

Audit Report

Individuals Who Have Appeals or
New Claims After Cooperative
Disability Investigations May Have
Supported Prior Denial or Cessation
Determinations

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: August 8, 2016 **Refer To:**

To: The Commissioner

From: Acting Inspector General

Subject: Individuals Who Have Appeals or New Claims After Cooperative Disability Investigations May Have Supported Prior Denial or Cessation Determinations (A-07-16-50137)

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether electronic folders for subsequent appeals or new claims contained documentation of Cooperative Disability Investigation Units' reports of investigations that may have provided evidence to support prior denial or cessation determinations.

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



Gale Stallworth Stone
Gale Stallworth Stone

Attachment

Individuals Who Have Appeals or New Claims After Cooperative Disability Investigations May Have Supported Prior Denial or Cessation Determinations

A-07-16-50137



August 2016

Office of Audit Report Summary

Objective

To determine whether electronic folders for subsequent appeals or new claims contained documentation of Cooperative Disability Investigation (CDI) Units' reports of investigations (ROI) that may have provided evidence to support prior denial or cessation determinations.

Background

In Fiscal Year (FY) 1998, the Social Security Administration (SSA) and Office of the Inspector General (OIG) jointly established the CDI program. The CDI program pools the resources and expertise of SSA, OIG, State disability determination services (DDS), and State or local law enforcement agencies to prevent fraud in SSA's disability programs. CDI Units investigate disability cases under SSA's Title II and XVI programs. The CDI program's primary mission is to obtain evidence that can resolve questions of potential fraud before benefits are paid. CDI Units also provide reports to DDS examiners on questionable in-payment beneficiaries during continuing disability reviews. As of March 2016, there were 37 CDI Units covering 32 States; Washington, D.C.; and the Commonwealth of Puerto Rico. SSA plans to add one additional CDI Unit in FY 2016.

Findings

During FYs 2010 through 2014, CDI Units completed investigations on 18,486 individuals who were subsequently denied disability benefits after an initial application or had benefits ceased after a continuing disability review. At the time of our audit:

- 5,255 of these individuals were receiving benefits. From these, we randomly selected 50 individuals who met the criteria of having (1) a certified electronic folder and (2) an allowance decision after appeal to the reconsideration or administrative law judge (ALJ) hearing level or filing a new disability claim after the date of the CDI Unit's investigation.
- 13,231 of these individuals were not receiving benefits at the time of our audit. From these, we randomly selected 50 individuals who met the criteria of having a (1) certified electronic folder and (2) denial or cessation determination after appeal to the reconsideration or ALJ hearing level or filing a new disability claim after the date of the CDI Unit's investigation.

Our review of these 100 individuals found the following:

- Administrative law judges (ALJ) were less likely to have included a discussion of the ROI in their decision rationales for individuals allowed benefits than in rationales for individuals denied benefits.
- Employees were less likely to have flagged electronic folders alerting adjudicators to the ROI for individuals allowed benefits.
- Employees were less likely to have carried the ROI forward to the new claim folders for individuals allowed benefits based on a new claim.

Recommendations

We made three recommendations to address our findings.

SSA agreed with our recommendations.

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ABBREVIATIONS

ALJ	Administrative Law Judge
CDI	Cooperative Disability Investigations
CDR	Continuing Disability Review
C.F.R.	Code of Federal Regulations
DDS	Disability Determination Services
FY	Fiscal Year
HALLEX	Hearings, Appeals, and Litigation Law Manual
MBR	Master Beneficiary Record
OCIG	Office of Counsel to the Inspector General
OIG	Office of the Inspector General
POMS	Program Operations Manual System
ROI	Report of Investigation
SSA	Social Security Administration
SSR	Supplemental Security Record
U.S.C.	United States Code

