
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**RESTITUTION OF MISUSED FUNDS
TO BENEFICIARIES UNDER
PUBLIC LAW 108-203**

August 2006

A-09-05-15139

AUDIT REPORT



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We improve SSA programs and operations and protect them against fraud, waste, and abuse by conducting independent and objective audits, evaluations, and investigations. We provide timely, useful, and reliable information and advice to Administration officials, the Congress, and the public.

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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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By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.



SOCIAL SECURITY

MEMORANDUM

Date: August 17, 2006

Refer To:

To: The Commissioner

From: Inspector General

Subject: Restitution of Misused Funds to Beneficiaries Under Public Law 108-203
(A-09-05-15139)

OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) implementation of section 101 of the *Social Security Protection Act of 2004 (Act)*.

BACKGROUND

Public Law 108-203, the *Act*, was signed into law on March 2, 2004. Section 101 of the Act requires that SSA reissue benefits to Title II and XVI beneficiaries when benefits were misused by organizational representative payees or individual payees serving 15 or more beneficiaries. This provision applied to misuse decisions made on or after January 1, 1995.¹

Before March 2, 2004, SSA repaid beneficiaries for the amount of misused funds only if SSA's failure to investigate or monitor a representative payee resulted in the misuse of benefits.²

In June 2004, SSA identified all representative payees and beneficiaries who met the requirements of section 101 from its Representative Payee System (RPS). Using this information, SSA established the Misuse Restitution Control System (MRCS) database to track and manage the completion of these cases. In its Representative Payment Status Report for March 2005, SSA reported it had completed its review of misuse cases subject to repayment under the *Act*.

According to the MRCS database, representative payees misused \$2.8 million that belonged to 2,685 Title II and XVI beneficiaries from January 1995 through June 2004. In total, SSA or its representative payees repaid \$2.5 million to 2,127 beneficiaries.

¹ Public Law No. 108-203 § 101(d).

² SSA, POMS, GN 00604.050C.

This included \$1.1 million before Public Law 108-203 was enacted and \$1.4 million after its enactment. However, about \$331,000 was not repaid to 360 beneficiaries because SSA could not locate them or they were deceased, incarcerated, or in nonpay status. The remaining 198 beneficiaries did not require repayment because SSA concluded that no misuse had occurred.

RESULTS OF REVIEW

In general, our audit disclosed that SSA adequately implemented section 101 of Public Law 108-203. However, we identified the following deficiencies:

- 63 beneficiaries had \$41,075 in funds misused by 5 representative payees but were not fully paid;³
- 244 additional beneficiaries were not repaid at least \$118,949 in funds misused by 3 representative payees;
- 247 beneficiaries were deceased, but SSA did not attempt to reissue \$247,289 in misused funds to their survivors or estates; and
- 12 beneficiaries had \$5,826 of overpayments that could have been collected by offsetting the amount of misused funds reissued to them.

Payment of Prior Misuse Cases Identified by SSA

Based on a random sample of 100 beneficiaries from the MRCS database, we found that SSA generally repaid those individuals whose funds were misused. However, our review disclosed that eight beneficiaries were not paid or fully repaid the amount of funds misused by five representative payees. These beneficiaries included (1) four individuals who were not repaid any funds and (2) four individuals who were not repaid the full amount of funds misused.

The four beneficiaries who were not repaid any funds had a total of \$2,905 misused by their representative payees. In one case, SSA did not repay the beneficiary until after we requested its misuse determination in June 2005. In another case, SSA believed it had repaid the beneficiary as required. In the remaining two cases, SSA had issued the checks, but they were returned to the Treasury. During our review, we determined that SSA had completed final actions to repay these beneficiaries.

³ This includes 4 beneficiaries in our sample who were not paid \$2,905 and 59 beneficiaries who were not repaid \$38,170. The 59 beneficiaries had the same representative payee, of which 4 were in our sample.

For another four beneficiaries, we found that SSA had not repaid the full amount of funds misused by a fee-for-service representative payee in Seattle, Washington. In total, the representative payee misused \$55,994 in benefits received on behalf of 59 beneficiaries. The executive director of the representative payee pled guilty to misappropriating \$17,824 of Title II and XVI benefits. SSA repaid the court-ordered restitution of \$17,824 to these individuals before Public Law 108-203 was enacted. However, since SSA determined it was negligent in its oversight of the representative payee, it should have repaid the full amount of misused funds. As a result, these beneficiaries were due an additional \$38,170.

