



## SOCIAL SECURITY

### MEMORANDUM

Date: July 2, 2008

Refer To:

To: The Commissioner

From: Inspector General

Subject: Title II Benefits to Fugitive Felons and Probation or Parole Violators (A-01-07-17039)

The attached final report presents the results of our audit. Our objective was to quantify the savings achieved as a result of the suspension of monthly Title II benefits to fugitive felons and probation or parole violators.

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.", written in a cursive style.

Patrick P. O'Carroll, Jr.

Attachment

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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**TITLE II BENEFITS  
TO FUGITIVE FELONS AND  
PROBATION OR PAROLE VIOLATORS**

**July 2008      A-01-07-17039**

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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.**

## **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.**

# Executive Summary

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## OBJECTIVE

Our objective was to quantify the savings achieved as a result of the suspension of monthly Title II benefits to fugitive felons and probation or parole violators. (Throughout this report, we use the term “fugitive felons” to include probation or parole violators as well as fugitive felons.)

## BACKGROUND

Beginning January 1, 2005, the *Social Security Act* prohibits the payment of Title II benefits to a beneficiary who is fleeing (for a period of more than 30 days) 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.

SSA interprets the law to mean that a person is “fleeing to avoid prosecution, custody, or confinement” when a person has an outstanding warrant for his or her arrest, even if that person is unaware of that warrant. However, the United States Second Circuit Court of Appeals, ruling in the case of *Fowlkes v. Adamec*, held the term “fleeing” to mean “the conscious evasion of arrest or prosecution,” and that SSA could not conclude from the mere fact that an outstanding felony arrest warrant exists that an individual is “fleeing.” As a result of the *Fowlkes* decision, SSA issued an acquiescence ruling and—beginning in December 2005—the Agency no longer suspended Title II payments to fugitive felons (not including probation or parole violators) residing in the Second Circuit.

## RESULTS OF REVIEW

As a result of the suspension of benefits to fugitive felons, we estimate SSA saved the Title II program about \$404.3 million through March 2008. This includes (1) \$47.3 million in fugitive felon overpayments that were recovered; (2) \$218.6 million in ongoing monthly benefits that were withheld from the fugitive felons while their warrants remained unsatisfied; and (3) \$138.4 million in ongoing monthly benefits that were withheld from beneficiaries while they were incarcerated following their apprehension.

Also, we estimate that SSA had the potential to save an additional \$249.6 million as of March 2008. This includes (1) \$89.5 million in benefits that will likely be withheld over the next 12 months from beneficiaries whose warrants remain unsatisfied and (2) \$160.1 million in overpayments that had not yet been recovered from the fugitive felons. Finally, we estimate that SSA did not save approximately \$60.3 million. This includes (1) \$41.8 million in overpayments that were waived or deemed uncollectible and (2) \$18.5 million that was paid to beneficiaries with outstanding felony warrants that will not be recovered because of the *Fowlkes* Ruling.

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## OBJECTIVE

Our objective was to quantify the savings achieved as a result of the suspension of monthly Title II benefits to fugitive felons and probation or parole violators. (Throughout this report, we use the term “fugitive felons” to include probation or parole violators as well as fugitive felons.)

## BACKGROUND

The Social Security Administration (SSA) administers the Old Age, Survivors and Disability Insurance Program under Title II of the *Social Security Act*.<sup>1</sup> The program provides monthly benefits to retired or disabled workers and their families and to survivors of deceased workers.

Beginning January 1, 2005, the *Social Security Act* prohibits the payment of Title II benefits to a beneficiary who is fleeing (for a period of more than 30 days) 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.<sup>2</sup>

SSA interprets the law to mean “. . . that a person is ‘fleeing to avoid prosecution, custody, or confinement’ when a person has an outstanding warrant for his or her arrest, even if that person is unaware of that warrant.”<sup>3</sup> 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.<sup>4</sup>

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

<sup>2</sup> The *Social Security Act* § 202(x)(1)(A)(iv)-(v), 42 U.S.C. § 402(x)(1)(A)(iv)-(v), as amended by § 203 of the *Social Security Protection Act of 2004* (Pub. L. No. 108-203, March 2, 2004).

