

BY THE COMPTROLLER GENERAL
**Report To The Chairman
Committee On Ways And Means
House Of Representatives
OF THE UNITED STATES**

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Legislation Authorizing States To Reduce Workers' Compensation Benefits Should Be Revoked

The Social Security Act provides that, when disabled workers are receiving both State workers' compensation and Social Security disability insurance benefits, the combined payments can be reduced by either the Social Security Administration or the State, but not by both. If a State elects to reduce its benefits--as 11 States now do--Social Security benefits cannot be reduced.

Allowing States to reduce their workers' compensation benefits causes the responsibility for compensating disabled workers for work-related injuries to be shifted from State workers' compensation programs to Social Security taxpayers. If all States make the reduction, by 1981 the Social Security Trust Fund can lose \$160 million annually.

GAO recommends that the provision allowing States to reduce workers' compensation be revoked.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-197700

The Honorable Al Ullman
Chairman, Committee on Ways and Means *HSE04100*
House of Representatives

Dear Mr. Chairman:

In response to your November 22, 1978, letter, we are reporting on the principal effects that the workers' compensation offset provision has on the Social Security Disability Insurance program and State workers' compensation programs. The report also describes how the goals of this provision, in many instances, were not achieved.

We provided the Department of Health, Education, and Welfare and the Social Security Administration with a copy of this report for their review and comment. We did not receive written comments from the Department. We did, however, discuss the matters covered in the report with Department and Social Security Administration officials, and their comments have been incorporated where appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of the report. At that time, we will send copies to the Department of Health, Education, and Welfare and other interested parties and make copies available to others upon request.

Sincerely yours

Comptroller General
of the United States

SSA AGC00026
HEW AGC00022

COMPTROLLER GENERAL'S REPORT
TO THE CHAIRMAN, HOUSE
COMMITTEE ON WAYS AND MEANS

LEGISLATION AUTHORIZING
STATES TO REDUCE WORKERS'
COMPENSATION BENEFITS
SHOULD BE REVOKED

D I G E S T

Benefits paid to disabled workers under the Social Security Disability Insurance program and by State workers' compensation programs can overlap and cause workers to receive more in benefits than they were earning before becoming disabled. To correct this situation, in 1965 the Congress added the workers' offset provision to the Social Security Act.

The provision was intended to

- limit the combined payments to 80 percent of a disabled worker's wages at the time of injury (see p. 4) and
- provide disabled workers with a financial incentive to return to work.

Either the Social Security Administration (SSA) or a State can reduce (offset) its benefits under the provision, but not both. If a State offsets its workers' compensation benefits, SSA cannot offset its disability insurance benefits. Eleven States have exercised this option and are offsetting benefits.

Allowing States to reduce workers' compensation payments can

- cause the financial responsibility for work-related injuries to be shifted from employers to the Social Security taxpayers and
- reduce the amount SSA saves (currently \$147 million annually) by offsetting disability benefits in States that do not offset benefits.

SSA expects the savings to exceed \$160 million by 1981 if no more States offset benefits. However, this amount could be lost if all States elect to take advantage of the provision.

The offsetting provision has caused some inequities in benefits to disabled workers. Because it does not require States to follow the 80-percent limit in offsetting workers' compensation benefits, workers in States which take advantage of the provision may receive more in combined benefits than they would have received if SSA had made the offset. (See p. 12.)

Also, SSA begins offsetting disability insurance payments in the month after it is notified that a disabled worker is receiving workers' compensation, not when a worker actually began receiving the compensation. As a result, disabled workers who do not report workers' compensation benefits to SSA or who report them late are financially rewarded, while those who properly report the benefits have them promptly reduced.

This procedure allows some recipients to receive excessive combined benefits, reduces the moneys Social Security could save in offsetting, and contradicts the intent of the offset provision--to limit combined benefits. (See ch. 3.)