SSA's policies, before the enactment of Public Law 108-203, required that it repay the amount of misused benefits to beneficiaries when its failure to investigate or monitor a representative payee resulted in misuse.⁴ We found that SSA did not record the full amount of misused funds in RPS. This may have contributed to these individuals not being repaid in full. However, SSA should have repaid the entire \$55,994 to these beneficiaries, notwithstanding the enactment of Public Law 108-203, because it was negligent in its oversight of the representative payee. SSA agreed to initiate action to repay these beneficiaries.

Additional Misuse Cases Not Repaid by SSA

During our review, we determined that SSA did not reissue at least \$118,949 to 244 beneficiaries who had funds misused by 3 representative payees.

- [Organizational Representative Payee](#) - SSA did not repay \$82,173 to 55 beneficiaries whose funds were misused by an organizational representative payee in Tacoma, Washington. Although only 2 misuse cases were initially recorded in RPS and MRCS, SSA entered the remaining 53 misuse cases in RPS after it discovered they were excluded. However, SSA did not complete its processing of these misuse cases to reissue the \$82,173 to the 55 beneficiaries. SSA agreed to initiate action to repay these beneficiaries.
- [Organizational Representative Payee](#) - The owner of an organizational representative payee was convicted of misappropriating \$274,001 in Social Security benefits from 295 individuals in Phoenix, Arizona, and Denver, Colorado. However, SSA only repaid the beneficiaries at the Phoenix location. SSA did not repay the \$36,776 of misused funds to the 47 beneficiaries at the Denver location because the misuse amounts were not included in RPS. SSA agreed to initiate action to repay these beneficiaries.

⁴ SSA, POMS, GN 00604.050C.

- [Individual Representative Payee](#) - During its review of an individual representative payee in New York, New York, SSA determined the representative payee had misused \$3,505 of Social Security benefits for 13 of the 14 beneficiaries in its sample. Specifically, SSA found the representative payee had collected a fee from these beneficiaries without prior approval from SSA. These amounts were included in the MRCS database for repayment. However, SSA did not review the remaining 142 beneficiaries' records to determine whether inappropriate fees had been charged.

Payments to Survivors or Estates of Deceased Beneficiaries

SSA's instructions for processing the repayment of misused funds of deceased beneficiaries are inconsistent with its general policies for returning misused and conserved funds to the survivors or estates of these individuals. SSA instructed its field offices not to reissue funds for deceased beneficiaries.⁵ As a result, SSA did not attempt to reissue \$247,289 of misused funds to the survivors or estates of 247 deceased beneficiaries. Our review disclosed that 25 of these deceased beneficiaries had family members in current pay status on SSA's payment records.

Before Public Law 108-203, SSA only repaid misused benefits if the misuse was caused by SSA's negligence in its actions when appointing or monitoring a representative payee. However, for deceased beneficiaries, SSA would reissue misused funds only after the representative payee made repayment. SSA in its implementation of Public Law 108-203 instructed its field offices to follow this same policy for the repayment of misused funds for deceased beneficiaries.⁶

Our review disclosed that SSA's instructions for processing misused benefits for deceased beneficiaries is contrary to its policies for repaying (1) misused and conserved funds for deceased Title II beneficiaries and (2) conserved funds for deceased Title XVI recipients. For deceased Title II beneficiaries, misused or conserved funds may be paid to the legal representative of the beneficiary's estate.⁷ For deceased Title XVI recipients, conserved funds that are held by a representative payee or returned to SSA belong to the estates of these beneficiaries.⁸ Since Public Law 108-203 does not specifically address misused funds for deceased beneficiaries, SSA should use its existing policies for guidance.

⁵ SSA, AM-04167, October 29, 2004, instructs field offices to follow the guidelines in POMS, GN 00604.060D.2.a (EXCEPTION) for any deceased beneficiaries in the MRCS database.

⁶ SSA, POMS, GN 00604.060.

⁷ SSA, POMS, GN 02301.001B.2.d.

⁸ SSA, POMS, GN 00603.100B.2 and SI 02101.001A.2.

Recovery of Overpayments from Beneficiaries

SSA's policies on misused funds restricted the collection of overpayments from the funds reissued to beneficiaries. According to SSA staff, only underpayments may be used to recover overpayments. In addition, SSA does not consider misused funds to be underpayments. As a result, SSA did not attempt to recover existing overpayments from any reissued misused funds. Based on a random sample of 100 beneficiaries from the MRCS database, we found 12 beneficiaries with \$5,826 of overpayments that could have been collected by offsetting the amount of misused funds reissued to them.

SSA has the authority to recover overpayments from amounts due a beneficiary.⁹ During our review, we discussed this with SSA's Office of Disability and Income Security Programs. SSA staff stated they would initiate action to revise both Title II and XVI policies to allow the recovery of overpayments from any reissued misused funds.