<sup>3</sup> Social Security Acquiescence Ruling 06-1(2), *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005): Determining Whether an Individual Is a Fugitive Felon Under the Social Security Act (Act)—Titles II and XVI of the Act, Federal Register, Vol. 71, No. 66, at page 17551 (April 6, 2006); See also SSA, Program Operations Manual System (POMS), GN 02613.001.B.3.

<sup>4</sup> There are two types of good cause—mandatory and discretionary. For more information, see Appendix A.

In December 2005, the United States Second Circuit Court of Appeals, ruling in the case of *Fowlkes v. Adamec*, rejected SSA’s interpretation of the law and the Agency’s implementing regulations.<sup>5</sup> The Court held the term “fleeing” to mean “the conscious evasion of arrest or prosecution,” and that SSA could not conclude from the mere fact that an outstanding felony arrest warrant exists that an individual is “fleeing.”<sup>6</sup> As a result of the *Fowlkes* decision, SSA issued an acquiescence ruling and—beginning in December 2005—the Agency no longer suspended Title II payments to fugitive felons residing in the Second Circuit, which includes Connecticut, New York, or Vermont.<sup>7</sup> (For additional background information, see Appendix A.)

To accomplish our objective, we obtained a file of fugitive felon records from the Office of the Inspector General, Office of Investigations, in October 2006 and identified 219,635 records with warrants and whose Social Security numbers appeared on Title II benefit records. We randomly selected 275 individuals from this population for detailed analysis. (See Appendix B for more information on our scope, methodology and sample results.)

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<sup>5</sup> *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005).

<sup>6</sup> 432 F.3d at 96.

<sup>7</sup> Social Security Acquiescence Ruling 06-1(2), *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005): Determining Whether an Individual Is a Fugitive Felon Under the Social Security Act (Act)—Titles II and XVI of the Act, Federal Register, Vol. 71, No. 66, at page 17551 (April 6, 2006). The *Fowlkes* decision does not apply to probation and parole violators.

## Results of Review

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As a result of the suspension of benefits to the fugitive felons in our audit, we estimate SSA saved the Title II program about \$404.3 million from January 1, 2005 through March 2008. This includes:

- \$47.3 million in benefit overpayments that were recovered from the fugitive felons;
- \$218.6 million in ongoing monthly benefits that were withheld from the fugitive felons while their warrants remained unsatisfied; and
- \$138.4 million in ongoing monthly benefits that were withheld from beneficiaries while they were incarcerated following their apprehension.

In addition, we estimate that SSA had the potential to save an additional \$249.6 million as of March 2008. This includes:

- \$89.5 million in benefits that will likely be withheld over the next 12 months from beneficiaries whose warrants remain unsatisfied and
- \$160.1 million in benefit overpayments that had not yet been recovered from the fugitive felons.<sup>8</sup>

Finally, we estimate that SSA did not save/recover approximately \$60.3 million. This includes:

- \$41.8 million in benefit overpayments that were not recovered because the Agency granted the beneficiaries waivers or deemed their overpayments uncollectible and
- \$18.5 million that was paid to beneficiaries with outstanding felony warrants but SSA will not recover because of SSA's Acquiescence Ruling based on the *Fowlkes* decision.

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<sup>8</sup> SSA may later waive some of these overpayments or deem them uncollectible.

## SAMPLE RESULTS

Of the 275 fugitive felons we sampled,

- 208 were not affected by the Title II fugitive felon nonpayment provisions (see Appendix C for additional details about these cases);
- 61 had their Title II benefits suspended and/or overpayments assessed because of their unsatisfied warrants;<sup>9</sup> and
- 6 continued to be paid their Title II benefits because SSA found that there was good cause to continue their payments.<sup>10</sup>

## OVERPAYMENTS TO FUGITIVE FELONS

In total, 60 fugitive felons in our sample were paid \$312,019 that they should not have received because of their unsatisfied warrants. Projecting the results to our population, we estimate that approximately 47,920 beneficiaries were overpaid about \$249.2 million. The following table summarizes the status of these overpayments as of March 2008.

