

Audit Report

The Social Security Administration's
Administrative Finality Policy



MEMORANDUM

Date: May 28, 2021 **Refer To:**

To: The Commissioner

From: Inspector General

Subject: The Social Security Administration's Administrative Finality Policy (A-01-19-50859)

The attached final report presents the results of the Office of Audit's review. The objective was to summarize prior work on the Social Security Administration's administrative finality policy and evaluate the Agency's actions to update it.

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

A handwritten signature in black ink that reads "Gail S. Ennis".

Gail S. Ennis

Attachment

The Social Security Administration's Administrative Finality Policy

A-01-19-50859



May 2021

Office of Audit Report Summary

Objective

To summarize prior work on the Social Security Administration's (SSA) administrative finality policy and evaluate the Agency's actions to update it.

Background

Administrative finality is the concept that, when a determination or decision is rendered, it becomes final and binding, unless it is appealed or reopened. Once a determination or decision becomes final, it can only be reopened and revised for certain reasons and within certain time periods pursuant to SSA's administrative finality policy.

Under the Old-Age, Survivors and Disability Insurance (OASDI) program, SSA does not consider each month's payment to be a new determination. This prevents SSA from revising future benefits if the Agency discovers an error under its current administrative finality policy. However, SSA can correct future Supplemental Security Income (SSI) payments when it finds an error because SSA considers each month's payment to be an initial determination.

Findings

Our prior work showed SSA had not corrected millions of ongoing OASDI payments because of its administrative finality policy. Although SSA agreed with our recommendation to evaluate its administrative finality policies since 2012, as of April 2021, SSA had not finalized its decision on policy changes. SSA has taken the following actions.

- SSA solicited public comment on proposed policy revisions in 2013.
- SSA requested and reviewed a 2016 Law Library of Congress' report, which stated, "A government agency may correct a mistake, and no principle of administrative law consigns an agency to repeating a mistake into perpetuity. Administrative agencies have the inherent authority to correct adjudications which appear to be erroneous." This comports with our prior recommendations, which SSA has not implemented, to correct ongoing payments.
- In 2017, SSA established a workgroup to develop recommendations to revise its administrative finality policy. In 2020, SSA informed us the workgroup planned to present options for policy updates to the Commissioner in Fiscal Year 2021 and implement changes by December 2022.

We also compared SSA's administrative finality policy to that of other agencies and found the Railroad Retirement Board and Department of Veterans Affairs' administrative finality policies permit revisions to ongoing and future payments in certain circumstances beyond those allowed by SSA policy.

Recommendation

We recommended SSA finalize its decision on updating its administrative finality policy and execute an action plan with specific milestones to ensure any updates are implemented timely. SSA agreed with the recommendation.

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ABBREVIATIONS

C.F.R.	Code of Federal Regulations
GAO	Government Accountability Office
OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code

OBJECTIVE

To summarize prior work on the Social Security Administration's (SSA) administrative finality policy and evaluate the Agency's actions to update it.

BACKGROUND

SSA administers the Old-Age, Survivors and Disability Insurance (OASDI) program to provide benefits to replace some of the earnings lost because a worker retires, becomes disabled, or dies.¹ SSA also administers the Supplemental Security Income (SSI) program to provide income for aged, blind, or disabled individuals with limited income and resources.²

In Fiscal Year 2020, SSA paid over \$1 trillion in OASDI and \$55 billion in SSI to over 70 million beneficiaries and recipients.³ SSA determines eligibility and payment amounts due an OASDI beneficiary or SSI recipient based on such factors, as income, resources, living arrangements, pension entitlement, and medical conditions.⁴ Once SSA makes an OASDI or SSI determination, the Agency may later reopen and revise the determination only under certain conditions. If those conditions are not met, SSA will not correct the determination or change payments associated with a determination.

Administrative Finality Limits Revisions to Payments

Administrative finality is the concept that, when a determination or decision is rendered, it becomes final and binding unless it is appealed or reopened. Once a determination or decision becomes final, it can only be reopened and revised for certain reasons and within certain time periods pursuant to SSA's administrative finality policy.⁵ See Table 1 for a summary of the administrative finality policy for OASDI and SSI.

¹ *Social Security Act*, 42 U.S.C. §§ 401-402 (govinfo.gov 2018).

² *Social Security Act*, 42 U.S.C. § 1381 (govinfo.gov 2018); 20 C.F.R. § 416.110 (govinfo.gov 2020).

³ SSA, *Fiscal Year 2020 Agency Financial Report*, pp. 7 and 55 (November 2020).

⁴ SSA, *What You Need to Know When You Get Retirement or Survivors Benefits*, pp. 5 through 18 (January 2021); *What You Need to Know When You Get Social Security Disability Benefits*, p. 2 (January 2021); *What You Need To Know When You Get Supplemental Security Income*, pp. 7 through 18 (August 2019).

⁵ 20 C.F.R. § 404.988 (govinfo.gov 2020); SSA, *POMS*, GN 04001.010 (December 22, 1989); GN 04001.001 (September 9, 2011); SI 04070.010 (March 24, 2017); and GN 04020.001 - 04020.110 (November 1, 1988 – May 22, 2012).

Table 1: Administrative Finality Policy in SSA Programs

OASDI ⁶	SSI ⁷
SSA may revise a determination within 1 year for any reason.
. . . within 4 years if <ul style="list-style-type: none"> • new and material evidence is furnished; • a clerical error was made; or • the evidence that was considered in making the determination clearly shows on its face that an error was made. 	. . . within 2 years if <ul style="list-style-type: none"> • new and material evidence is furnished; • a clerical error was made; or • the evidence that was considered in making the determination clearly shows on its face that an error was made.
. . . at any time , if <ul style="list-style-type: none"> • fraud or similar fault is found, or • the evidence clearly shows on its face that an error was made and if the change would be favorable to the beneficiary.⁸ 	. . . at any time , if <ul style="list-style-type: none"> • fraud or similar fault is found.

