



SOCIAL SECURITY

MEMORANDUM

Date: September 25, 2009

Refer To:

To: The Commissioner

From: Inspector General

Subject: The Social Security Administration's Compliance with Certain Evidence Requirements that Restrict Noncitizens' Eligibility for Title II Benefits (A-08-09-19108)

The attached final report presents the results of our review. Our objective was to assess the Social Security Administration's compliance with certain laws that restrict noncitizens' eligibility for benefits under Title II of the *Social Security Act*.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.

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.

Attachment

QUICK RESPONSE EVALUATION

The Social Security Administration's Compliance with Certain Evidence Requirements that Restrict Noncitizens' Eligibility for Title II Benefits

A-08-09-19108



September 2009

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.

OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) compliance with certain laws that restrict noncitizens' eligibility for benefits under Title II of the *Social Security Act* (Title II).¹

BACKGROUND

A number of Federal laws have established additional eligibility requirements that noncitizens must meet before SSA processes their Title II benefit claims. For example, Section 503 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*² (IIRIRA) prohibits SSA from awarding Social Security benefits to resident noncitizens who are not lawfully present in the United States. In addition, Section 202(n)(1) of the *Social Security Act*³ generally prohibits SSA from awarding benefits to noncitizens who the Department of Homeland Security (DHS) has deported unless DHS admitted them as lawfully permanent residents after their removal.

Section 211 of the *Social Security Protection Act of 2004*⁴ (SSPA) restricts SSA from authorizing Social Security benefits to noncitizens who received an original Social Security number (SSN) on or after January 1, 2004 unless they were issued an SSN for work purposes or admitted into the United States as a nonimmigrant visitor for business or alien crewman. The SSPA provision applies to the primary numberholder. However, if a claimant does not meet the work-authorization requirement, dependents or survivors applying for benefits under his/her SSN may not be eligible either.⁵

The Ensign Amendment, incorporated into the *Consolidated Appropriations Act of 2008* (Act),⁶ prohibits funds appropriated in the Act from being

¹ Title II of the *Social Security Act* authorizes SSA to administer the Old-Age, Survivors, and Disability Insurance program. Under this program, SSA pays Social Security benefits to qualified retired and disabled workers, their dependents, and eligible survivors. *Social Security Act* § 201 et seq., 42 U.S.C. § 401 et seq.

² Pub. L. No. 104-208, Division C § 503, 42 U.S.C. § 402(y). IIRIRA repeated the lawful presence requirement of the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, but changed the effective date from September 1 to December 1, 1996. Pub. L. No. 104-193 § 401, 8 U.S.C. § 1611.

³ 42 U.S.C. § 402(n)(1).

⁴ Pub. L. No. 108-203 § 211, 42 U.S.C. §§ 414 and 423.

⁵ SSA, Program Operations Manual System RS 00301.102 B.1.

⁶ Pub. L. No. 110-161, Division G § 527, 121 Stat. 2212.

“ . . . expended or obligated by the Commissioner of Social Security for purposes of administering Social Security benefit payments under title II of the Social Security Act, to process claims for credit for quarters of coverage based on work performed under a social security account number that was not the claimant’s number which is an offense prohibited under section 208 of the Social Security Act.”

The Ensign Amendment provisions superseded the SSPA provisions when SSA determined the claimant had an “intent to deceive”—that is, the claimant willingly and knowingly falsely used another’s SSN for work purposes. In 2009, Congress extended the Ensign Amendment’s⁷ provisions through continuing resolution and passage of the *Omnibus Appropriations Act of 2009*.⁸ However, the 2009 provision removed the “intent to deceive” condition and requires that the noncitizen be convicted under the *Social Security Act*⁹ for certain SSN-related offenses.

To accomplish our objective, we obtained an extract of 216,805 Title II applications noncitizens submitted to SSA in 2008. From this extract, we randomly selected 50 for review. Table 1 shows the number and type of noncitizen Title II applicants in our sample who were subject to the IIRIRA, SSPA, and Ensign Amendment provisions. We did not find any errors in SSA’s processing of the 50 cases we reviewed. As such, we did not review any additional cases.