Overpayments	Sample Results	Percent	Population Estimate
Recovered	\$59,174	19.0%	\$47,260,285
Not Yet Recovered	\$200,493	64.2%	\$160,128,347
Written Off (waived or deemed uncollectible)	\$52,352	16.8%	\$41,812,434
<b>Total Overpayments</b>	<b>\$312,019</b>	<b>100.0%</b>	<b>\$249,201,066</b>

## UNDETECTED OVERPAYMENTS

We found that 60 fugitive felons in our sample were overpaid \$312,019 because they had unsatisfied warrants.<sup>11</sup> However, of this amount, \$98,728 (or 32 percent) in overpayments to 10 beneficiaries went undetected until our audit. Projecting these results to our population, we estimate that approximately \$78.9 million in overpayments to about 7,987 fugitive felons went undetected by SSA.

<sup>9</sup> Of these 61 cases, 60 had overpayments due to their fugitive felon suspension and only 1 case was not overpaid, but benefits were stopped because the individual had an unsatisfied warrant.

<sup>10</sup> This included three cases in which benefits continued because discretionary good cause was found by SSA. This also included three cases in which benefits continued because mandatory good cause was found. We did not identify any fugitive felons in our sample who requested—but were denied—benefit continuation under the good cause provisions. (For additional information on good cause, see Appendix A.)

<sup>11</sup> These fugitive felons were overpaid for an average period of 8 months. This includes 48 beneficiaries from the disability trust fund and 12 beneficiaries from the retirement/survivor trust fund.

Overpayments occurred in several cases because of limitations in SSA's computer systems.<sup>12</sup> To identify fugitive felons who are receiving Title II benefits, the Agency compares warrant information in its fugitive felon control file to the benefit rolls. However, until August 2007, the system did not match warrant records against the Title II claims system to detect benefit applicants with unsatisfied warrants.<sup>13</sup> As a result, several individuals in our sample received benefit payments for which they were not eligible.

For example, in September 2006, SSA was notified of a warrant for one individual in our sample who was wanted for a drug-related offense. However, the individual's benefit application was pending at that time. When SSA finished processing the application in November 2006, the individual was not recognized as a fugitive felon and payments were initiated. In total, he received \$9,498 that he was not eligible to receive because of his unsatisfied warrant.

### **PROGRAM SAVINGS RESULTING FROM SUSPENSION OF BENEFITS TO FUGITIVE FELONS**

We estimate SSA saved an additional \$273,689 by withholding the ongoing benefits to 35 of the 61 beneficiaries while their warrants remained unsatisfied (for an average period of 12 months). Projecting these results to the population, we estimate SSA saved approximately \$218.6 million by withholding the ongoing benefits to about 27,954 beneficiaries.

For example, a warrant was issued in November 2002 for a beneficiary who was wanted for drug charges. The Agency suspended benefits in October 2005 and recorded an overpayment of \$11,302. SSA continued to withhold the ongoing monthly benefits until the warrant was dismissed in November 2006—saving \$15,253 in Title II program funds.

The table below summarizes the number of months that the 61 beneficiaries in our sample were not due Title II benefits because their warrants remained unsatisfied.

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<sup>12</sup> For other cases, the overpayments were not detected for various reasons. (For example, in one case, the warrant could not be verified by law enforcement previously, but was verified when we conducted our review.) We plan to conduct additional work in Fiscal Year 2009 on the systems issue.

<sup>13</sup> In June 2008, SSA informed us that operating instructions were never published for this process. Furthermore, SSA determined that it did not have the legal authority to match warrant data with its Title II claims system. The terms of SSA's matching agreements with the law enforcement agencies specify that the information can only be matched against those individuals who are already entitled to benefits. Additionally, the Agency indicated to us that only a limited number of cases would be identified.

<b>Table 2</b>		
<b>Total Number of Months the Warrants Remained Unsatisfied<sup>14</sup></b>	<b>Number of Beneficiaries</b>	<b>Percent</b>
3 months or fewer	13	21%
4 to 6 months	9	15%
7 to 9 months	5	8%
10 to 12 months	10	16%
13 to 15 months	7	12%
16 to 18 months	0	0%
19 to 21 months	3	5%
22 to 24 months	2	3%
More than 24 months	12	20%
<b>Total</b>	<b>61</b>	<b>100%</b>

SSA assists law enforcement agencies in their efforts to locate and apprehend fugitive felons by sharing beneficiary address information with them. Of the 61 beneficiaries in our sample whose benefits were suspended because of their outstanding warrants, 15 of them were subsequently apprehended and incarcerated. SSA saved about \$173,293 by withholding the benefits to these beneficiaries while they were prisoners (for an average period of 14 months). Projecting these results to the population, we estimate that SSA saved the Title II program approximately \$138.4 million by withholding the benefits to about 11,980 beneficiaries while they were imprisoned.