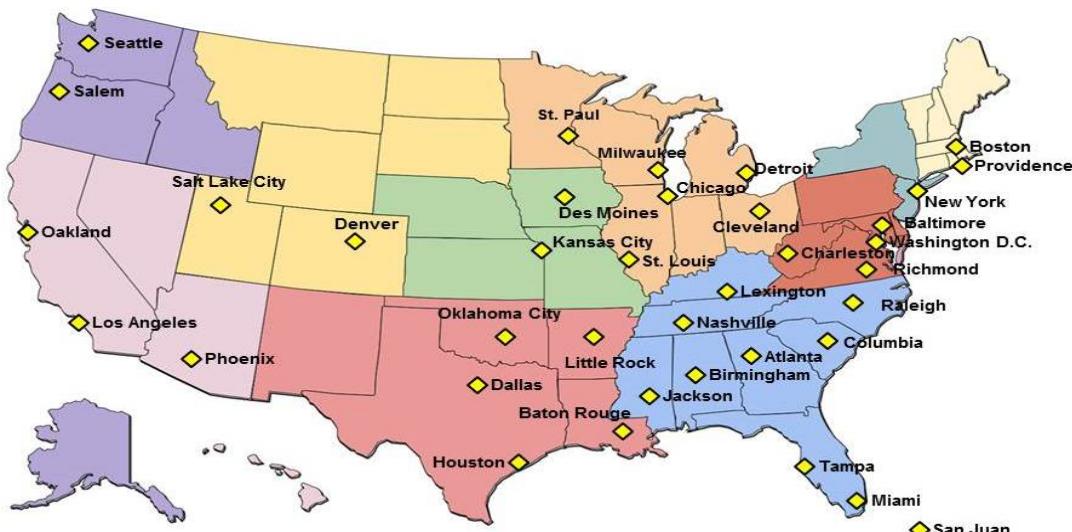
OBJECTIVE

Our objective was to determine whether electronic folders for subsequent appeals or new claims contained documentation of Cooperative Disability Investigation (CDI) Units' reports of investigations (ROI) that may have provided evidence to support prior denial or cessation determinations.

BACKGROUND

In Fiscal Year (FY) 1998, the Social Security Administration (SSA) and Office of the Inspector General (OIG) jointly established the CDI program. The CDI program pools the resources and expertise of SSA, OIG, State disability determination services (DDS), and State or local law enforcement agencies to prevent fraud in SSA's disability programs. CDI Units investigate disability cases under SSA's Title II and XVI programs. A primary mission of the CDI program is to obtain evidence that can resolve questions of potential fraud before benefits are paid.¹ CDI Units also provide DDS examiners reports on questionable in-payment cases during continuing disability reviews (CDR).² As of March 2016, there were 37 CDI Units covering 32 States; Washington, D.C.; and the Commonwealth of Puerto Rico (see Figure 1). SSA plans to add one additional CDI Unit in FY 2016.

Figure 1: CDI Units as of March 2016



¹ We use the terms “benefits” throughout the report to refer to both Title II benefits and Title XVI payments.

² SSA is required to periodically perform CDRs on individuals who are entitled to Title II or Title XVI payments based on disability to determine whether there is medical improvement related to the ability to work and the individual can engage in substantial gainful activity. See 20 C.F.R. §§ 404.1594(a) and 416.994(a).

From FY 1998 through March 2016, CDI efforts resulted in \$3.4 billion in projected savings to SSA's disability programs and \$2.3 billion in projected savings to non-SSA programs. In FY 2015, CDI efforts resulted in projected savings of \$406 million to SSA's disability programs.

Most CDI Units comprise an OIG Special Agent who serves as the team leader, State DDS and SSA employees who act as program experts, and State or local law enforcement officers.³ Using each member's skills, the CDI Units receive cases identified as suspicious by the DDS, and, where appropriate, investigate these claims.⁴ When the CDI Unit completes the investigation, it sends the DDS a report detailing the investigation. For initial claims, DDS employees determine whether a person's disability claim is allowed or denied and, for CDRs, whether the person's disability continues or has ceased.⁵

An individual who received a denial after an initial claim for benefits or a cessation after a CDR has multiple levels of appeal. The reconsideration level is the first step in the appeals process for a claimant who is dissatisfied with the initial determination.⁶ Reconsideration involves a thorough review of all evidence from the initial determination and any new evidence provided.⁷ Claimants who are denied benefits or have benefits ceased at the State DDS can appeal to the hearing level in SSA's Office of Disability Adjudication and Review. This process generally entails a hearing before an administrative law judge (ALJ) who considers the evidence in the file, any new evidence, and any testimony. The ALJ then applies SSA disability standards to the case and issues a new decision.

³ Some CDI units are operating without a law enforcement partner.

⁴ CDI Units receive referrals from SSA as well as other sources, such as private citizens and law enforcement agencies. However, the referrals are typically from DDS employees.