Because SSA does not correct prior OASDI or SSI payments when it applies administrative finality, beneficiaries may receive funds to which they are not entitled. However, SSA does not consider these prior uncorrected payments to be improper because administrative finality was correctly applied.⁹

SSA developed different administrative finality policies for OASDI and SSI because of the differences in program eligibility requirements. SSA explained its reopening rules allow them to

. . . reevaluate SSI eligibility monthly, offering more opportunities to correct records without applying administrative finality. Since the need to reopen [OASDI] determinations is more common than in [SSI] determinations and decisions, our [OASDI] rules allow a longer timeframe for reopening under good cause (four years) and more reasons for unlimited reopening. [SSI] administrative finality rules have a two-year timeframe for reopening for good cause and unlimited reopening applies only for fraud and similar fault.

⁶ 20 C.F.R. §§ 404.987-989 (govinfo.gov 2020). SSA, *POMS*, GN 04001.010 (December 22, 1989).

⁷ 20 C.F.R. §§ 416.1487-1489 (govinfo.gov 2019). SSA, *POMS*, SI 04070.010 (March 24, 2017).

⁸ SSA's regulations provide several other situations that permit revisions at any time under the OASDI program. A final determination or decision may be reopened at any time under any of the conditions in 20 C.F.R. § 404.988(c) (govinfo.gov 2019). SSA, *POMS*, GN 04020.001 - 04020.110 (November 1, 1988 – May 22, 2012)

⁹ Because SSA does not consider these payments to be improper, it does not include them in its improper payment estimates under the *Payment Integrity Information Act of 2019*, Pub. L. No. 116-117, 134 Stat. 113 (2020).

Improper payment estimates were previously required under the *Improper Payments Elimination and Recovery Act of 2010*, Pub. L. No. 111-204, 124 Stat. 2224 (2010).

Administrative finality applies to initial determinations of benefits or eligibility, which SSA defines differently in the OASDI and SSI programs.

- Under the OASDI program, SSA does not consider each month's payment to be a new determination.¹⁰ This prevents SSA from revising benefits if it finds an error longer than 4 years after the initial determination in most cases. Generally, when SSA finds an error after the period benefit allowed by administrative finality has ended, it will continue paying the incorrect OASDI benefit amount until the beneficiary dies or SSA makes a new payment determination, such as when benefits convert from disability to retirement when a beneficiary attains full retirement age. “For example, if we erroneously entitled you to a larger payment amount than was due, we will continue to pay you the larger benefit amount even though we know it is wrong.”¹¹
- SSA policy allows it to correct past SSI payments within 2 years. Unlike the OASDI program, the Agency can correct future SSI payments when it finds an error because SSA considers each month's payment to be an initial determination in which there is “deemed” no changes in the factors of eligibility or payment amount.¹²

According to SSA, it created this policy to (1) protect beneficiaries from the inconvenience or hardship that could result from the correction of an Agency error and (2) ease administration of the program. SSA limits the circumstances under which it may change its decisions to ensure individuals can rely on the determinations and decisions made in its claims. SSA policy states, “When a determination or decision is made with respect to entitlement, amount, or the actual payment of benefits . . . the individual to whom that determination or decision applies should be able to rely on it correctness.”¹³

Although SSA must follow its administrative finality policy while that policy is in place, the *Social Security Act* grants the Commissioner the authority to set this policy by regulations.¹⁴ SSA can change its administrative finality policy as it deems appropriate.

Methodology

We reviewed SSA Office of the Inspector General (OIG) reports, The Law Library of Congress' studies, and the administrative finality policies of other Federal agencies. We also reviewed the notes from SSA's administrative finality workgroup meetings and answers from SSA to our questions. See Appendix A for our scope and methodology.

¹⁰ SSA, POMS, GN 03101.070 (June 17, 2011).

¹¹ Rules of Administrative Finality, 78 Fed. Reg. 46,309, p. 46,310 (July 31, 2013).

¹² SSA, POMS, SI 04070.010, A.3 (March 24, 2017).

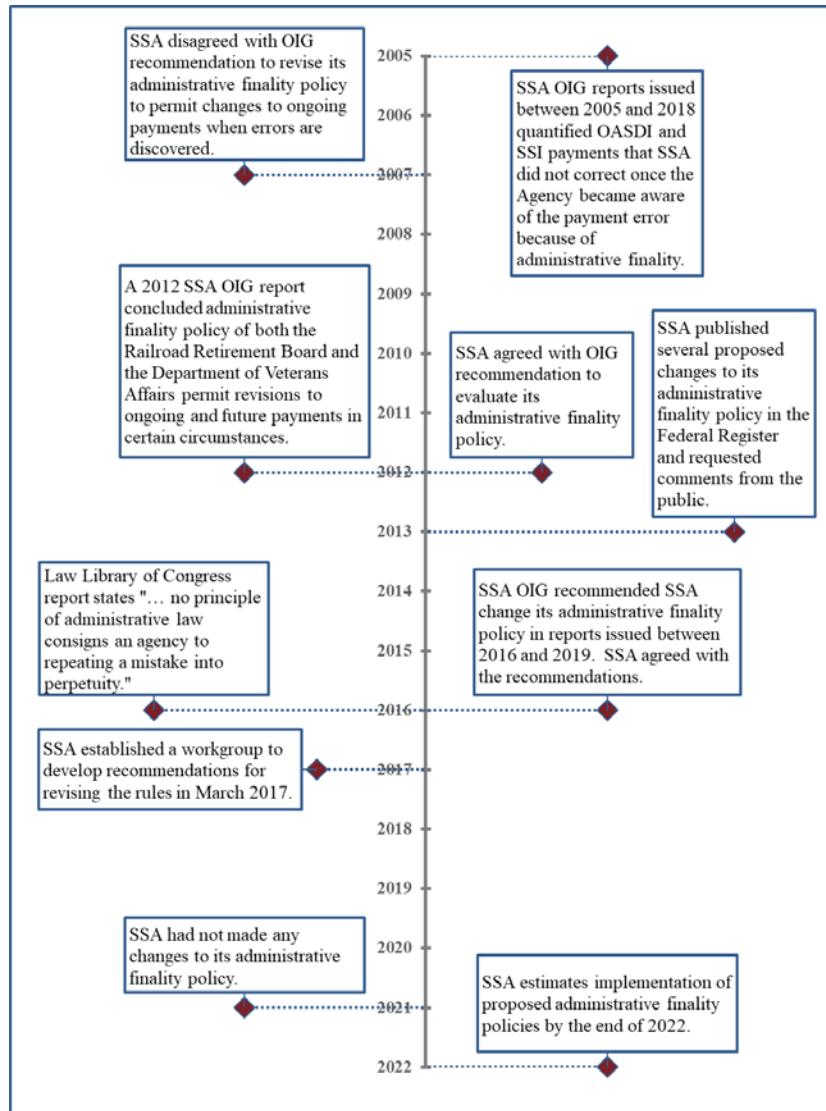
¹³ SSA, POMS, GN 04001.001, C (September 9, 2011).