## **OFFENSES COMMITTED BY THE FUGITIVE FELONS**

The fugitive felons in our sample who were not due Title II benefits were wanted for various crimes, including larceny, fraud and drug-related offenses. The table below summarizes the types of offenses for which the fugitive felon beneficiaries in our sample were wanted.

<sup>14</sup> The average period was 12 months, the median period was 10 months.

<b>Table 3</b>	
<b>Offense<sup>15</sup></b>	<b>Number of Beneficiaries</b>
Parole or Probation Violation <sup>16</sup>	28 (46 percent)
Other Non-Violent, Non-Drug-Related Offenses <sup>17</sup>	17 (28 percent)
Drugs	12 (20 percent)
Violent Offenses (includes Rape, Robbery, and Assault)	4 (6 percent)
<b>Total</b>	<b>61 (100 percent)</b>

## **BENEFIT STATUS AS OF MARCH 2008**

Although SSA achieved program savings by suspending Title II benefits to fugitive felons, we found that 34 of the 61 fugitive felons—who were previously not due benefits—satisfied their warrants and were receiving monthly benefits as of March 2008. Projecting our sample results to the population, we estimate that 27,155 fugitive felons (whose benefits were previously suspended) satisfied their warrants and were again receiving benefits as of March 2008. The table below summarizes the Title II benefit status of the 61 beneficiaries in our sample for whom benefit suspension occurred because of the outstanding warrants.

<b>Table 4</b>	
<b>Title II Benefit Status as of March 2008</b>	<b>Number of Beneficiaries</b>
Beneficiary satisfied the warrant and SSA resumed paying benefits	34 (56 percent)
Beneficiary was still not due benefits because the warrant remained unsatisfied	14 (23 percent)
Beneficiary was not due benefits because he or she was in prison	7 (11 percent)
Beneficiary was no longer entitled to benefits regardless of the warrant status <sup>18</sup>	6 (10 percent)
<b>Total</b>	<b>61 (100 percent)</b>

As shown in the table above, 14 of the 61 beneficiaries had not satisfied their warrants and therefore continued to have their benefits suspended. As of March 2008, their warrants were outstanding for an average period of 33 months. If their warrants remain unsatisfied, we estimate SSA will save about \$112,121 over the next 12 months by continuing to withhold the ongoing monthly benefits. Projecting these results to the

<sup>15</sup> We grouped offenses into violent and non-violent categories per POMS GN 02613.900.

<sup>16</sup> We were able to determine the underlying offenses for all 28 fugitive felons. The underlying offense (category) for these 28 fugitive felons is as follows: 21 were “Other Non-Violent, Non-Drug Related Offenses”; 3 were “Violent Offenses”; and 4 were “Drugs.”

<sup>17</sup> This includes burglary, larceny, forgery, counterfeiting, fraud, stolen property, contempt of court, failure to appear, driving under the influence of liquor and other traffic offenses, and weapons offenses.

<sup>18</sup> This includes three beneficiaries who died; two beneficiaries who attained age 18 and were no longer entitled to child benefits; and one who was no longer considered disabled.

population, we estimate SSA will save about \$89.5 million over the next year by withholding the recurring benefits to approximately 11,181 fugitive felon beneficiaries whose warrants remained unsatisfied as of March 2008.

For example, in May 2005, a warrant was issued for a beneficiary in our sample who was wanted for possession of cocaine. SSA suspended Title II benefit payments in November 2005 and recorded an overpayment of \$2,076. By suspending the ongoing benefits to this fugitive felon, the Agency had saved the Title II program \$10,706 as of March 2008. If the warrant remains unsatisfied, we estimate SSA will save an additional \$4,596 over the course of a year.