⁵ Some investigations result in criminal prosecution. Cases the Department of Justice does not accept for criminal or civil prosecution may result in civil monetary penalties or administrative sanctions. The OIG's Office of the Counsel to the Inspector General (OCIG) initiates civil monetary penalties after the OIG's Office of Investigations completes an investigation and the Department of Justice has declined to pursue the case both criminally and civilly. If OCIG does not pursue a civil monetary penalty, it may refer the case to SSA for possible administrative sanctions. Administrative sanctions are penalties pursued by SSA for individuals who provide false or misleading information to SSA or omit material information.

⁶ There is no reconsideration step in 10 States. In these States, appeals go directly to an ALJ for a hearing. SSA, POMS DI 12015.100 B.2 and C (January 15, 2014).

⁷ SSA, POMS, DI 27001.001 A (October 29, 2014).

RESULTS OF REVIEW

During FYs 2010 through 2014, CDI Units completed investigations on 18,486 individuals who were denied disability benefits after an initial application or had benefits ceased after a CDR.⁸ At the time of our audit:

- 5,255 of these individuals were receiving benefits. From these, we randomly selected 50 individuals who met the criteria of having (1) a certified electronic folder and (2) an allowance decision after appeal to the reconsideration or ALJ hearing level or filing a new disability claim after the date of the CDI Unit's investigation (see Table 1).
- 13,231 of these individuals were not receiving benefits at the time of our audit. From these, we randomly selected 50 individuals who met the criteria of having a (1) certified electronic folder and (2) denial or cessation determination after appeal to the reconsideration or ALJ hearing level or filing a new disability claim after the date of the CDI Unit's investigation (see Table 1).⁹

Table 1: Level of Final Determination for Sampled Individuals

Level of Final Determination	Number of Allowed Sampled Individuals	Number of Denied Sampled Individuals
Appeal - ALJ Hearing	26	15
Appeal - Reconsideration	7	9
New Claim	17	26
Total	50	50

We reviewed the electronic folders for the 100 individuals and found employees did not always document ROIs for individuals allowed or denied disability benefits after appeals or new claims. However, the lack of documentation was much more evident for individuals allowed disability benefits. Specifically, we found the following.

- ALJs were less likely to have included a discussion of the ROI in their decision rationales for individuals allowed benefits than in rationales for individuals denied benefits.
- Employees were less likely to have flagged electronic folders alerting adjudicators to the ROI for individuals allowed benefits.

⁸ All 18,486 individuals were either denied benefits after an initial application for disability or had benefits ceased after a CDR. CDI units received approximately 33,000 allegations during FYs 2010 through 2014. However, not all allegations resulted in investigations, and not all investigations may have provided evidence in support of a denial or cessation determination.

⁹ See Appendix A for our detailed scope and methodology.

- Employees were less likely to have carried the ROI from the prior denial or cessation forward to the new claim folders for individuals allowed benefits on a new claim.

This analysis indicated adjudicators might not have been aware of evidence from the ROI that may have supported a denial or cessation determination.

ROI Not Discussed in Decision Rationales

Our review found it was less likely that ALJs included a discussion of the ROI in their decision rationales for individuals allowed benefits. Specifically, of 26 individuals allowed after appeal to the ALJ hearing level (see Table 1), we found ALJs did not discuss the ROI for 16 individuals (62 percent). Conversely, of the 15 individuals denied after appeal to the ALJ hearing level (see Table 1), we found ALJs did not discuss the ROI for 2 individuals (13 percent).

According to SSA, there can be legitimate reasons an ALJ may omit discussion of an ROI from the decision rationale. For example, the finding of disability in the ALJ's appeal decision may be completely unrelated to impairments alleged at the initial or reconsideration levels discussed in the ROI. Further, SSA noted the ROI may have covered a different period of alleged disability than that considered in the ALJ decision.

However, of the 16 individuals who did not have the ROI discussed in the decision rationales, 10 had the same primary impairment at the appeal as when the CDI Unit performed its investigation. Further, in approving the appeals, ALJs determined 14 of the 16 individuals' disabilities began before the original denial or cessation decisions.¹⁰ As such, the alleged disability timeframes considered at the ALJ level appeared to overlap with the timeframes covered in the CDI Units' ROIs. In total, 8 of the 16 individuals had the same primary impairment at both levels analyzed with the approved disabilities beginning before the original denial or cessation decision with the documented ROI. Based on this analysis, it appears the ALJs should have addressed the ROIs within the decision rationales for at least 8 of the 26 individuals (31 percent).

