

U.S. Senate
Special Committee on Aging



Statement for the Record

**The Social Security Administration's
Representative Payee Program**

James G. Huse, Jr.
Inspector General of the Social Security Administration

September 9, 2003

Good morning, Chairman Craig, Ranking Member Breaux, and members of the Senate Special Committee on Aging. I want to commend you for holding this important hearing today on the Social Security Administration's (SSA) Representative Payee Program. I want to discuss the current program's deficiencies, our work in the area, and the ways we think legislation can help us improve safeguards in the Representative Payment Program.

SSA provides Social Security and Supplemental Security Income (SSI) benefits to the most vulnerable members of our society—the young, the elderly, and the disabled. Congress granted SSA the authority to appoint representative payees where needed to receive and manage these beneficiaries' payments. There are currently about 5.4 million representative payees who manage benefits for millions of beneficiaries.

A representative payee may be an individual or an organization. Individual representative payees are typically relatives of the beneficiary, who are entrusted to use such funds in the best interest of the beneficiary. Although individual representative payees may at times provide services to multiple beneficiaries, they are prohibited from charging fees for such services.

Organizational representative payees, on the other hand, are typically large institutions that provide care and treatment for beneficiaries residing in such institutions (e.g., Department of Veterans Affairs hospitals, State psychiatric institutions, and extended care facilities). Other types of organizational representative payees may include community groups, charitable organizations, and other nonprofit agencies. The Social Security Act allows qualified and authorized organizational representative payees to collect a fee for providing representative payee services.

As I have previously testified before this Subcommittee, not all representative payees properly manage benefits entrusted to them. Let me give you a couple of examples of the harm corrupt representative payees can do.

A Kansas man was representative payee for several recipients and beneficiaries of Department of Veterans Affairs (VA) and SSA benefits for several years. He converted their benefits to his personal use, telling agents after his arrest he needed the money to pay for his drinking habit, and he

admitted selling at least three recipients' farms for more than \$70,000 each. Our office worked with VA's OIG to bring charges, and he was sentenced to 12 months house arrest wearing an electronic monitor, three years supervised probation, a special assessment fee of \$300, and restitution in the amount of \$490,625.

"Payee-R-Us," an organizational representative payee service in Washington State, handled as many as 200 vulnerable beneficiaries including individuals who were mentally disabled, for which it received a \$25 fee per client. Its executive director embezzled over \$107,000 in payments. In one egregious example, a homeless beneficiary was unaware of his approximately \$15,000 retroactive benefit check that the executive director had embezzled for her personal use. After our Seattle Field Division's investigation, she pleaded guilty to representative payee misuse and Social Security fraud. She was sentenced to 10 months' imprisonment and ordered to pay \$107,292 in restitution directly to 88 victims.

Between October 1, 1997 and March 31, 2003, we have opened over 3,200 investigations of representative payees. Those investigations have identified nearly \$26 million in fraud, and have resulted in over 600 convictions.

Today's hearing will give me the opportunity to discuss the pressing need for legislation to strengthen the representative payee provisions of the Social Security Act in 3 areas: selection, monitoring, and penalties for the abuse of fiduciary responsibilities.

Our audit work has shown that closer attention to the initial selection process could resolve many potential problems before they arise, so it is critical that SSA more thoroughly screen potential representative payees. In October 2002, we issued a report that identified 121 individuals serving as representative payees for others whose own SSI benefits were stopped by SSA because they were fugitive felons or parole or probation violators. As you know, current SSA policy does not prohibit fugitive felons and parole or probation violators who have not been convicted of a crime involving a Social Security program to serve as representative payees. We also completed an additional audit in March 2003 wherein we quantified the number of representative payees who were fugitive felons regardless of whether they were receiving SSI payments. In this audit, we estimated that fugitives would manage approximately \$19 million in Social Security funds each year if SSA does not take action to replace them as representative payees.