¹⁴ *Social Security Act*, 42 U.S.C. §§ 902(a)(5), 405(a) (govinfo.gov 2018).

RESULTS OF REVIEW

Our prior work has shown that SSA cannot correct millions of ongoing OASDI payments because of its administrative finality policy. Although SSA agreed with our recommendations to evaluate its administrative finality policies since 2012, as of April 2021, SSA had not finalized its decision on policy changes.¹⁵ See Figure 1.

Figure 1: Summary of Actions Related to Administrative Finality



¹⁵ According to the *Standards of Internal Control in the Federal Government*, “[m]anagement completes and documents corrective actions . . . on a timely basis. These corrective actions include resolution of audit findings . . .” GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G, pp. 68 and 69 (2014).

Ongoing Improper Payments Not Corrected Because of Administrative Finality

During the last 15 years, we have issued five reports that quantified ongoing OASDI payments that SSA could not correct because of administrative finality. Examples follow.

- A 2007 report found SSA could not assess overpayments to 44,000 OASDI beneficiaries or correct future payments to 26,000 beneficiaries because of administrative finality.¹⁶ This report recommended, “SSA should consider revisions to its rules and regulations that will permit changes to the ongoing OASDI benefit payments whenever errors are discovered.”¹⁷
- A 2018 report estimated SSA would continue paying approximately 21,000 OASDI beneficiaries more than they were entitled to,¹⁸ because it applied administrative finality and could not correct payment errors related to government pension offset¹⁹ and the windfall elimination provision.²⁰ This report recommended SSA, “Make a decision on whether it should revise its rules on administrative finality to allow for the correction of the Windfall Elimination Provision and Government Pension Offset overpayments for the population of the dually entitled beneficiaries identified by our audits.”²¹

See additional information in Appendix B, Table B–1.

¹⁶ SSA, OIG, *Administrative Finality in the Old-Age, Survivors and Disability Insurance Program*, A-01-07-27029, p. 3 (September 2007).

¹⁷ SSA, OIG, *Administrative Finality in the Old-Age, Survivors and Disability Insurance Program*, A-01-07-27029, p. D-2 (September 2007).

¹⁸ SSA, OIG, *Follow-up: Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset*, A-09-17-50252, pp. 3, 7, and 8 (August 2018). Other reports on this topic include *Windfall Elimination Provision Exemptions*, A-13-17-34132 (August 2019); *Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset*, A-09-12-11210 (January 2013); and *Dually Entitled Beneficiaries who are Subject to Government Pension Offset and the Windfall Elimination Provision*, A-09-07-27010 (September 2008).

¹⁹ Government pension offset reduces monthly Social Security benefits for spouses, divorced spouses, and widows who also receive a pension based on their own employment for a Federal, State, or local government not covered by Social Security. The government pension offset reduction is generally equal to two-thirds of the government pension. *Social Security Act*, 42 U.S.C. § 402(k)(5) (govinfo.gov 2018); 20 C.F.R. §404.408a(d) (govinfo.gov 2020); and SSA, *POMS*, GN 02608.100 (December 2, 2020).

²⁰ The windfall elimination provision can reduce OASDI benefits for beneficiaries who worked for an employer that did not withhold Social Security taxes from their salaries, such as a government agency or an employer in another country. *Social Security Act*, 42 U.S.C. § 415(a)(7)(A)-(B) (govinfo.gov 2018); and 20 C.F.R. § 404.213 (govinfo.gov 2020), and SSA, *POMS*, RS 00605.360 (June 24, 2013).

²¹ SSA, OIG, *Follow-up: Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset*, A-09-17-50252, p. C-2 (August 2018).

The Social Security Administration Agreed to Reconsider its Administrative Finality Policy but Had Made No Changes as of April 2021

In a September 2007 report, we first recommended SSA revise its administrative finality policy.²² SSA disagreed with that recommendation. However, SSA agreed with a recommendation in our July 2012 report to re-evaluate its administrative finality policies.²³ From 2016 through 2019, we issued three additional reports with recommendations that SSA finalize changes to its administrative finality policy regarding whether the Agency should continue paying incorrect future benefits.²⁴ SSA agreed with the recommendations.