During our audit period, SSA's policy required that ALJs address the ROIs as well as any supporting evidence in the ALJs' decision rationales.¹¹ However, in March 2016, after we initiated our review, SSA updated its policy and removed the requirement that ROIs be discussed in ALJs' decision rationales.¹² The updated policy requires that ALJs discuss any evidence that raises issues of fraud or similar fault, which could include ROIs. However, because it appears at least 31 percent of the decision rationales for individuals allowed benefits should have had the ROIs discussed and did not before the policy change, we are concerned the lack of a specific

¹⁰ The disability onset date, or established onset date, is the first day the individual meets the definition of disability or statutory blindness as defined in the Social Security Act and regulations and met certain entitlement or eligibility factors. SSA, POMS DI 25501.200 A (August 10, 2015).

¹¹ SSA, HALLEX, I-2-8-25 C.2.c (September 2, 2005).

¹² SSA, HALLEX, I-2-8-25 B.4 (March 10, 2016).

requirement could lead ALJs to omit any discussion of ROIs from decision rationales. Therefore, we recommend that SSA reconsider whether the requirement that ALJs document the use of the ROI in the decision rationale should be re-established in policy.¹³

Electronic Folders Not Flagged

Our review found employees were less likely to have flagged electronic folders alerting adjudicators to the ROI for individuals allowed benefits. Specifically, of the 33 individuals allowed after appeals (see Table 1), we found 21 of their electronic folders (64 percent) were not flagged (see Table 2). Conversely, of the 24 individuals denied after appeals, we found 14 of their electronic folders (58 percent) were not flagged (see Table 2). Our analysis indicated that flagging cases for which CDI Units conducted an investigation alerted adjudicators to the ROI, which might have supported the denial or cessation on appeal.

Table 2: Folders Not Flagged for Individuals Who Appealed to Reconsideration or ALJ Hearing Levels

	Number of Allowed Sampled Individuals	Number of Denied Sampled Individuals
Total Appeals (Reconsideration and ALJ Hearing, see Table 1)	33	24
Electronic Folder Not Flagged	21	14
Percent of Total	64	58

In a prior audit, we recommended SSA provide instructions on what component is responsible for flagging electronic folders to identify cases where a CDI Unit conducted an investigation. SSA responded that it had instructions for flagging folders to address the recommendation.¹⁴ However, this review continued to identify electronic folders without any reference of the existence of an ROI. Accordingly, we recommend SSA update its policies to outline the process employees should follow to alert adjudicators of the existence of an ROI in the electronic folder.

ROIs Not Included in New Claim Folders

Our review found employees were less likely to have carried the ROI from the prior denial or cessation forward to the new claim folders for individuals allowed benefits on a new claim. Specifically, of the 17 individuals allowed after a new claim (see Table 1), we found 13 ROIs (76 percent) were not carried forward (see Table 3). Conversely, of the 26 individuals denied

¹³ We previously recommended SSA request the Chief ALJ to remind ALJs to document the use of the ROI in the decision rationales, and SSA agreed. SSA, OIG, *Office of Hearings and Appeals Reversal of Disability Denial Decisions Involving Investigative Information from Cooperative Disability Investigations Units* (A-07-05-15091), pp. 7 and 8, January 2006.

¹⁴ Id. at p. 5.

after a new claim, we found 11 ROIs (42 percent) were not carried forward (see Table 3). Therefore, our analysis indicated that including the ROI in the most current electronic folder may have enabled adjudicators to be aware of previous investigations, providing evidence to support the subsequent denial.

Table 3: ROIs Not Carried Forward to New Claim Folders

	Number of Allowed Sampled Individuals	Number of Denied Sampled Individuals
Total New Claims ¹⁵ (see Table 1)	17	26
ROI Not Carried Forward	13	11
Percent of Total	76	42

According to SSA policy, if a prior folder contains an ROI, a copy of the ROI should go into the subsequent electronic folder.¹⁶ Therefore, we recommend SSA remind employees to include ROIs from prior claims in current claim folders.