CONCLUSION AND RECOMMENDATIONS

In general, our audit disclosed that SSA adequately implemented section 101 of Public Law 108-203. However, SSA did not reissue \$41,075 to 63 beneficiaries who had funds misused by 5 representative payees. In addition, we identified 244 beneficiaries who were not repaid at least \$118,949. We also found that SSA's policies for reissuing misused funds were not always consistent with current laws and regulations or SSA's policies for the disposition of misused and conserved funds.

We recommend that SSA:

1. Reissue the remaining \$38,170 owed to 59 beneficiaries who had funds misused by a fee-for-service representative payee.
2. Repay \$118,949 to 102 beneficiaries who had funds misused by 2 organizational representative payees.
3. Review the accounting records for 142 beneficiaries of an individual representative payee to calculate and repay the amount of misused funds to these individuals.
4. Repay \$247,289 of misused funds to the survivors or estates of 247 deceased beneficiaries in accordance with existing SSA policies for repaying misused and conserved funds.

⁹ *Social Security Act* §§ 204(a) and 1631(b), 42 U.S.C. §§ 404(a) and 1383(b) and 20 C.F.R. §§ 404.502 and 416.570.

5. Revise its representative payee policies for reissuing misused funds for deceased beneficiaries to ensure consistency with SSA's policies for repaying misused and conserved funds to the survivors and estates of these individuals.
6. Revise its representative payee policies to allow the recovery of overpayments from any reissued funds.

AGENCY COMMENTS

SSA agreed with Recommendations 1 through 3 and 6. SSA disagreed with Recommendations 4 and 5 stating its instructions for processing the repayment of misused funds of deceased beneficiaries were consistent with its general policies for returning misused and conserved funds to the survivors or estates of these individuals. See Appendix C for the full text of SSA's comments.

OIG RESPONSE

We believe our recommendations to pay misused funds to the survivors or estates of deceased beneficiaries are appropriate. SSA's policy is to repay misused funds to survivors or estates only if the representative payee has already repaid the misused funds to SSA. One of the benefits of the *Act* was that it eliminated any contingency for repayment of misused funds based upon the actions of representative payees. The policy does not consider the increased financial burden imposed on family members who may have provided the beneficiary financial assistance necessitated by the representative payee's misuse of SSA benefits.



Patrick P. O'Carroll, Jr.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – Agency Comments

APPENDIX D – OIG Contacts and Staff Acknowledgments

Acronyms

Act	<i>Social Security Protection Act of 2004</i>
C.F.R.	Code of Federal Regulations
MRCS	Misuse Restitution Control System
POMS	Program Operations Manual System
RPS	Representative Payee System
SSA	Social Security Administration
U.S.C.	United States Code

Scope and Methodology

We obtained a copy of the Social Security Administration's (SSA) Misuse Restitution Control System (MRCS) database as of June 3, 2005. Our population consisted of 2,685 Title II and XVI beneficiaries from January 1995 through June 2004. We refined our population to exclude (1) 360 beneficiaries who could not be located or were deceased, incarcerated, or in nonpay status and (2) 198 beneficiaries who did not require repayment because misuse had not occurred. From the remaining population of 2,127 beneficiaries, we selected a random sample of 100 beneficiaries for review. For each sample item, we requested the misuse determination and supporting documentation for the amount of funds misused.

To accomplish our objective, we:

- Reviewed Public Law 108-203, *the Social Security Protection Act of 2004*.
- Reviewed the applicable sections of the *Social Security Act*, Code of Federal Regulations, and SSA's Program Operations Manual System.
- Reviewed each sample item to determine whether (1) the representative payee and beneficiary met the requirements of Public Law 108-203, (2) SSA or the representative payee reissued the total amount misused to the beneficiary, and (3) the beneficiary had an overpayment on the date in which the reissued funds were disbursed.
- Interviewed SSA employees from the Western Program Service Center and the Offices of Disability and Income Security Programs and Applications and Supplemental Security Income Systems.

We determined the computer-processed data from the MRCS database were sufficiently reliable for our intended use. We conducted interviews with SSA employees to evaluate the reasonableness of the methodology used to extract this information from SSA's Representative Payee System. However, we did not conduct tests to determine the completeness and accuracy of the data.

We performed audit work in Richmond, California, and Baltimore, Maryland, between May 2005 and March 2006. The entity audited was the Office of Income Security Programs under the Deputy Commissioner for Disability and Income Security Programs. We conducted our audit in accordance with generally accepted government auditing standards.

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: August 4, 2006

Refer To: S1J-3

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

From: Larry W. Dye /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Restitution of Misused Funds to Beneficiaries Under Public Law 108-203" (A-09-05-15139)--INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the draft report content and recommendations are attached.

Please let me know if we can be of further assistance. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at extension 54636.