Table 1: Details of the 50 Noncitizen Title II Sample Records Reviewed

<i>Noncitizen Applicant:</i>	Number of Noncitizen Title II Applicants Who Were Subject to:		
	IIRIRA	SSPA	Ensign Amendment
Primary Numberholder	30	3	31
Dependent	8	1	12
Survivor	7	0	0
Total Number of Sample Applicants Subject to Each Provision¹⁰	45	4	43
Percent Processed Correctly	100%	100%	100%

Appendix B provides additional background, scope, and methodology.

⁷ SSA continues to refer to the 2009 legislation as the “Ensign Amendment.”

⁸ Pub. L. No. 111-8 § 522, 123 Stat. 806.

⁹ *The Social Security Act* §§ 208 (a)(6) or (7), 42 U.S.C. §§ 408(a)(6) or (7).

¹⁰ Based on the requirements of IIRIRA, SSPA, and Ensign Amendment, we determined that not all 50 of the noncitizen Title II applicants were subject to each law. As such, we determined 5 applicants were not subject to IIRIRA, 46 to SSPA, and 7 to the Ensign Amendment. However, some applicants were subject to the requirements of one or more laws.

Results of Review

Based on our limited review, SSA complied with the IIRIRA, SSPA, and Ensign Amendment provisions restricting noncitizens' eligibility for Title II benefits. To address each provision and ensure only eligible noncitizens received Title II benefits, SSA implemented numerous policies and procedures instructing field office personnel on how to develop and meet the additional evidence requirements before processing their benefit claims.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

SSA complied with IIRIRA's lawful presence provision when processing noncitizens' Title II benefit claims. SSA implemented policies and procedures that instructed field office personnel on how to develop and confirm noncitizens' lawful presence in the United States. SSA also provided charts that illustrated each category of lawfully present noncitizens, which included information on the documentary evidence required to establish their lawful status. In addition, SSA instructed personnel to ensure the DHS-issued documents noncitizens submitted were acceptable¹¹ and the class of admission DHS noted on those documents agreed with the class shown in the charts. Furthermore, SSA generally requires personnel to verify noncitizens' immigration status with DHS using the Systematic Alien Verification for Entitlements program.¹² Because of the additional restriction placed on deported noncitizens, SSA instructed personnel to query the SSA file that contains deportation data.¹³ If personnel identify deportation data, policy provides further instruction on how to determine whether deported noncitizens meet IIRIRA's lawful presence requirement.

Field office personnel followed SSA policies and procedures when developing and confirming noncitizens' lawful presence. Of the 50 noncitizen Title II applicants in our sample, 45 (90 percent) were subject to IIRIRA's lawful presence provision.¹⁴ In all cases, the documentation we reviewed indicated these noncitizens resided in the United States and were lawfully admitted by DHS.

¹¹ SSA considers a DHS-issued document acceptable when it is the appropriate form for a particular lawfully admitted status and appears authentic. In addition, current instructions state the DHS-issued document must be unexpired, unless a prior period of immigration status must be proven.

¹² DHS provides and maintains the Systematic Alien Verification for Entitlements program for benefit-granting agencies, such as SSA, to verify that alien applicants meet immigration status eligibility requirements.

¹³ The term "deportation" refers to a formal process where an order of removal is issued and a hearing is held before an immigration judge. Generally, deportation or removal occurs when the order is carried out and the noncitizen is physically expelled from the United States.

¹⁴ The remaining noncitizen claimants did not reside in the United States. Because these noncitizen Title II applicants were not U.S. residents, their benefit eligibility was not subject to the IIRIRA's lawful presence provision.

Social Security Protection Act of 2004

SSA complied with SSPA's work-authorization provision when processing noncitizens' Title II benefit claims. SSA implemented policies and procedures that instructed field office personnel on how to identify when noncitizen Title II applicants are subject to the provision. When processing noncitizens' Title II claims, SSA policy requires that personnel review primary numberholders' Numerical Identification (Numident)¹⁵ files and determine the date SSA assigned them an SSN. If SSA assigned the numberholders' SSNs on or after January 1, 2004, SSA policy requires that personnel determine whether their Numidents displayed a work-authorized code. If the Numident does not identify them as work-authorized, SSA policy requires that personnel verify the primary numberholders' current work-authorization with DHS. However, if the primary numberholders are deceased, SSA policy instructs personnel to verify with DHS whether they were work-authorized at time of death.

