions. We determined that SSA and ALJs did not always address the earnings, which resulted in overpayments.

The characteristics found in one 5-percent segment of the SSR are considered representative of any other segment in the SSR. Therefore, we estimated the number of recipients overpaid and the amount of overpayments that occurred in the entire SSR population by multiplying the number and amount of overpayments found in our review by 20. The results of our review are shown in the table below.

Overpayment Description	Number of Recipients	Overpayment Amount
ALJ did not address SGA within 12 months of disability onset that was posted to the earnings record at the time of the hearing	19	\$147,924
ALJ did not address SGA that occurred more than 12 months after disability onset that was posted to the earnings record at the time of the hearing	3	\$30,692
SSA did not address SGA within 12 months of disability onset that was posted to the earnings record after the date of the hearing	10	\$91,983
SSA did not address SGA after 12 months of disability onset that was posted to the earnings record after the date of the hearing	1	\$9,276
<b>Total for One Segment of the SSR</b>	<b>33</b>	<b>\$279,875</b>
Estimate for the Entire SSR (the total for one segment times 20)	660	\$5,597,500

## Substantial Gainful Activity Earnings Guidelines and Effective Dates Based on Year of Work Activity for Non-blind Individuals<sup>1</sup>

For Month(s)	Countable earnings of employees indicate substantial gainful activity and countable income of the self-employed is substantial if the amount averages more per month than
In Calendar Year 2012	\$1,010
In Calendar Year 2011	\$1,000
In Calendar Year 2010	\$1,000
In Calendar Year 2009	\$980
In Calendar Year 2008	\$940
In Calendar Year 2007	\$900
In Calendar Year 2006	\$860
In Calendar Year 2005	\$830
In Calendar Year 2004	\$810
In Calendar Year 2003	\$800
In Calendar Year 2002	\$780
In Calendar Year 2001	\$740
In July 1999 Through December 2000	\$700
In January 1990 Through June 1999	\$500
In Calendar Years 1980 Through 1989	\$300
In Calendar Year 1979	\$280
In Calendar Year 1978	\$260

<sup>1</sup> SSA, POMS, DI 10501.015 (October 21, 2011)

## Agency Comments



## SOCIAL SECURITY

### MEMORANDUM

**Date:** October 5, 2012 **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 Draft Report, "Supplemental Security Income Applicants with Earnings Received After Their Disability Onset Dates and Before Favorable Hearing Decisions" (A-02-10-20128)—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 Amy Thompson at (410) 966-0569.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,  
"SUPPLEMENTAL SECURITY INCOME APPLICANTS WITH EARNINGS  
RECEIVED AFTER THEIR DISABILITY ONSET DATES AND BEFORE  
FAVORABLE HEARING DECISIONS" (A-02-10-20128)**

**Recommendation 1**

Remind ALJs to address earnings posted after an applicant's disability onset date and before his/her hearing date to determine whether the related work activity affects the applicant's disability onset date or SSI eligibility.

**Response**

We agree.

**Recommendation 2**

Assess the feasibility of a systems alert that identifies cases where significant earnings for work performed before the ALJ decision are recorded for an SSI recipient after issuance of a favorable hearing decision.

**Response**

We disagree. We already have tools in place to identify cases with significant earnings for work performed prior to the ALJ decision. Rather than create a new tool, we believe reminding staff to utilize the tools already in place, as agreed to in Recommendation 1, will meet the intended purpose of this recommendation.

## OIG Contacts and Staff Acknowledgments

### ***OIG Contacts***

Tim Nee, Director, New York Audit Division

Christine Hauss, Audit Manager

### ***Acknowledgments***

In addition to those named above:

Vincent Huang, Program Analyst

Brennan Kraje, Statistician

For additional copies of this report, please visit our Website at <http://oig.ssa.gov/> or contact the Office of the Inspector General's Public Affairs Staff at (410) 965-4518. Refer to Common Identification Number A-02-10-20128.

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