## **THE IMPACT OF THE *FOWLKES* ACQUIESCENCE RULING**

Beginning December 6, 2005, as a result of SSA's *Fowlkes* Acquiescence Ruling, the Agency does not withhold Title II benefits from individuals who have unsatisfied felony warrants and reside in the Second Circuit (this does not include probation or parole violators). Beneficiaries whose benefits had been withheld on this basis must request that SSA resume their benefits.<sup>19</sup> In July 2007, the Agency mailed notices to these beneficiaries advising them of the *Fowlkes* Ruling and informing them of how to request relief.

To evaluate the impact of the *Fowlkes* Ruling on the Title II program, we identified 8,980 fugitive felons with warrants as of June 2007 who may have resided in the Second Circuit.<sup>20</sup> We randomly selected 275 fugitive felons from this population for further analysis.

Of these 275 fugitive felons:

- 234 were not affected by the *Fowlkes* Ruling;<sup>21</sup>
- 35 were considered eligible for the benefits that were paid to them—despite their outstanding warrants—because of the *Fowlkes* Ruling;
- 6 had their Title II benefits suspended because of their outstanding felony warrants but did not request that SSA resume their benefits under the *Fowlkes* Ruling.

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<sup>19</sup> Some beneficiaries do not need to request the application of the *Fowlkes* Ruling. See POMS, GN 02613.810.A.2 and GN 03501.015.B.2.

<sup>20</sup> For additional information about our *Fowlkes* population, see Appendix B.

<sup>21</sup> For example, the fugitive felons were not eligible for Title II benefits when their warrants were outstanding, or they satisfied their warrants before December 2005.

## PROGRAM SAVINGS NOT REALIZED BECAUSE OF *FOWLKES* RULING

Because of the *Fowlkes* Ruling, 35 beneficiaries in our sample were eligible to receive their Title II benefits despite their unsatisfied felony warrants.<sup>22</sup> These fugitive felons were paid \$565,879 in Title II benefits that they would not have been eligible to receive were it not for the *Fowlkes* Ruling. Projecting our sample results to the population, we estimate that about 1,143 fugitive felon beneficiaries in the Second Circuit were paid approximately \$18.5 million in Title II benefits despite their outstanding felony warrants.

For example, a warrant was issued in November 2005 for a beneficiary in our sample who was wanted for sexual assault. The beneficiary lived in New York, and the warrant remained unsatisfied as of March 2008. Because of the *Fowlkes* Ruling, SSA did not suspend benefit payments to this individual. As of March 2008, this fugitive felon received \$29,400 in benefits that would not have been due him had he not resided in the Second Circuit. Further, we estimate this fugitive felon will receive an additional \$13,032 in benefits over the next 12 months.

## OFFENSES COMMITTED BY THE FUGITIVE FELONS

In total, 11 of the 35 fugitive felons in our sample who—because of the *Fowlkes* Ruling—were eligible for Title II benefits despite their outstanding warrants were wanted for violent or drug-related offenses. The table below summarizes the types of offenses for which the fugitive felon beneficiaries in our sample were wanted.

<b>Offense</b>	<b>Number of Beneficiaries</b>
Other Non-Violent, Non-Drug-Related Offenses <sup>23</sup>	22 (63 percent)
Drugs	7 (20 percent)
Violent Offenses (Sexual Assault, Robbery and Assault)	4 (11 percent)
Unknown (not provided by law enforcement)	2 (6 percent)
<b>Total</b>	<b>35 (100 percent)</b>

<sup>22</sup> This includes 29 fugitive felons who were living in New York, 5 living in Connecticut and 1 living in Vermont. The *Fowlkes* decision does not apply to probation or parole violators.

<sup>23</sup> This includes arson; burglary; larceny; stolen or damaged property; forgery; non-violent sex offenses; non-support of parent and other family offenses; witness tampering; escape; failure to appear; and driving under the influence of alcohol.

# Conclusions

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We estimate that SSA saved the Title II program over \$400 million as a result of the suspension of benefits to fugitive felons. This demonstrates that SSA is addressing improper payments. It also shows SSA's efforts to address its stewardship responsibilities—ensuring that only individuals eligible for benefits receive them.