For example, in a 2016 report, we recommended that SSA “Finalize changes to its administrative finality policy regarding whether the agency should continue to pay prospective benefits even where administrative finality currently prohibits reopening the determination.” SSA responded, “We agree. We will continue to work on finalizing our policy changes.”²⁵ As of April 2021—over 8 years after SSA agreed with the recommendation in our 2012 report—SSA had not implemented it. See Appendix C for more details on our prior recommendations.

SSA provided us with additional detail on the time involved in its response to our recommendations to update its policy.

The administrative finality rules are complex, long standing, and span across almost all areas of our programs. With this in mind, we have taken a deliberative approach to revising the rules, while also juggling competing agency priorities, which has resulted in the rules revision effort taking an extended amount of time. We convened a cross-component workgroup (whose efforts extended over multiple years) to review the current administrative finality rules and propose revisions. This group of well-rounded agency experts provides insight into the different facets of the administrative finality policy and ways to improve its application.

The main hurdle to completing this effort has been finding data to support the rules revision. There is no specific collection source to provide administrative finality information. For that reason, we have taken a multi-faceted approach, including a request that the [Law] Library of Congress review administrative finality rules from other government agencies. Finally, we are working to obtain data to inform decision

²² SSA, OIG, *Administrative Finality in the Old-Age, Survivors and Disability Insurance Program*, A-01-07-27029, p. 6 (September 2007).

²³ SSA, OIG, *Significance of Administrative Finality in the Social Security Administration’s Programs*, A-08-11-21107, p. 6 (July 2012).

²⁴ SSA, OIG, *Old-Age, Survivors and Disability Insurance Benefits Affected by Federal Pensions*, A-13-16-23006 (September 2016); *Follow-up: Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset*, A-09-17-50252 (August 2018); and *Windfall Elimination Provision Exemptions*, A-13-17-34132 (August 2019).

²⁵ SSA, OIG, *Old-Age, Survivors and Disability Insurance Benefits Affected by Federal Pensions*, A-13-16-23006, p. C-2 (September 2016).

making and ensure that any administrative finality rules revisions are evidence-based. We expect to receive this data in [Fiscal Year] 2021.

Federal Register Notice and Request for Public Comment

In July 2013, SSA published proposed changes to its administrative finality policy in the Federal Register for public comment. SSA laid out the following reasons for the proposed rule changes.

1. We take our responsibility as effective stewards of the trust funds very seriously. Modifying our rules would enable us to take corrective action on more cases, and could decrease the amount of improper payments that we make.
2. Our current rules are complex to administer. The fact that our rules under [OASDI] and [SSI] contain different timeframes for reopening for good cause can result in confusion for our adjudicators and the public, particularly in situations where an individual is concurrently receiving benefits under title II and title XVI of the [Social Security] Act.
3. The current rules may prevent us from making changes regardless of the possible outcome for the individual. For example, if an individual presents or we discover new and material evidence after the time period that would allow us to reopen, we cannot take corrective action and revise the determination or decision. Modifying our rules to change certain timeframes for reopening may enable us to take corrective actions on more cases.
4. The [OIG] has recommended that we review our rules on administrative finality to find ways that will allow us to correct more erroneous payments.
5. Some of our administrative finality rules have not been revised in sixty years. Over the years, there has been an increase in our workloads and the complexity of our programs. Updating the rules would allow us to reflect these changes.
6. Finally, modifying our current rules would enable us to streamline and simplify our rules on administrative finality. We believe this would allow us to operate more efficiently in a challenging, limited-resource environment.²⁶

SSA asked for comments concerning whether and how it should change its administrative finality policy in the Federal Register posting. SSA received seven responses to the request for public comment. While four respondents did not address the proposed changes to correct ongoing benefits, three disagreed with them, asserting that the focus should be on ensuring

²⁶ Rules of Administrative Finality, 78 Fed. Reg. 46,309, p. 46,310 (July 31, 2013).

correct initial determinations.²⁷ SSA told us, “We evaluated and discussed the comments received. We used the comments as the starting point for our rules revision effort.” See *SSA Administrative Finality Workgroup* below for additional information on SSA’s rules revision efforts.

Other Programs Allow Revisions to Ongoing Payments

In response to a request from SSA, the Law Library of Congress studied the application of administrative finality in benefit determinations in seven other Federal agencies²⁸ as well as government benefit programs in seven other countries (see Table 2).²⁹ Many of the other agencies and countries limit the time considered when assessing past overpayments—similar to SSA. The Law Library of Congress Reviews did not discuss whether other U.S. agencies or countries apply administrative finality in the case of underpayments or whether they bar the correction of ongoing payments. However, the Law Library of Congress report states, “A government agency may correct a mistake, and no principle of administrative law consigns an agency to repeating a mistake into perpetuity. Administrative agencies have the inherent authority to correct adjudications which appear to be erroneous.”³⁰ This supports our recommendations that SSA change its policy to allow for the correction of future payments.

²⁷ The Director of Government Affairs of the National Organization of Social Security Claimants’ Representatives, stated, “We believe that Congress’s failure to adequately fund the agency’s administrative budget over the past few years has had a greater effect on SSA’s ability to make the correct decision at the right time, rather than the perceived limitations of reopening regulations.” Ethel Zelenske, *Re: Request for comments on SSA’s rules of administrative finality, Docket No. SSA-2013-0011*, Regulations.gov, p. 4 (September 26, 2013).

²⁸ The Law Library of Congress, Global Legal Research Center, *Administrative Finality in Benefits Determinations: A Review of US Legal, Regulatory, and Social Science Materials*, Report for the Social Security Administration, LL File No. 2016-012840 (2016).

²⁹ The Law Library of Congress, Global Legal Research Center, *Administrative Finality in Benefits Determinations - Australia • Canada • England and Wales • France • Germany • Israel • Japan*, Report for the Social Security Administration, LL File No. 2016-012832 (2016).