Field office personnel complied with SSA policies and procedures when determining whether noncitizen Title II applicants were subject to, and met, the SSPA provision. Of the 50 noncitizen Title II applicants, 4 (8 percent) received SSNs after January 1, 2004. The documentation we reviewed indicated that only these four noncitizens were subject to the SSPA provision. In all cases, we determined the primary numberholders were work-authorized and assigned an SSN for work purposes.

Ensign Amendment

SSA complied with the Ensign Amendment provision when processing Title II claims noncitizens submitted in 2008. SSA established policies and procedures that instructed field office personnel on how to determine when the provision applied to noncitizens' Title II claims. If SSA personnel discover the primary numberholder used another's SSN to work, policy instructs them to establish whether the noncitizen knowingly and falsely used an erroneous SSN with the intent to deceive. If personnel determine there was an intent to deceive, SSA policy further requires that they code the Title II application as an Ensign case and disallow the claim. If personnel determine the noncitizen did not use another's SSN with an intent to deceive, SSA policy instructs them to follow normal procedure to develop the claim. Since the 2009 revisions to the Ensign Amendment, SSA has revised its policies and procedures.

Field office personnel complied with the Ensign Amendment provision. Because the Ensign Amendment does not apply to survivor claims, only 43 (86 percent) of the 50 Title II applicants were subject to the provision. In all cases, the documentation we reviewed did not reveal that the primary numberholders had worked under another's SSN.

¹⁵ The Numident Master File houses, in SSN order, the identifying information for each numberholder. This information may include the numberholder's name, date of birth, place of birth, parents' names, citizenship status, date of death (if applicable), and the office where the SSN application was processed and approved.

Matters for Consideration

Because immigration reform is an evolving issue in American culture, SSA should anticipate that new or revised laws may impact its programs. Based on our review of the effective dates for the 2008 and 2009 Ensign Amendments and SSA policy, it appears SSA did not implement or revise its policies and procedures until about 4 months after the Ensign Amendment became effective. Although we did not identify any noncitizen Title II claims impacted by this late implementation, we believe timely development and communication of new or amended procedures are crucial to SSA program integrity. As such, we encourage the Agency to timely monitor pending legislation and make changes to its policies and procedures as expeditiously as feasible.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Background, Scope, and Methodology

APPENDIX C – OIG Contacts and Staff Acknowledgments

Acronyms

<i>Act</i>	<i>Consolidated Appropriations Act of 2008</i>
DHS	Department of Homeland Security
Ensign Amendment	<i>Consolidated Appropriations Act of 2008; Omnibus Appropriations Act of 2009</i>
GAO	Government Accountability Office
IIRIRA	<i>Illegal Immigration Reform and Immigrant Responsibility Act of 1996</i>
Numident	Numerical Identification
OIG	Office of the Inspector General
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSN	Social Security Number
SSPA	<i>Social Security Protection Act of 2004</i>
Title II	Title II of the <i>Social Security Act</i>
U.S.C.	United States Code
Form	
SS-5	<i>Application for a Social Security Card</i>

Background, Scope, and Methodology

BACKGROUND

Title II of the *Social Security Act* authorizes the Social Security Administration (SSA) to administer the Old-Age, Survivors and Disability Insurance program.¹ Under this program, SSA pays benefits to qualified retired and disabled workers, their dependents, and eligible survivors. These Social Security benefits are based on the worker's (primary numberholder's) earnings, averaged over his or her lifetime.