## **AGENCY COMMENTS**

SSA provided us with some information to clarify its fugitive felon matching process, which we incorporated into the report. (See Appendix D for SSA's comments.)

# *Appendices*

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## **Additional Background Information**

The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* precluded eligibility for Supplemental Security Income (SSI) payments for certain fugitive felons effective August 1996.<sup>1</sup> An individual receiving SSI and Title II concurrently continued to receive the Title II benefits even though the SSI payments were suspended.

The *Social Security Protection Act of 2004* extended the fugitive felon nonpayment provision to Title II beneficiaries beginning January 1, 2005.<sup>2</sup> This law made persons ineligible to receive Title II benefits during any month in which they were fleeing to avoid prosecution, custody, or confinement for felonies or violating a condition of probation or parole under Federal or State law.

The Social Security Administration (SSA) considers a person to be “fleeing to avoid prosecution, custody, or confinement” when that person has an outstanding warrant for his or her arrest, even if he or she is unaware of the warrant.<sup>3</sup> However, under the authority granted in the law, SSA will continue payments to beneficiaries who have unsatisfied warrants if “good cause” exists to do so.

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. Good cause may be either mandatory or discretionary.<sup>4</sup>

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<sup>1</sup> Pub. L. No. 104-193, § 202. We issued our audit report, *Assessment of the Supplemental Security Income Fugitive Felon Project* (A-01-03-23070), in September 2003.

<sup>2</sup> Pub. L. No. 108-203, § 203.

<sup>3</sup> Social Security Acquiescence Ruling 06-1(2), *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005): Determining Whether an Individual Is a Fugitive Felon Under the Social Security Act (Act)—Titles II and XVI of the Act, Federal Register, Vol. 71, No. 66, at page 17551 (April 6, 2006).

<sup>4</sup> Section 202(x)(1)(B)(iii) & (iv) of the Social Security Act, 42 U.S.C. § 402(x)(1)(B)(iii) & (iv).

## **MANDATORY GOOD CAUSE**

The Agency shall determine that mandatory 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; or
- the individual was erroneously implicated in the criminal offense because of identity fraud.

## **DISCRETIONARY GOOD CAUSE**

The Agency may determine that discretionary good cause exists and continue benefit payments if (1) the criminal offense was non-violent and not drug-related, and in the case of probation or parole violators, both the violation and the underlying offense were non-violent and not drug related, and (2) mitigating factors exist.

The Agency has set forth a list of mitigating factors to meet this criteria that have been divided into Option A or Option B.<sup>5</sup> For a finding of good cause in these circumstances, all of the factors in either Option A or Option B must be met.

### **Option A:**

- The criminal offense or probation or parole violation on which the beneficiary was charged or convicted was non-violent and not drug related. For a probation or parole violation the original offense was also non-violent and not drug related; and
- The beneficiary was not convicted of any subsequent felony crimes since the warrant was issued; and
- The law enforcement agency that issued the warrant reports that it will not extradite the fugitive felon or is unwilling to act on the warrant.

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<sup>5</sup> SSA, POMS GN 02613.025.B.2.a & b.

## Option B:

- The criminal offense or probation or parole violation on which the beneficiary was charged or convicted was non-violent and not drug related. For a probation or parole violation the original offense was also non-violent and not drug related; and
- The beneficiary was not convicted of any subsequent felony crimes since the warrant was issued; and
- The warrant is/was the only existing warrant and was issued 10 or more years prior to the date the Fugitive Felon Match processed the current warrant information; and
- The beneficiary:
  - ✓ lacks the mental capacity to resolve a warrant, or
  - ✓ is incapable of managing payments, or
  - ✓ is legally incompetent, or
  - ✓ has a representative payee, or
  - ✓ is residing in a long-term care facility.

## Scope, Methodology and Sample Results

To accomplish our objective, we:

- Researched the *Social Security Act* and the Social Security Administration’s (SSA) regulations, policies and procedures related to the payment of Title II benefits to fugitive felons.
- Obtained a file of fugitive felon records from the Office of the Inspector General, Office of Investigations in October 2006 and identified 219,635 records with warrants and whose Social Security numbers appeared on Title II benefit records.<sup>1</sup> We randomly selected 275 individuals from this population for detailed analysis. Specifically, we:
  - ✓ calculated the overpayments that resulted from fugitive felon ineligibility and
  - ✓ estimated the savings to the Title II program that resulted from the continued suspension of benefits to individuals with unsatisfied warrants.