³⁰ CORPUS JURIS SECUNDUM (C.J.S.) *Public Administrative Law and Procedure*, vol. 73A § 361 (2015); quoted in The Law Library of Congress, Global Legal Research Center, *Administrative Finality in Benefits Determinations: A Review of US Legal, Regulatory, and Social Science Materials*, Report for the Social Security Administration, LL File No. 2016-012840, pp. 19 and 20 (2016).

Table 2: Agencies and Countries Included in the Law Library of Congress' Studies

Agencies	Countries
Center for Medicare & Medicaid Services	Australia
Department of Agriculture's Supplemental Nutrition Assistance Program	Canada
Department of Defense	England and Wales
Department of Labor's Office of Workers' Compensation Programs	France
Department of Veterans Affairs	Germany
Office of Personnel Management	Israel
Railroad Retirement Board	Japan
Social Security Administration	

We also compared SSA's administrative finality policy to those of other agencies and found the Railroad Retirement Board and Department of Veterans Affairs' administrative finality policies permit revisions to ongoing and future payments in more circumstances than SSA's administrative finality policy.

The Railroad Retirement Board allows for final decisions to be reopened at any time to correct specific errors beyond what SSA policy allows. For example, a decision may be reopened at any time when it is incorrect because of a failure to apply either a reduction or the correct reduction amount to a specific component of an annuity. Reductions resulting from these corrections apply to the months following the month of corrective action.³¹ The Railroad Retirement Board also allows for a final decision to be reopened at any time if "The claimant shows that it is to his or her advantage to select a later annuity beginning date. . ."³² This policy would allow for the correction of future underpayments to the beneficiary.

The Department of Veterans Affairs allows final and binding decisions to be revised based on both "clear and unmistakable error" and "difference of opinion." In the case of clear and unmistakable error, "For the purpose of authorizing benefits . . . a reversal or revision of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision."³³ In the case of other reductions, including those caused by difference of opinion, "Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit."³⁴ This policy allows the correction of past and future over- and underpayments.

³¹ 20 C.F.R. § 261.2(c)(10) (govinfo.gov 2020).

³² 20 C.F.R. § 261.2(c)(9) (govinfo.gov 2020).

³³ 38 C.F.R. §§ 3.105(a) and 3.105(b) (govinfo.gov 2020). In some cases of reduction or discontinuance of compensation or pension payments, the award will be reduced or discontinued effective following a 60-day period for the presentation of evidence to show that compensation or pension benefits should be continued at their present level. 38 C.F.R. §§ 3.105(e) and 3.105(f) (govinfo.gov 2020).

³⁴ 38 C.F.R. § 3.500 (govinfo.gov 2020).

SSA Administrative Finality Workgroup

In March 2017, SSA established a workgroup to develop recommendations for revising its administrative finality policy.³⁵ In 2017, the workgroup regularly met to discuss streamlining and updating the administrative finality policy.

Although the workgroup considered the potential benefits of OIG's recommendations, the group initially rejected changing administrative finality policy to allow the correction of ongoing improper payments because of the disadvantages listed below.

- Changes could be harsh on individuals relying on a certain monthly payment amount.
- There would be an additional large workload to reopen and issue revised determinations for every incorrect determination with due process.
- Appeals to revised determinations would potentially add to the hearings backlog.³⁶

The workgroup met once in March 2019 to introduce a new workgroup lead and discuss one item related to the recommendations. See Table 3.

Table 3: Workgroup Meeting Dates

Year	Day of Meeting
2017	March 20, April 24, May 8, May 22, July 31, October 23, December 4
2018	April 23, September 10, September 24
2019	March 14

Following the last workgroup meeting in March 2019, the workgroup turned its efforts to obtaining data to support its recommendations. According to SSA, although regular meetings of the full workgroup were no longer needed, members of the workgroup worked with various agency components to obtain data to support its recommendations. SSA informed us “The workgroup expects to present options to the [SSA] Commissioner in Fiscal Year 2021,” with an estimated implementation date of December 31, 2022.

³⁵ The workgroup included employees from SSA’s Offices of Quality Review, Disability Policy, General Counsel, Disability Determinations, Electronic Services and Technology, Public Services and Operations Support, Income Security Programs, Appellate Operations, and Hearings Operations.

³⁶ If a claimant is dissatisfied with an SSA decision, he/she can appeal it. SSA, *POMS*, GN 04001.090, A (September 9, 2011). SSA’s hearings and appeal process has experienced timeliness issues and growing backlogs with average processing times reaching as high as 595 days in Fiscal Year 2018. SSA, OIG, *Fiscal Year 2018 Inspector General’s Statement on the Social Security Administration’s Major Management and Performance Challenges*, A-02-18-50307, p. 1 (November 2018). While SSA continues to reduce hearing pending levels, it still has a backlog of pending cases. SSA considers any pending level that keeps the average processing time for hearings above 270 days as a “backlog.” As of the end of September 2020, the average processing time for hearings was 355 days. SSA, OIG, *Fiscal Year 2020 Inspector General’s Statement on the Social Security Administration’s Major Management and Performance Challenges*, A-02-19-50825, p. 4 (November 2020).

CONCLUSION

SSA has not timely addressed our prior recommendations to update its administrative finality policy. In the 8 years since SSA first agreed with our recommendation to update its policy, the Agency has taken some steps, but, as of April 2021, it had not finalized its decision.

RECOMMENDATION

We recommended SSA finalize its decision on updating its administrative finality policy and execute an action plan with specific milestones to ensure any updates are implemented timely.

AGENCY COMMENTS

SSA agreed with the recommendation, see Appendix D.