Attachment:
SSA Response

COMMENTS ON THE OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT, “RESTITUTION OF MISUSED FUNDS TO BENEFICIARIES UNDER PUBLIC LAW 108-203” (A-09-05-15139)

Thank you for the opportunity to review and comment on the draft report. We appreciate OIG conducting this audit and we were pleased with the overall finding of the draft report which indicates that, in general, SSA adequately implemented Section 101 of Public Law 108-203, the Social Security Protection Act of 2004 (SSPA).

Recommendation 1

SSA should reissue the remaining \$38,170 owed to 59 beneficiaries who had funds misused by a fee-for-service representative payee (Rep Payee).

Comment

We agree. We will have the servicing field office (FO) process these cases. As with all of the following recommendations to reissue money, we have requested a listing of the cases and will forward the listing to the servicing FO to be worked.

Recommendation 2

SSA should repay \$118,949 to 102 beneficiaries who had funds misused by 2 organizational Rep Payees.

Comment

We agree. We will have the servicing FO process these cases.

Recommendation 3

SSA should review the accounting records for 142 beneficiaries of an individual Rep Payee to calculate and repay the amount of misused funds to these individuals.

Comment

We agree. We will have the servicing FO process these cases.

Recommendation 4

SSA should repay \$247,289 of misused funds to the survivors or estates of 247 deceased beneficiaries in accordance with existing SSA policies for repaying misused and conserved funds.

Comment

We disagree. The Agency's instructions for processing the repayment of misused funds of deceased beneficiaries are consistent with its general policies for returning misused and conserved funds to the survivors or estates of these individuals. See page 4 of the report, under "Payments to Survivors or Estates of Deceased Beneficiaries." We believe that there is a misunderstanding on OIG's part regarding the policies in the two Program Operations Manual Systems (POMS) sections. The draft report cites POMS GN 02301.001B.2.d (NOTE) which states in part "...if the beneficiary dies before recertification of conserved or misused funds, the money, can be paid only to the legal representative of the beneficiary's estate. See POMS GN 00603.100B.2." This procedure refers to conserved funds that have been returned, or misused funds that have been repaid to the Agency, and how to treat the returned/repaid funds.

The report acknowledged that the Agency's policy concerning misuse cases involving deceased beneficiaries is based on procedures in place before the SSPA was enacted and that those procedures provided the basis for our actions in these cases after passage of the SSPA. To be specific, the instruction regarding these cases after passage of the SSPA (AM-04167) was based on the Agency's policy of not paying restitution under the pre-existing (negligence-based) restitution provisions in Sections 205(j)(5), 807(i), and 1631(a)(2)(E) of the Social Security Act to deceased beneficiaries. This policy for the negligence-based restitution provisions had been in effect for over 10 years before Section 101 of the SSPA was enacted. When it implemented the restitution provision in Section 101 of the SSPA, the Agency kept a consistent policy on restitution for deceased beneficiaries. Section 101 of the SSPA provided no basis for a different policy.

Additionally, the negligence-based restitution provisions remain in effect. By keeping a consistent policy, the Agency avoided having one policy for deceased beneficiaries under the negligence-based restitution provisions and a different policy for deceased beneficiaries under the restitution provisions of Section 101 of the SSPA. The Agency's pre-existing policy is referenced at POMS GN 00604.060D.2.a. It provides that if the beneficiary is deceased "...do not make duplicate payment and create an unnecessary overpayment." When SSA makes repayment of benefits which were previously misused, in effect we are making a duplicate payment which creates an overpayment, and this procedure is intended to prevent this in cases where the beneficiary is deceased. In implementing the retroactive misuse repayment provision of Section 101 of that legislation, we instructed the FO staff to follow SSA's longstanding guideline, and not make repayment if the beneficiary was deceased. We believe that our actions in these cases were consistent with existing SSA policies.

Recommendation 5

SSA should revise its Rep Payee policies for reissuing misused funds for deceased beneficiaries to ensure consistency with SSA's policies for repaying misused and conserved funds to the survivors and estates of these individuals.

Comment

We disagree. We do not believe the Agency's instructions regarding restitution of misused benefits for deceased beneficiaries requires revision for the reasons stated above in Recommendation 4.

Recommendation 6

SSA should revise its Rep Payee policies to allow the recovery of overpayments from any reissued funds.

Comment

We agree. We concur with this recommendation and on June 23, 2006, made the change to POMS GN 02301.001B.2.d to allow for the recovery of overpayments from any reissued funds.

OIG Contacts and Staff Acknowledgments

OIG Contacts

James J. Klein, Director, San Francisco Audit Division, (510) 970-1739

Jack H. Trudel, Audit Manager, (510) 970-1733

Acknowledgments

In addition to those named above:

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