We conducted our audit in Boston, Massachusetts, between July and November 2007. We tested the data obtained for our audit and determined them to be sufficiently reliable to meet our objective. The entities audited were SSA’s field offices under 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **SAMPLE RESULTS AND ESTIMATES/PROJECTIONS**

<b>Table 1: Population and sample size</b>	
Population Size	219,635
Sample Size	275

<sup>1</sup> SSA receives warrant information from the Federal Bureau of Investigation’s National Crime Information Center and the United States Marshals Service, as well as 17 States and 3 municipalities.

<b>Table 2: Beneficiaries who were not eligible for the Title II benefits that were paid to them because of their warrants</b>	<b>Number of Beneficiaries</b>	<b>Dollars</b>
Sample Results	60	\$312,019
Point Estimate	47,920	\$249,201,066
Projection Lower Limit	39,060	\$175,939,457
Projection Upper Limit	57,791	\$322,462,674

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

<b>Table 3: Recovery status of the fugitive felon overpayments in Table 2</b>	<b>Sample Results</b>	<b>Percent</b>	<b>Population Estimate</b>
Recovered	\$59,174	19.0%	\$47,260,285
Recovery Efforts Underway	\$200,493	64.2%	\$160,128,347
Not Recovered (Written Off)	\$52,352	16.8%	\$41,812,434
<b>Total (See Table 2)</b>	<b>\$312,019</b>	<b>100.0%</b>	<b>\$249,201,066</b>

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

<b>Table 4: Overpayments in Table 2 that were not detected by SSA until our audit</b>	<b>Number of Beneficiaries</b>	<b>Dollars</b>
Sample Results	10	\$98,728
Point Estimate	7,987	\$78,850,962
Projection Lower Limit	4,364	\$19,877,007
Projection Upper Limit	13,372	\$137,824,916

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

<b>Table 5: Beneficiaries whose ongoing benefits were withheld because their warrants remained unsatisfied</b>	<b>Number of Beneficiaries</b>	<b>Dollars</b>
Sample Results	35	\$273,689
Point Estimate	27,954	\$218,588,020
Projection Lower Limit	20,985	\$137,381,967
Projection Upper Limit	36,274	\$299,794,073

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

<b>Table 6: Beneficiaries who satisfied their warrants and were again eligible for benefits as of March 2008, and the amount of Title II benefits they were not eligible to receive while their warrants were unsatisfied</b>	<b>Number of Beneficiaries</b>	<b>Dollars</b>
Sample Results	34	\$220,729
Point Estimate	27,155	\$176,290,472
Projection Lower Limit	20,283	\$104,577,805
Projection Upper Limit	35,394	\$248,003,139

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

<b>Table 7: Benefits expected to be saved over the next 12 months by withholding the ongoing benefits to fugitive felons who did not satisfy their warrants as of March 2008</b>	<b>Number of Beneficiaries</b>	<b>Dollars</b>
Sample Results	14	\$112,121
Point Estimate	11,181	\$89,547,825
Projection Lower Limit	6,820	\$49,022,204
Projection Upper Limit	17,225	\$130,073,446

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

<b>Table 8: Benefits saved due to incarceration following fugitive felon suspension</b>	<b>Number of Beneficiaries</b>	<b>Dollars</b>
Sample Results	15	\$173,293
Point Estimate	11,980	\$138,404,073
Projection Lower Limit	7,453	\$65,299,593
Projection Upper Limit	18,170	\$211,508,554

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

## **ANALYSIS OF THE *FOWLKES* RULING**

We also identified a separate population to evaluate the impact of the *Fowlkes* Acquiescence Ruling on the Title II program. Specifically, we identified 8,980 fugitive felons with warrants as of June 2007 and who may have resided in the Second Circuit (Connecticut, New York, and Vermont).<sup>2</sup> We randomly selected 275 records from this population for further analysis. For each sampled case, we calculated the amount of Title II funds paid to the beneficiary that he or she would not have been eligible to receive were it not for the *Fowlkes* Ruling.