Michelle L. Anderson
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed applicable sections of the *Social Security Act*.
- Reviewed the Social Security Administration’s (SSA) regulations, rules, policies, and procedures on administrative finality.
- Reviewed proposed changes to administrative finality policy and public comment received on these proposals.
- Reviewed the Law Library of Congress’ review of U.S. legal, regulatory, and social science materials regarding administrative finality in benefits determinations.¹
- Reviewed the Law Library of Congress’ review of administrative finality policies from other international benefits paying agencies.²
- Reviewed the Department of Veterans Affairs’ and Railroad Retirement Board’s regulations, rules, and policies on administrative finality.
- Reviewed Office of the Inspector General reports from 2005 to 2019 related to administrative finality.
 - Analyzed these reports’ scope, methodology, and findings with respect to administrative finality.
 - Identified reports that found SSA did not assess improper payments because of administrative finality but did not quantify the amounts.
 - Quantified report estimates of past and ongoing improper payments not corrected because of administrative finality.
- Reviewed SSA Office of Quality Review reports from 2012 to 2019 related to administrative finality.
- Obtained and reviewed information from SSA regarding the rationale behind current administrative finality policy, SSA response to the Office of Quality Review’s

¹ The Law Library of Congress, Global Legal Research Center, *Administrative Finality in Benefits Determinations: A Review of US Legal, Regulatory, and Social Science Materials*, Report for the Social Security Administration, LL File No. 2016-012840 (2016).

² The Law Library of Congress, Global Legal Research Center, *Administrative Finality in Benefits Determinations - Australia • Canada • England and Wales • France • Germany • Israel • Japan*, Report for the Social Security Administration, LL File No. 2016-012832 (2016).

recommendations regarding administrative finality, and information related to SSA's administrative finality workgroup.

We assessed the significance of internal controls necessary to satisfy our objective. This included an assessment of the five internal control components, control environment, risk assessment, control activities, information and communication, and monitoring. In addition, we reviewed the principles of internal controls associated with our objective. We identified the following component and principles as significant to the objective.

- Component 5: Monitoring
 - Principle 16: Perform Monitoring Activities.
 - Principle 17: Evaluate Issues and Remediate Deficiencies.

The principal entity audited was the Office of Income Security Programs under the Office of the Deputy Commissioner for Retirement and Disability Policy. We conducted our review between June 2020 and April 2021 in Boston, Massachusetts. 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 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.

Appendix B – REPORTS RELATED TO ADMINISTRATIVE FINALITY

The Office of the Inspector General (OIG) has issued several reports that discuss the Social Security Administration's (SSA) application of its administrative finality policy in its Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs. In these reports, we identified both over- and underpayments for beneficiaries and recipients that SSA did not resolve because administrative finality prevented it from correcting the payments.

Table B–1 shows reports related to ongoing/future payments SSA will not correct because of administrative finality.

Table B–1: Audit Projections of Ongoing Improper Payments SSA Will Not Correct Because of Administrative Finality

Title, Common Identification Number, and Issue Date	Number of Affected Beneficiaries	Estimate of Lifetime Improper Payments SSA Will Not Correct Because of Administrative Finality	Estimate of Annual Improper Payments SSA Will Not Correct Because of Administrative Finality
<i>Benefits Paid to Dually Entitled Title II Beneficiaries, A-01-06-26004 (August 2006)</i>	281	\$10,312,215	
<i>Administrative Finality in the Old-Age, Survivors and Disability Insurance Program, A-01-07-27029 (September 2007)</i>	25,801	\$49,767,698	
<i>Payment Accuracy of Dually Entitled Title II Beneficiaries, A-04-13-13014 (August 2014)</i>	664	\$10,279,135	
<i>Higher Benefits for Dually Entitled Widow(er)s Had They Delayed Applying for Retirement Benefits, A-09-18-50559 (February 2018)</i>	1,899		\$9,847,464
<i>Follow-up: Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset, A-09-17-50252 (August 2018)¹</i>	20,668		\$46,380,172
TOTAL	49,313	\$70,359,048	\$56,227,636

¹ The projections in this report are for ongoing improper payments identified in two prior audits conducted on this topic. SSA, OIG *Dually Entitled Beneficiaries Who are Subject to Government Pension Offset and the Windfall Elimination Provision, A-09-07-27010* (September 2008) and *Dually Entitled Beneficiaries Who are Subject to the Windfall Elimination Provision and Government Pension Offset, A-09-12-11210* (January 2013).

Table B–2 shows reports related to past OASDI and/or SSI payments SSA did not correct because it applied administrative finality.

Table B–2: OIG Report Projections of Past Payments SSA did not Correct Because of Administrative Finality

Title, Common Identification Number, and Issue Date	Number of Affected Beneficiaries	OASDI Payments Issued in the Past that SSA Will Not Correct	SSI Payments Issued in the Past that SSA Will Not Correct	Total Payments SSA issued in the Past That it Will Not Correct
<i>Disabled Supplemental Security Income Recipients with Earnings, A-01-04-14085 (April 2005)</i>	73,260		\$82,850,020	\$82,850,020
<i>Benefits Paid to Dually Entitled Title II Beneficiaries, A-01-06-26004 (August 2006)</i>	281	\$7,655,238		\$7,655,238
<i>Direct Deposit for Multiple Title XVI Recipients Into the Same Bank Account, A-02-06-25141 (March 2007)</i>	148		\$819,812	\$819,812
<i>Administrative Finality in the Old-Age, Survivors and Disability Insurance Program, A-01-07-27029 (September 2007)</i>	44,230	\$140,533,069		\$140,533,069
<i>Manual Computations of Supplemental Security Income Payments, A-07-09-19060 (June 2010)</i>	30,262		\$14,455,606	\$14,455,606
<i>Payment Accuracy of Dually Entitled Title II Beneficiaries, A-04-13-13014 (August 2014)</i>	664	\$7,644,626		\$7,644,626
<i>Widow(er)s Eligible for an Earlier Initial Month of Entitlement, A-09-17-50187 (August 2017)</i>	110,116	\$285,453,378		\$285,453,378
<i>Higher Benefits for Dually Entitled Widow(er)s Had They Delayed Applying for Retirement Benefits, A-09-18-50559 (February 2018)</i>	9,224	\$131,817,936		\$131,817,936
TOTAL	268,185	\$573,104,247²	\$98,125,438³	\$671,229,685⁴

² Of the total OASDI improper payments, \$156 million is projected dollars not assessed as overpayments and \$417 million is projected dollars not assessed as underpayments.