A number of Federal laws limit noncitizens' eligibility for Social Security benefits. We primarily reviewed the following laws: *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA),² *Social Security Protection Act of 2004* (SSPA),³ and "Ensign Amendment," which was incorporated into the *Consolidated Appropriations Act of 2008*.⁴ In 2009, Congress extended the Ensign Amendment's⁵ provisions through continuing resolution and passage of the *Omnibus Appropriations Act of 2009*.⁶

SCOPE

To determine whether SSA established and followed policies and procedures to comply with the IIRIRA, SSPA, and Ensign Amendment provisions, we reviewed policies and procedures in SSA's Program Operations Manual System on processing noncitizen Title II benefit claims. In addition, we obtained an extract of 216,805 Title II applications noncitizens submitted to SSA in 2008. From this extract, we randomly selected 50 applications to review.

¹ The *Social Security Act* § 201 et seq., 42 U.S.C. § 401 et seq.

² Pub. L. No. 104-208, Division C § 503, 42 U.S.C. § 402(y). The IIRIRA repeated the lawful presence requirement of the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, but changed the effective date from September 1 to December 1, 1996. Pub. L. No. 104-193 § 401, 8 U.S.C. § 1611.

³ Pub. L. No. 108-203 § 211, 42 U.S.C. §§ 414 and 423.

⁴ Pub. L. No. 110-161, Division G § 527, 121 Stat. 2212.

⁵ SSA continues to refer to the language in the current legislation as the "Ensign Amendment."

⁶ Pub. L. No. 111-8 § 522, 123 Stat. 806.

METHODOLOGY

To accomplish our objective, we

- reviewed applicable laws and regulations;
- reviewed an audit report issued by the Government Accountability Office (GAO) regarding SSA's compliance with SSPA;⁷
- reviewed the Numerical Identification (Numident) file⁸ for each primary numberholder and scheduled original and replacement Social Security number (SSN) card data;
- requested from SSA a microfiche copy of Form SS-5, *Application for a Social Security Card*, for all original and replacement SSN cards;
- verified lawful presence of each Title II applicant with Department of Homeland Security (DHS), either by contacting a DHS representative or through use of its Systematic Alien Verification for Entitlements⁹ or E-Verify programs;¹⁰
- queried SSA's Disability, Railroad, Alien, and Military Service file for any deportation notices related to the sample applicants;
- reviewed primary numberholders' summary and detailed earnings queries for Tax Years 2006 through 2008;
- reviewed SSA's Earnings Modernization Item Correction System and Modernized Claims System to determine whether primary numberholders had claimed credit for past wages earned under another's SSN; and
- performed LexisNexis¹¹ searches for any reports of multiple SSN use by primary numberholders.

⁷ GAO, *Social Security Administration: Additional Actions Needed to Prevent Improper Benefit Payments under Social Security Protection Act* (GAO-06-196, April 2006).

⁸ The Numident Master File houses, in SSN order, the identifying information for each numberholder. This information may include the numberholder's name, date of birth, place of birth, parents' names, citizenship status, date of death (if applicable), and the office where the SSN application was processed and approved.

⁹ DHS provides and maintains the Systematic Alien Verification for Entitlements program for benefit-granting agencies, such as SSA, to verify that alien applicants meet immigration status eligibility requirements.

¹⁰ The E-Verify program is a DHS initiative supported by SSA that employers can voluntarily use to verify employment eligibility for newly hired employees.

¹¹ LexisNexis is an on-line service that provides comprehensive information, such as legal, news, business, and public records content.

Our review of internal controls was limited to gaining an understanding of the laws, regulations, and policies that govern the additional evidence required when SSA processes Title II claims for noncitizens. We primarily relied on SSA's Master Beneficiary Record¹² and found the data used in this report were sufficiently reliable to meet our evaluation objective.

We performed our review in the Office of Audit in Birmingham, Alabama, in June and July 2009. The SSA entities reviewed were the Offices of the Deputy Commissioner for Operations and Retirement and Disability Policy. We conducted our review in accordance with the President's Council on Integrity and Efficiency's¹³ *Quality Standards for Inspections*.

¹² The Master Beneficiary Record is the master payment file for the Retirement and Survivors and Disability Insurance programs.

¹³ 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.

OIG Contacts and Staff Acknowledgments

OIG Contacts

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Acknowledgments

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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.

Office of Investigations

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.