RECOMMENDATIONS TO THE CONGRESS

The Congress should revise the workers' compensation offset provision of the Social Security Act to

- revoke section 224(d), which allows States to offset their portion of disability benefits, and
- require that the Social Security offset be effective at the time workers' compensation benefits were awarded, rather than when SSA is notified of such award in cases of delayed or inaccurate recipient reporting.

GAO discussed the matters covered in this report with Department of Health, Education, and Welfare and SSA officials, and they did not state any objections to the report's recommendations.

GAO's Office of General Counsel will provide suggested legislative language for these recommendations upon request.

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ABBREVIATIONS

GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
OGC	Office of General Counsel
SSA	Social Security Administration

CHAPTER 1

INTRODUCTION

In 1965 the Congress added to the Social Security Act a provision intended to limit the combined benefits that disabled workers could receive from State workers' compensation programs and the Social Security Disability Insurance program. The provision, known as the workers' compensation offset provision, was adopted to reduce combined benefits that the Congress considered excessive and thereby provide disabled workers with a financial incentive to work. 1/

On November 22, 1978, the Chairman, House Committee on Ways and Means, asked us to:

- Examine the implications and impact of the provision as it exists today.
- Determine how the Social Security Administration (SSA) is administering the provision, giving specific attention to determining if beneficiary nonreporting is a national problem.
- Analyze SSA's projected costs to administer the offset provision and the return of the offset to the trust fund.
- Determine the financial impact on the trust fund of allowing States' first offset rights and the potential impact if all States legislated offset provisions.

During 1979 three other Members of Congress expressed the same general concerns. They also expressed concern about the effects that varying State workers' compensation laws have had on disabled workers and SSA's offset policies on disability insurance and workers' compensation benefits.

This report addresses the concerns raised by the Chairman and the other Members of Congress.

1/The Congress considered benefits excessive whenever combined benefits from the two programs exceeded 80 percent of the workers' predisability earnings or the total family social security benefit, whichever is higher.

DISABILITY INSURANCE AND WORKERS' COMPENSATION PROGRAMS

The Disability Insurance program was established in 1954 under title II of the Social Security Act to protect wage earners who had contributed to the Social Security system but who became disabled before reaching retirement age and were unable to continue working. The Social Security Trust Fund, which is funded equally by employers' and employees' contributions, provides retirement and disability payments to Social Security beneficiaries.

Workers' compensation--the first social insurance system in the United States--evolved in response to the high rate of industrial accidents and the difficulty of establishing who was at fault for such work-related injuries. Historically, common-law principles held that the employer had financial responsibility for only work-related injuries that resulted from his negligent act. Thus, disabled workers who sued employers for damages had to prove their injuries were caused by employer negligence--a slow, costly, uncertain legal process.

By the close of the 19th century, it was apparent that the common-law defenses--contributory negligence, assumption of risk, and negligent acts of fellow employees--operated too harshly on the claims of disabled workers. So, in 1908 the Congress enacted the first workers' compensation law covering Federal civil employees engaged in hazardous work. Today, all States have workers' compensation laws covering public and private employees. These laws are similar, in concept and principles, to the 1908 Federal law.

The key principles of the workers' compensation law are that (1) the employers should assume costs of occupational disabilities without regard to fault and (2) the resulting economic losses should be considered costs of production.

The six basic objectives underlying workers' compensation laws are that they:

- Provide sure, prompt, and reasonable income and medical benefits to work-accident victims, or income benefits to their dependents, regardless of fault.

- Provide a single remedy and reduce court delays, costs, and workloads arising out of personal-injury litigation.
- Relieve public and private charities of financial drains related to uncompensated industrial accidents.
- Eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals.
- Encourage maximum employer interest in safety and rehabilitation through appropriate experience-rating mechanisms.
- Promote frank study of causes of accidents (rather than concealment of fault), thereby reducing preventable accidents and human suffering.

Workers' compensation laws are administered by State commissions or boards or, in a few States, by State courts. Employers in most States are required to pay workers' compensation insurance premiums to a State insurance fund or to private insurance carriers, who are responsible for actually paying benefits. Employers in some States, however, can elect to be self-insured.