³ Of the total SSI improper payments, \$83 million is projected dollars not assessed as overpayments and \$15 million is projected dollars not assessed as underpayments.

⁴ Of the total improper payments, \$239 million is projected dollars not assessed as overpayments and \$432 million is projected dollars not assessed as underpayments.

Table B–3 shows reports that noted SSA would not correct some (a) past OASDI or SSI payments and/or (b) future OASDI payments because of administrative finality, but the reports did not quantify dollars.

Table B–3: OIG Reports that Did Not Quantify the Amount of Improper Payments Not Assessed Because of Administrative Finality

Title, Common Identification Number, and Issue Date
<i>Disabled Title II Beneficiaries With Earnings Reported on the Master Earnings File, A-01-03-13019 (July 2004)</i>
<i>Underpayments on Prior Supplemental Security Income Records, A-07-07-17034 (August 2007)</i>
<i>Supplemental Security Income Recipient Marriages Not Reported to the Social Security Administration, A-01-07-27109 (May 2008)</i>
<i>Unprocessed Manual Recalculations for Title II Payments, A-03-07-17090 (August 2008)</i>
<i>Dually Entitled Beneficiaries who are Subject to Government Pension Offset and the Windfall Elimination Provision, A-09-07-27010 (September 2008)</i>
<i>Supplemental Security Income Recipients with Unreported Vehicles, A-02-08-28038 (July 2009)</i>
<i>Manual Computations of Supplemental Security Income Payments, A-07-09-19060 (June 2010)</i>
<i>Emerge, Incorporated, an Organizational Representative Payee for the Social Security Administration, A-13-10-21087 (March 2011)</i>
<i>Supplemental Security Income Recipients with Unreported Real Property, A-02-09-29025 (June 2011)</i>
<i>Old-Age, Survivors and Disability Insurance Benefits Affected by State or Local Government Pensions, A-13-10-10143 (November 2011)</i>
<i>Supplemental Security Income Recipients Eligible For, or Receiving, Russian Pensions, A-01-12-21238 (December 2012)</i>
<i>The Social Security Administration's Development of Earnings Alerts for Supplemental Security Income Recipients, A-02-11-11185 (December 2012)</i>
<i>Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset, A-09-12-11210 (January 2013)</i>
<i>Using Bank Data to Identify Supplemental Security Income Recipients with Potential Overpayments, A-01-12-11223 (September 2013)</i>
<i>Processing Internal Revenue Service Alerts for Supplemental Security Income Recipients, A-03-13-13106 (December 2013)</i>
<i>Supplemental Security Income Recipients Who Have Earnings, A-01-16-50003 (December 2015)</i>
<i>Old-Age, Survivors and Disability Insurance Benefits Affected by Federal Pensions, A-13-16-23006 (September 2016)</i>
<i>Manually Reduced Cross-program Recovery Overpayments, A-06-17-50225 (July 2017)</i>
<i>Removal of Self-employment Income and the Impact on Social Security Benefits, A-03-16-50102 (February 2018)</i>
<i>Controls over Supplemental Security Income Applicants/Recipients' Transferring Ownership of Resources, A-02-16-50066 (May 2018)</i>
<i>Follow-up: Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset, A-09-17-50252 (August 2018)</i>
<i>Supplemental Security Income Recipients Who Have Not Had a Redetermination in Longer than 10 Years, A-01-17-50219 (August 2018)</i>
<i>Accuracy of Supplemental Security Income Payments to Recipients with Manually Deemed Income, A-07-18-50295 (August 2018)</i>
<i>Windfall Elimination Provision Exemptions, A-13-17-34132 (August 2019)</i>
<i>Beneficiaries with Representative Payees and Earnings, A-02-17-50143 (March 2020)</i>

Over- and Underpayments Because the Social Security Administration Misapplied Administrative Finality

Our 2005 audit on administrative finality in the SSI program found the rules of administrative finality were not consistently applied, resulting in overpayments assessed outside of the 24-month limit when no fraud or similar fault was found. SSA's Office of Quality Review also issued a number of reports with similar findings. The Office tracked over- and underpayments caused by the misapplication of administrative finality. If SSA changed the period administrative finality bars from correction that resulted in an incorrect overpayment, the error tracked is an underpayment in the same amount. If SSA made a change that resulted in an incorrect underpayment, the error tracked is an overpayment in the same amount. See Table B-4 for over- and underpayments because of the misapplication of administrative finality.