CONCLUSIONS

We found employees did not always document ROIs for individuals allowed or denied disability benefits after appeals or new claims. However, the lack of documentation, in the electronic folder or decision rationales, was much more evident for individuals subsequently allowed disability benefits. Specifically, it was less likely that ALJs had included a discussion of the ROI in their decision rationales for individuals allowed benefits. Also, after we initiated our review, SSA removed from its policy the requirement that ROIs be discussed in ALJs' decision rationales. Further, employees were less likely to have flagged electronic folders alerting adjudicators to the ROI for individuals allowed benefits. Finally, we found employees were less likely to have carried the ROI from the prior denial or cessation forward to the new claim folders for individuals allowed benefits on a new claim.

It is imperative that employees document electronic folders with the ROIs to ensure all adjudicators—either on appeal or on new claims—are aware of CDI involvement. Our review indicated that adjudicators might not have been aware of evidence from the ROI that may have supported a denial or cessation determination.

¹⁵ The average length of time between the denial or cessation determination and the new claim allowance was over 2 years, ranging from 42 days to almost 4 years. The average length of time between the prior denial or cessation determination and the new claim denial was almost 3 years, ranging from almost 7 months to 5 years.

¹⁶ SSA, POMS, DI 81020.030 A (February 7, 2012).

RECOMMENDATIONS

We recommend that SSA:

1. Reconsider whether the requirement that ALJs document the use of the ROI in the decision rationale should be re-established in policy.
2. Update its policies to outline the process employees should follow to alert adjudicators of the existence of an ROI in the electronic folder.
3. Remind employees to include ROIs from prior claims in current claim folders.

AGENCY COMMENTS

SSA agreed with our recommendations. The Agency's comments are included in Appendix B.



Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration's (SSA) regulations, policies, and procedures.
- Reviewed prior Office of the Inspector General (OIG) reports.
- Obtained a data file from OIG's Office of Investigations of 18,532 subjects of investigation completed by Cooperative Disability Investigations (CDI) Units during Fiscal Years (FY) 2010 through 2014 that may have provided evidence in support of a denial or cessation determination for 18,486 individuals.
- Matched the 18,486 individuals to the Master Beneficiary (MBR) in June 2015 and Supplemental Security Records (SSR) in July 2015 and identified 5,255 individuals (28 percent) receiving Title II or XVI benefits and 13,231 individuals (72 percent) not receiving Title II or XVI benefits.
 - Selected a random sample of 100 individuals receiving benefits and reviewed the first 69 individuals to arrive at a sample of 50 who met the criteria of having (1) a certified electronic folder and (2) an allowance decision after appeal to the reconsideration or administrative law judge (ALJ) hearing level or filing a new disability claim after the previous denial or cessation determination that involved a CDI Unit's investigation.¹
 - Selected a random sample of 125 individuals not receiving benefits and reviewed the first 101 individuals to arrive at a sample of 50 who met the criteria of having a (1) certified electronic folder and (2) denial or cessation determination after appeal to the reconsideration or ALJ hearing level or filing a new disability claim after the previous denial or cessation determination that involved a CDI Unit's investigation.²

¹ We did not include in our sample individuals who were receiving benefit continuation or retirement benefits. Benefit continuation refers to individuals who receive a medical cessation determination following a continuing disability review and elect to continue receiving benefits during an appeal. If the individual elects to continue receiving benefits and the final decision affirms the cessation determination, any payments made under this election are considered overpayments. *Social Security Act §§ 223(g) and 1631 (a)(7), 42 U.S.C. 423 and 42 U.S.C. 1383.*

² We selected a larger random sample of individuals not receiving benefits because we had to review more individuals to arrive at a sample of 50. From the 101 individuals we reviewed, we excluded those who began receiving benefits after we identified our population or did not have a medical denial after the denial or cessation with CDI involvement.