WORKERS' COMPENSATION OFFSET PROVISION

Although the Social Security Disability Insurance program and the State workers' compensation programs were created for different reasons, their benefits can overlap and cause disabled workers to receive more in benefits than they were earning before becoming disabled. In its June 1965 report on the workers' compensation offset bill, the Senate Finance Committee implied that overlapping benefits from these two programs were excessive if they exceed 80 percent of the workers' average monthly earnings before disability. Moreover, the Committee believed it was desirable to prevent payment of such excessive combined benefits as a matter of principle.

This principle prevailed later that year when the Congress adopted the workers' compensation offset provision (section 224 of the Social Security Act).

Under the provision, a worker's Social Security disability benefits are to be reduced so that the combined payments from workers' compensation and disability insurance do not exceed the larger of (1) 80 percent of the worker's average current monthly earnings before he became disabled or (2) the amount of the total family Social Security disability benefits.

For example, a disabled worker who was earning \$610 a month before becoming disabled and is now entitled to \$248 in Social Security disability insurance benefits and \$406 in workers' compensation payments would be limited to \$488 under the offset provision. 1/ The following table shows how the offset is computed.

Social Security disability benefit	\$248
Workers' compensation payment	<u>406</u>
Total combined benefits	654
Offset limit (larger of either \$610 x 80% or \$248)	<u>488</u>
Amount offset	<u>\$166</u>

Accordingly, SSA would reduce its \$248 benefit to \$82 (\$248 less \$166) so that the disabled worker would receive a total of \$488. The offset becomes effective the month after SSA receives notice of the disabled worker's "entitlement" to workers' compensation.

The offset provision states that the workers' compensation offset will not be applied by SSA if a State provides laws or plans (referred to as plans in this report) for an offset of workers' compensation benefits. However, it does not explicitly mandate the Department of Health, Education, and Welfare (HEW) to review State plans to determine if they are adequate to preclude Federal offset under this provision.

1/Although the \$488 appears to be much less than the \$610 the worker was earning before becoming disabled, the \$610 is pretax income while the \$488 is nontaxable.

Nevertheless, HEW has reviewed 11 States' 1/ offset plans--as per SSA's and States' requests. HEW concluded that the plans were adequate to preclude Federal offset. As of January 1980, these States were offsetting workers' compensation benefits.

Alaska and Wisconsin have also enacted offset plans, but HEW concluded that they are inadequate to preclude Federal offset.

Currently, the Social Security offset saves the Social Security Trust Fund about \$147 million annually by reducing the benefits of about 174,000 disabled workers and their dependents. For the average family benefit subject to offsetting, this amounts to a disability insurance benefit reduction of about \$185 a month. This is the average amount necessary to reduce combined workers' compensation and disability insurance benefits to 80 percent of the disabled workers' average monthly earnings before disability.

SCOPE OF REVIEW

We reviewed the Social Security Act and its legislative history as it pertains to disability benefits, and we examined the policies and procedures used in administering the workers' compensation offset provision. In addition, we reviewed SSA's methodologies by which it estimated the offset provision's administrative cost and its projected savings to the trust fund. We also interviewed State and private insurance administrators of workers' compensation programs that offset Social Security benefits.

Our review was made at SSA headquarters in Baltimore, Maryland; the SSA regional office in Seattle, Washington; and the SSA district office in Salem, Oregon. We also spoke with officials of HEW's Office of General Counsel (OGC) in Baltimore, San Francisco, and Seattle.

1/California, Colorado, Florida, Louisiana, Minnesota, Montana, New York, North Dakota, Ohio, Oregon, and Washington.

CHAPTER 2

THE STATE OPTION TO OFFSET SHOULD BE REVOKED

When the States exercise their option to provide for workers' compensation offset plans, (1) the principles underlying the workers' compensation laws are undermined because the financial responsibility for work-related disabilities is shifted from employers to the Social Security taxpayers, (2) the savings Social Security achieves by offsetting are reduced, and (3) excessive combined benefits are paid to disabled workers in some States.