<sup>2</sup> The data we analyzed included records in which the State was not identified. We included these cases in our population because the fugitive felons may have resided in the Second Circuit.

<b>Table 9: Population and sample size</b>	
Population Size	8,980
Sample Size	275

<b>Table 10: Beneficiaries who were eligible for Title II benefits despite their felony warrants because of the <i>Fowlkes</i> Ruling</b>	<b>Number of Beneficiaries</b>	<b>Dollars</b>
Sample Results	35	\$565,879
Point Estimate	1,143	\$18,478,535
Projection Lower Limit	862	\$14,100,734
Projection Upper Limit	1,478	\$22,856,335

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

## **Reasons Why Sample Fugitive Felon Cases Did Not Result in the Suspension of Title II Benefits**

For 208 of the 275 fugitive felons in our sample, Title II benefit payments were not stopped under the fugitive felon provisions in section 202(x)(1)(A) of the *Social Security Act*. As of March 2008:

- 147 individuals were not eligible for Title II benefit payments at the time they had unsatisfied felony warrants;
- 36 individuals satisfied their warrants before January 2005 (the effective date of the Title II fugitive felon nonpayment provision);
- 8 individuals were not suspended because the Agency had insufficient warrant information;
- 7 individuals satisfied their warrants within 30 days of their issuance;
- 5 individuals were wanted for misdemeanor offenses only;<sup>1</sup> and
- 5 individuals died.

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<sup>1</sup> Misdemeanor warrants are screened out as part of the Social Security Administration's fugitive felon process. However, these five individuals were included in the initial fugitive felon file received from a participating State. The records for these individuals were not processed, and the State subsequently re-sent a new file with only felony and parole or probation violation warrants.

## Agency Comments



## SOCIAL SECURITY

### MEMORANDUM

**Date:** June 09, 2008 **Refer To:** S1J-3

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

**From:** David V. Foster /s/  
Acting Chief of Staff

**Subject:** Office of the Inspector General (OIG) Draft Report, "Title II Benefits to Fugitives" (A-01-07-17039)—INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments 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 (410) 965-4636.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, “TITLE II BENEFITS TO FUGITIVES” (A-01-07-17039)**

Thank you for the opportunity to review and provide comments on this draft report.

The report states concerns about nonpayment of: 1) fugitives; and 2) parole and probation violators, and a later footnote clarifies that "fugitives" refers to both (see page ii and page 2, footnote 8). Accordingly, please consider retitling the report (*e.g.*, Title II Benefits and Criminal Law Enforcement) and using the phrase “fugitive felons or parole/probation violators” instead of “fugitives” in the report. If not, please consider moving footnote 8 to the first footnote position or to the opening text.

OIG concludes that SSA has enhanced its Title II claims system to identify benefit applicants who are fugitives or violators before their claims are approved and payments are issued. While it is true that SSA developed such an identification process, operating instructions to implement the process were never published.

Upon analysis of the proposed identification process, SSA determined that it does not have the legal authority to match arrest warrant data with the Title II claims system. The terms of our matching agreements with the law enforcement agencies that report arrest warrant information specify that the information can only be matched against those individuals who are already entitled to benefits. We also determined that we would identify only a limited number of claimants who have open warrants from this process. The process can identify only those Title II claimants who had an outstanding warrant during a period of prior Title XVI eligibility or if the warrant data and the Title II claim are received simultaneously. Considering the lack of authority for this process and its limited effectiveness, we have decided not to implement the process.

[In addition to the comments above, SSA also provided technical comments which have been addressed, where appropriate, in this report.]

## **OIG Contacts and Staff Acknowledgments**

### ***OIG Contacts***

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### ***Acknowledgments***

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Kathleen Toli, Auditor

David York, Program Analyst

For additional copies of this report, please visit our web site at [www.socialsecurity.gov/oig](http://www.socialsecurity.gov/oig) or contact the Office of the Inspector General's Public Affairs Specialist at (410) 965-3218. Refer to Common Identification Number A-01-07-17039.

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Social Security Advisory Board

## **Overview of the Office of the Inspector General**

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 fugitive felons receiving benefit payments from SSA, and provides technological assistance to investigations.