- Reviewed the sampled individuals to determine whether employees documented the CDI reports of investigation in the electronic folders. In addition to the electronic folder, we reviewed information from the following SSA systems:
 - MBR
 - SSR
 - Disability Determination Services Case Control Query
 - Case Processing and Management System
 - Claims File Records Management System

We conducted our review between February and May 2016 in Kansas City, Missouri. We determined the data used for this audit were sufficiently reliable to meet our objective. The principle entities audited were the Offices of Operations and Disability Adjudication and Review. 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 – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: August 04, 2016 **Refer To:** S1J-3

To: Gale S. Stone
Acting Inspector General

From: Frank Cristaudo /s/
Executive Counselor to the Commissioner

Subject: Office of the Inspector General Draft Report, “Individuals Who Have Appeals or New Claims After Cooperative Disability Investigations May Have Supported Prior Denial or Cessation Determinations.” (A-07-16-50137) – INFORMATION

Thank you for the opportunity to review the draft report, “Individuals Who Have Appeals or New Claims After Cooperative Disability Investigations May Have Supported Prior Denial or Cessation Determinations” (A-07-16-50137). We are committed to reducing fraud, waste, and abuse in our agency’s programs. Our Cooperative Disability Investigation Units (CDIU) are in place to investigate suspected fraud in our disability programs. If a CDIU previously completed an investigation, we take our responsibility seriously to inform any subsequent adjudicating component of the information contained in the report. We ensure that policy instructs adjudicators to consider all evidence in both the electronic folder and prior folders. In particular, where possible, we implement automated solutions alerting all adjudicators of important documents and policies.

Please see our attached comments. If you have any questions, please contact me at (410) 965-0520. Your staff may contact Gary S. Hatcher, Senior Advisor for the Audit Liaison Staff, at (410) 965-0680.

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“INDIVIDUALS WHO HAVE APPEALS OR NEW CLAIMS AFTER COOPERATIVE
DISABILITY INVESTIGATIONS MAY HAVE SUPPORTED PRIOR DENIAL OR
CESSATION DETERMINATIONS” (A-07-16-50137)**

General Comment

We are committed to reducing fraud, waste, and abuse in our agency's programs. Our Cooperative Disability Investigation Units (CDIU) are in place to investigate suspected fraud in our disability programs. If a CDIU previously completed an investigation, we take our responsibility seriously to inform any subsequent adjudicating component of the information contained in the report. We ensure that policy instructs adjudicators to consider all evidence in both the electronic folder and prior folders. In particular, where possible, we implement automated solutions alerting all adjudicators of important documents and policies. This is the case with the CDIU report of investigation (ROI), which has a unique document type in the electronic folder.

Recommendation 1

Retain the requirement that Administrative Law Judges (ALJs) document the use of the (ROI) in the decision rationale.

Response

We agree. Our current policies (HALLEX I-2-10-10 D) outline the purpose of the ROI, which is to provide material evidence that an adjudicator can use to evaluate fraud or similar fault. Additionally, HALLEX I-2-8-25 B.4 requires that an ALJ decision must contain a discussion of evidence that raises issues of fraud or similar fault. If an ROI raises an issue of fraud or similar fault, the decision must discuss the ROI. However, not every ROI raises the issue of fraud or similar fault. Current HALLEX provisions require that an ALJ consider the ROI, and discuss it when appropriate.

Recommendation 2

Update its policies to outline the process employees should follow to alert adjudicators of the existence of an ROI in the electronic folder.

Response

We agree. Employees need to identify cases with an ROI, but we believe using a systems identifier for the ROI in the electronic claims folder would be a more effective way to alert adjudicators and hearing office staff.

We will not undertake the application of a flag, as suggested in the report on page 5. Rather, we have a methodology currently in place to allow the use of a document type code (0175), which is recognizable in all legacy systems, which will alert adjudicators of the fact that a CDIU ROI is in the file.

Recommendation 3

Remind employees to include ROIs from prior claims in current claim folders.

Response

We agree. HALLEX I-2-1-13 B.1 currently requires that Hearing Office (HO) personnel request a prior claim(s) file when fraud or similar fault may be involved in the current or prior claim. Additionally, the electronic business process 3.6 provides specific details regarding HO staff responsibilities when prior claims file(s) are present.

We have in place Program Operations Manual System (POMS) policies, which detail prior folder materials and procedures after the fraud or similar fault referrals are sent. We will publish an Administrative Message in FY 2016 to remind employees of our existing policies in those areas, which we believe will assist us in our goal of preventing and/or detecting fraud or similar fault.

Finally, we are in the process of revising our POMS policy to advise Disability Hearing Officers, and all other State agency adjudicators when and how to address the ROI. This policy will apply to all levels of adjudication at the State agency level and takes into account the newly published rulings, SSR 16-2p and SSR 16-3p.

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