CONGRESSIONAL INTENT FOR ALLOWING STATE OFFSET IS UNCLEAR

Because the legislative history is brief and sometimes unclear, it is difficult to determine why the Congress allowed the States to preempt the Social Security offset. The legislative history, for example, does not show whether the Congress realized that State offsetting would shift financial responsibility for work-related disabilities from employers to Social Security taxpayers. Nor does it show whether the Congress considered the impact that State offsetting would have on the savings Social Security achieves by offsetting.

STATE OFFSETTING UNDERMINES THE PRINCIPLES OF WORKERS' COMPENSATION LAWS

The principles of workers' compensation laws hold that the industrial employers should assume the costs of workers' occupational disabilities without regard to fault. The resulting economic losses are considered part of the normal cost of production. Employers are thereby relieved from liabilities arising from common-law suits involving negligence; however, they are to assume responsibility to provide, through an insurance mechanism, prompt and reasonable income and medical benefits to disabled workers and/or their dependents.

When States offset workers' compensation benefits, the employers do not assume full responsibility for occupational disability costs. Such offsets financially benefit self-insured employers, private insurance carriers, and State-operated insurance funds. In addition, employers who insure

their disability risk through private insurance carriers may benefit from lower premiums paid if the carriers pass along their offset savings. However, the employers', insurance carriers', and States' financial gain is the Social Security program's and the taxpayers' loss.

Various private insurance carriers and labor unions, as well as the National Commission on State Workers' Compensation Laws, have expressed concern about the adverse effects on workers' compensation programs of allowing States to offset. For example, employers may be less likely to develop adequate safety programs if they can avoid or reduce the economic losses arising from work-related injuries or diseases.

A 1972 National Commission on State Workers' Compensation Law report, for instance, recommended that the workers' compensation program be the primary source of benefits for work-related disabilities. The Commission cited inherent disadvantages of State workers' compensation offset; namely, it would neither encourage maximum employer interest in safety and rehabilitation nor promote candid study of the causes of workplace accidents and diseases.

According to an official of an insurance association representing about 45 percent of the Nation's workers' compensation insurance carriers, there is no logical reason to allow the States to offset workers' compensation benefits against SSA's disability benefits. The official said that workers' compensation programs have the primary financial responsibility for work-related disabilities; therefore, Social Security should not be the first-line insurer for such disabilities.

The president of a major labor union in Oregon, one of the States that elected to offset, has also criticized the States' right to offset in letters to Members of Congress. In a March 29, 1979, letter to several Members, he asked that they revoke the States' right to offset because it places the primary responsibility for compensating disabled workers on the public instead of on employers. He concluded: "* * * Workers' Compensation is the employers' responsibility, not the general population['s]."

STATE OFFSETTING IS COSTLY TO
THE SOCIAL SECURITY TRUST FUND

The workers' compensation offset provision costs SSA an estimated \$2.5 million to \$3 million a year to administer, but it saves the trust fund over \$147 million annually by reducing the amount of disability insurance benefits paid to disabled workers also receiving workers' compensation benefits. These savings will diminish as more States elect to offset.

Representatives of workers' compensation insurers and several State officials told us that State interest in the option is growing, primarily because of the rising cost of workers' compensation to employers. In a June 1978 news article, one State legislator was quoted as saying, "As long as the loophole exists, why not take advantage of it."

Although projecting how many States will elect to offset is difficult, we believe that more States will do so.

Accuracy of SSA's cost projections

An increase in the number of States electing to offset could have a serious financial impact on the trust fund. Because of the importance of SSA's cost projections in determining the impact of allowing States to offset, the Chairman asked us to evaluate the accuracy of SSA's (1) projected administrative costs and (2) estimates of how much the offset saves the trust fund.