Table B-4: Over- and Underpayments in Millions Because of the Misapplication of Administrative Finality

Source	Title, Common Identification Number, and Issue Date	Under-payments	Over-payments	Total Deficiency Dollars
Office of the Inspector General	<i>Social Security Administration's Administrative Finality Rules, A-01-04-24024 (July 2005)</i>	\$74.7 ⁵		\$74.7
SSA's Office of Quality Review	<i>Title XVI Transaction Accuracy Review Report Findings Fiscal Year 2011 (June 2012)</i>	\$27.3	\$10.4	\$37.7
SSA's Office of Quality Review	<i>Title XVI Transaction Accuracy Review Report Fiscal Year 2012 (September 2013)</i>	\$25.1	\$20.2	\$45.3
SSA's Office of Quality Review	<i>Fiscal Year 2012 Title II Work Continuing Disability Review Quality Review Findings (February 2014)</i>	\$18.4	\$6.6	\$25.0
SSA's Office of Quality Review	<i>Fiscal Year 2013 Title II Work Continuing Disability Review Quality Review Findings (August 2014)</i>		\$420.7	\$420.7
SSA's Office of Quality Review	<i>Title XVI Transaction Accuracy Review Report Fiscal Year 2013 (August 2014)</i>	\$39.9	\$6.3	\$46.2
SSA's Office of Quality Review	<i>Title XVI Transaction Accuracy Review Report Fiscal Year 2014 (September 2015)</i>	\$31.0	\$27.6	\$58.6
SSA's Office of Quality Review	<i>Fiscal Year 2015 Title II Work Continuing Disability Review Quality Review Findings (October 2016)</i>		\$13.5	\$13.5
	TOTAL	\$216.4	\$505.3	\$721.7

⁵ We estimated SSA assessed approximately \$74.7 million in SSI overpayments beyond the 24-month limit when SSA found no fraud or similar fault. Consistent with the Office of Quality Review report findings, these are included in the underpayment column.

Appendix C – AUDIT RECOMMENDATIONS RELATED TO ADMINISTRATIVE FINALITY

The reports listed below included recommendations related to the Social Security Administration's (SSA) administrative finality policy in its Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs.

Administrative Finality in the Old-Age, Survivors and Disability Insurance Program, A-01-07-27029 (September 2007)

Recommendation: SSA should consider revisions to its rules and regulations that will permit changes to the ongoing OASDI benefit payments whenever errors are discovered.

Agency Response: We disagree. . . .ongoing readjudication of claims would place an administrative burden on the Agency's resources, as well as impact the public's reliance on the government's decision. Our regulations state that four years is a reasonable time limit for us to identify and correct any error on our records. Correcting a record more than four years in the past could cause undue hardship for our beneficiaries, as well as create extensive public relations issues for the Agency. We are concerned that making decisions to correct and reduce beneficiary payments beyond the four year time span may erode public trust for our Social Security programs. Any changes in the existing rules would need to be carefully weighed to determine the potential impact of any changes on both the beneficiaries and the Agency. At this time we do not agree that it would be in the Social Security program's best interest to perform ongoing OASDI benefit recalculations, as to do so would require additional administrative resources and/or the deferral of other Agency work.

Finally, Section 205(c) of the Social Security Act (and implementing regulations at 20 CFR 404.820ff) limits the circumstances in which earnings records from past years may be revised downward. This, in turn, may limit the ability of SSA in many cases to make the sorts of downward adjustments in benefit amounts that are intended in the recommendation. It may be that, in the absence of a statutory change to section 205(c), the impact of the recommendation with respect to SSA's regulatory administrative finality policy may be limited.

Status of Recommended Changes: SSA has considered revisions to its rules and regulations that will permit changes to the ongoing OASDI benefit payments whenever errors are discovered. On July 31, 2013 SSA published a Federal Register Notice¹ requesting suggestions and comments from the public on simplifying its administrative finality policy. However, as of April 2021, SSA has not implemented revisions to its policy.

¹ *Rules of Administrative Finality*, 78 Fed Reg. 46,309, p. 46,310 (July 31, 2013)

Significance of Administrative Finality in the Social Security Administration's Programs, A-08-11-21107 (July 2012)

Recommendation: Evaluate its administrative finality policies and regulations and consider revising the rules to allow for the collection of more debt.

Agency Response: We agree. We evaluated our administrative finality policies and regulations and are considering four proposals for changing the rules of administrative finality. On July 31, 2013, we published a Federal Register Notice to request comments and suggestions from the public on a few possible changes to our rules.

Status of Recommended Changes: As of April 2021, SSA has not implemented revisions to its policy.

Old-Age, Survivors and Disability Insurance Benefits Affected by Federal Pensions, A-13-16-23006 (September 2016)

Recommendation: Finalize changes to its administrative finality policy regarding whether the agency should continue to pay prospective benefits even where administrative finality currently prohibits reopening the determination.

Agency Response: We agree. We will continue to work on finalizing our policy changes.

Status of Recommended Changes: As of April 2021, SSA has not implemented revisions to its policy.

Follow-up: Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset, A-09-17-50252 (August 2018)

Recommendation: Make a decision on whether it should revise its rules on administrative finality to allow for the correction of the Windfall Elimination Provision and Government Pension Offset overpayments for the population of the dually entitled beneficiaries identified by our audits.

Agency Response: We agree.

Status of Recommended Changes: As of April 2021, SSA has not implemented revisions to its policy.

Windfall Elimination Provision Exemptions, A-13-17-34132
(August 2019)

Recommendation: We recommend SSA finalize changes to its administrative finality policy regarding whether the Agency should continue to pay prospective benefits even where administrative finality currently prohibits reopening the determination.

Agency Response: We agree.

Status of Recommended Changes: As of April 2021, SSA has not implemented revisions to its policy.

Appendix D – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: May 25, 2021

Refer To: TQA-1

To: Gail S. Ennis
Inspector General

A handwritten signature in black ink, appearing to read "Scott Frey".

From: Scott Frey
Chief of Staff

Subject: Office of the Inspector General Draft Report “The Social Security Administration's Administrative Finality Policy” (A-01-19-50859) -- INFORMATION

Thank you for the opportunity to review the draft report. Administrative finality is a complex subject that touches every aspect of the benefit programs we administer. We are carefully considering changes to our longstanding regulations and policies to ensure that we protect the beneficiaries and recipients we serve. In addition, any changes must make the policies easier to administer, which will help reduce improper payments.

We agree with the recommendation to finalize our decision about updating our administrative finality policy, and make any resulting changes timely.

Please let me know if I can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.



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