SSA estimates that, annually, it spends \$2.5 million to \$3 million to administer the offset provision and the offset provision currently saves the trust fund about \$147 million.

The administrative cost estimate was based primarily on information obtained in 1977, when SSA was preparing legislative proposals for fiscal year 1978. At that time, SSA collected staff utilization and production statistics and estimated that it spent \$1.8 million to administer the offset.

After our inquiry, SSA raised its estimate to between \$2.5 million and \$3 million. The adjusted estimate included administrative costs incurred by field personnel and data

processing that had been left out of the earlier estimate. Although this adjusted estimate was based on 1977 information, SSA believes it is still a valid indicator of current administrative costs. Based on our evaluation of SSA's cost allocation procedure and its pertinent records, we believe these estimates are reasonable.

On the basis of current experience and information about growth trends in the Social Security programs, SSA projects that annual savings from the offset provision may reach \$160 million by 1981. We believe these projected savings are reasonable based on our evaluation of SSA's historical records and its trend analyses of disabled workers. However, this projection could be significantly affected if additional States elect to offset or administrative changes are made. For instance, if all States elected to offset, the \$160 million potential savings could be lost.

SOME STATES ALLOW COMBINED BENEFITS TO
DISABLED WORKERS IN EXCESS OF 80 PERCENT
OF PREDISABILITY EARNINGS

Because the offset provision does not establish criteria for States, the various State plans compute benefits differently. As a consequence, disabled workers in some States receive combined benefits in excess of 80 percent of their prior earnings.

Lack of criteria and guidance

The workers' compensation offset provision allows States to preempt the Social Security offset by developing plans for an offset of workers' compensation benefits. However, the provision neither specifies the elements for an acceptable State offset plan nor mandates that plans be reviewed or approved by HEW. HEW's Office of General Counsel has reviewed the States' offset plans, but the plans nevertheless contain inconsistencies, for two reasons. First, conflicting court opinions on the offset provision plan have afforded little legal guidance. Second, guidelines and criteria for evaluating State plans to insure consistency have not been established.

Two U.S. district court cases in Florida illustrate how the offset provision can be interpreted in conflicting ways. In one of the cases, a disabled worker sued HEW because SSA

continued to offset his benefits even though Florida had its own offsetting plan. The disabled worker argued that, since Florida provided for offsetting, the Federal offset was not applicable.

The magistrate ruled that to bar the Federal offset, the the State plan must actually reduce benefits. Since Florida did not reduce this worker's benefits, SSA was allowed to apply its offset. The magistrate reasoned that this was the only ruling consistent with the offset provision's original purpose of preventing the payment of excessive combined benefits.

In the second case, however, a magistrate ruled that, as Florida's plan provided for a reduction in benefits-- regardless of whether the State actually reduced benefits-- it met the requirements of the Federal law. In this case, SSA was barred from offsetting benefits even though Florida did not do so.

Because of conflicting court opinions and because no guidelines or criteria have been established, inconsistencies in State offset plans exist. For example:

--In 1966, when reviewing Colorado's offset plan, an HEW/OGC regional attorney advised that "any plan" sufficed to bar Federal offset if it reduced benefits. This position was reversed in 1974, when OGC attorneys reviewed the Montana, Florida, and Minnesota plans. The 1974 opinion was that a State offset plan was sufficient to preclude Federal offset only if it significantly reduced the individual's benefits.

--In 1977, the Seattle HEW/OGC regional attorney concluded that Alaska's proposed offset plan would not preclude Federal offset, primarily because it stipulated that workers' compensation benefits would be reduced only when disability insurance and workers' compensation benefits were being received for the same injury. However, other OGC attorneys had earlier advised that the Montana and Minnesota plans, which included a similar requirement, would preclude Federal offset.

Impact on disabled workers

The various State offset plans affect an individual's combined Social Security and workers' compensation disability entitlements because of differences among the States in computing the offset.

Some of the differences are:

- State A does not reduce a disabled worker's benefits until the worker has received \$25,000 in workers' compensation benefits. After receiving \$25,000, the worker continues to receive the full disability insurance benefit from SSA, but the State reduces the workers' compensation benefit by 100 percent of the disability insurance benefit. However, the State provides a supplemental benefit after 2 years of disability which is in addition to benefits provided by Social Security. The supplemental benefit compensates for the offset that the State applies after the worker's compensation benefits reach \$25,000.
- States B and C reduce a disabled worker's compensation benefits by one-half of the worker's disability insurance benefit.
- The State D plan provides for an offset if a disabled worker's combined benefits exceed 80 percent of the worker's predisability earnings, which is the same percentage level used in the SSA offset. However, the State formula, unlike the SSA offset formula, only offsets disability benefits paid to a disabled worker; it excludes spouse and dependents' benefits which are often equal to one-third or more of the disabled worker's benefit.

How these differences in State offset plans can affect a disabled worker's combined benefits can be illustrated by comparing benefits in States A, B, C, and D. For example, a disabled worker with a wife and a child who was earning predisability income of \$964 a month would be affected as follows under the various State offset plans:

Social Security and workers' compensation combined benefits	SSA	State offset laws		
		States B and C	State D	State A
Before offset (note a)	\$1,127	\$1,127	\$1,127	\$1,127
After offset	<u>b/771</u>	<u>c/780</u>	<u>d/1,002</u>	<u>e/1,043</u>
Percent of pre- disability income after offset	80	81	104	108

a/\$1,127 = \$694 Social Security benefits plus \$433 workers' compensation.

b/\$771 = \$338 reduced Social Security benefits plus \$433 workers' compensation.

c/\$780 = \$694 unreduced Social Security benefits plus \$86 workers' compensation.

d/\$1,002 = \$694 unreduced Social Security benefits plus \$308 workers' compensation.

e/\$1,043 = \$694 unreduced Social Security benefits plus \$349 State supplemental benefit, which is granted after 2 years of disability and workers' compensation is totally offset.

Thus, different State offset plans can result in disabled workers receiving combined benefits greater than 80 percent of predisability income, which is contrary to congressional intent.

CHAPTER 3

OFFSET PROVISION NEEDS CLARIFICATION

Because language in the offset provision is not precise, SSA has interpreted the provision in different ways and has adopted different administrative policies on when offsetting should begin.

SSA's current interpretation and resulting policies adversely affect SSA's administration of the offset provision because SSA begins offsetting after it is notified that a disabled worker is receiving workers' compensation, rather than when the worker began receiving such compensation.

WHEN SHOULD SSA IMPOSE THE OFFSET?

The offset provision provides that the offset be imposed by SSA after it receives notice from the disabled worker that he or she is entitled to workers' compensation. SSA begins offsetting in the month after it is notified and does not retroactively offset benefits to the time they actually began, even if recipients fail to report benefits to SSA for a long time.

When disabled workers do not report their workers' compensation benefits to SSA promptly, thus delaying the imposition of the offset, the recipients receive excessive combined benefits; this reduces the moneys SSA could save in offsetting.

Many workers' compensation recipients do not report their benefits to SSA completely, accurately, and promptly

Disabled workers who receive Social Security disability insurance benefits are required to report to SSA when they are also receiving workers' compensation so that SSA can apply the appropriate offset to limit combined benefits. The Chairman requested that we determine whether recipients are properly reporting workers' compensation benefits.

We estimate that, during the 16-month period July 1977 to October 1978, about 5,300 new disabled workers nationwide were added to the SSA offset rolls. And of those, 2,388 (45 percent) did not immediately report their workers' compensation benefits. The late-reporting disabled workers reported

on the average 8 months late and were erroneously paid about \$1,140 each in excessive benefits. As a result, SSA lost about \$3 million in offsetable moneys.

In addition, several of our reports on SSA-administered programs noted that nonreporting of income is a major problem for SSA. Three of these reports noted that SSA overpaid many beneficiaries by millions of dollars because they failed to provide SSA with current information on benefits received from other Government programs.

A report to the Congress 1/ discussed the adverse effects on the Supplemental Security Income program caused by veterans' failure to report benefits received from the Veterans Administration. The failure of many persons to properly report their veterans' benefits caused SSA to overpay them \$60 million a year.

A report to Congressman Erlenborn 2/ on workers' compensation and its effects on black lung payments observed that 34 percent of the disabled workers drawing both benefits were paid incorrectly because SSA did not have accurate State workers' compensation data. As a result, in the two States tested, we estimated that SSA annually overpaid recipients \$926,000.

A report to the Secretary of HEW 3/ on the Supplemental Security Income program noted that substantial overpayments have been made to recipients who had not reported or had inaccurately reported changes in their income, resources, or other circumstances. SSA estimated that about 17 percent of the recipients on the rolls were erroneously paid over \$200 million in 1976 because they failed to report or inaccurately reported changes to SSA.

Moreover, SSA estimated that, during fiscal year 1978, over \$257 million was erroneously paid to Supplemental Security Income recipients because of reporting failures. According to SSA's Office of Payment and Eligibility Quality,

1/"Supplemental Security Income Payments Can Be Reduced"
(HRD-76-159, Nov. 18, 1976).

2/Letter report (HRD-78-109, May 16, 1978).

3/Letter report (HRD-78-118, May 22, 1978).

from April to September 1978, recipients' failure to report accurate or complete information and their failure to report changes in circumstances were the leading causes of dollar errors.

Based on the foregoing, we believe that many recipients are not reporting workers' compensation benefits completely, accurately, and promptly and that this problem is widespread.

Changes in SSA's policy

Between February 1966 and June 1976, SSA's policy was to apply the offset the month it should have been effective if the disabled worker had promptly reported workers' compensation benefits. SSA's intent was to discourage late reporting. The policy was also consistent with SSA's policy for its other programs, which required SSA to retroactively apply reductions in cases of late reporting.

In 1976, however, HEW/OGC reviewed SSA's policy and concluded that it was contrary to the language of the offset provision which, OGC maintained, strictly prohibits applying the offset retroactively to when the disabled worker first received workers' compensation benefits. In its opinion, OGC recognized that the legislative history did not show whether the Congress expressly considered or anticipated situations where disabled workers did not promptly report workers' compensation benefits. However, SSA revised its policy and now offsets only after receiving notification.

We believe that, in view of the widespread recipient reporting problem, the language in the offset provision should be amended to require retroactive offsetting in cases of delayed or inaccurate recipient reporting.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The workers' offset provision allows States to offset their workers' compensation benefits and precludes Social Security from offsetting its disability benefits if States so elect. Allowing States to offset can (1) shift the financial responsibility for work-related disabilities from employers to Social Security taxpayers, (2) reduce the savings Social Security now achieves through offsetting, and (3) result in the combined benefits disabled workers receive to exceed 80 percent of wages at the time of disability.

In addition, the offset provision's language is not precise as to whether SSA can apply its offset retroactively when recipients fail to report workers' compensation benefits promptly and accurately. Because the provision is unclear, SSA has interpreted it in different ways and has adopted varying policies. As a result of SSA's current policy, disabled workers who fail to report workers' compensation benefits promptly or accurately receive excessive benefits. Consequently, the congressional intent to limit the combined benefits of disabled workers has been impaired.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress revise the workers' compensation offset provision of the Social Security Act to

- revoke section 224(d), which allows States to offset their portion of disability benefits, and
- require that the Social Security offset be effective at the time workers' compensation benefits were awarded, rather than when Social Security is notified of such award in cases of delayed or inaccurate recipient reporting.

We discussed the matters covered in this report with HEW and SSA officials, and they did not state any objections to the report's recommendations.

GAO's Office of General Counsel will provide suggested legislative language for these recommendations upon request.

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