Our work also shows that once an appropriate representative payee is selected, it becomes incumbent upon SSA to adequately monitor that individual or organization to ensure that benefits are being used as intended to aid the beneficiary and that the representative payee continues to be suitable. During our reviews of representative payees, we found that SSA could not always retrieve completed Representative Payee Reports (RPR) when needed. As part of our audits, we requested SSA to provide the most recently completed Reports for beneficiaries. However, SSA was able to provide only 226 of the 474 (48%) RPRs we requested.

We have also identified problems in SSA's monitoring and oversight of representative payees. In April 2003, we issued a report on SSA's oversight of representative payees and concluded that SSA's representative payee review methodology should be modified to ensure that representative payees are using Social Security funds only for the benefit of the beneficiaries they represent. We identified several weaknesses:

- SSA does not require a review of RPRs to determine whether the representative payee is properly reporting on the use of SSA benefits. The amounts reported on the RPR are not compared to the amounts reflected in the representative payee's financial records.
- The site review methodology lacks guidance for evaluating results of the reviews and does not specify the number of beneficiaries to be interviewed.
- SSA review teams did not always maintain documentation to support conclusions and recommendations made during the site reviews.
- SSA review teams did not always review the required number of beneficiary records, did not always report the results of the reviews to representative payees, and did not always follow-up to determine whether the representative payee took action to correct identified deficiencies.

Our June 2002 review of over 2,400 representative payees identified by SSA as having misused approximately \$12 million in beneficiary payments showed that 78 percent of the cases over \$5,000 were not referred to us for possible criminal, civil and/or administrative remedies. These cases represented over \$5.9 million in misused benefits. SSA had retained nearly 20 percent of these representative payees after determining they had misused

benefit payments totaling \$1.8 million, even though 79 percent of the misused benefits were **not** repaid to the beneficiaries as required by SSA.

Our audit work on representative payee monitoring continues. We recently began a review of SSA's procedures to ensure that disabled beneficiaries who need representative payees have them. Our preliminary results indicate that some individuals who need representative payees based on their medical conditions do not have one assigned. We expect to complete this report in fiscal year (FY) 2004.

As we have pointed out today and in audit reports and prior testimony, legislation is needed to ensure the integrity of the representative payee process. I believe H.R. 743, which has been adopted by the House and is now before the Senate Committee on Finance, makes important strides in each of the areas I have discussed today.

For example, H.R. 743 eliminates the requirement that benefits can be reissued only upon a finding of SSA's negligence. Instead, the Agency would be able to re-issue benefits to those whose money was misspent even absent a finding of negligence. Further, this legislation makes the representative payee liable for the amount of benefits misused.

After selecting appropriate representative payees and monitoring their performance, attention then turns to appropriate sanctions for those who fails to meet their fiduciary responsibilities. We have found the Civil Monetary Penalty (CMP) program to be an effective tool against fraud in other areas. Unfortunately, as previously reported to you, we have reviewed potential cases for enforcement under the CMP program and found that the current CMP statutes do not adequately address some of the most egregious situations involving representative payees. To remedy this, we proposed two amendments to the CMP statutes, both of which are included in H.R. 743.

Just as importantly, H.R. 743 would amend Section 1129 of the Social Security Act to allow the imposition of CMPs for the willful conversion of a beneficiary's funds by a representative payee. For example, in one of our cases the benefits of a disabled child whose mother (as a minor herself) could not serve as her son's representative payee, were instead paid to the father. The father, who did not live with the child and the child's mother, converted more than \$10,000 of his child's benefits to his own use. The U.S. Attorney declined to prosecute the father criminally, and the case was

referred to my office for consideration under the CMP statutes. Unfortunately, the current CMP statutes do not provide for penalties to be imposed for conversion of benefits by representative payees. We need legislation that provides this much needed authority. We believe provisions such as those contained in H.R. 743 are a step in the right direction for addressing the problems in the Representative Payment Program.

Any improper activity associated with any representative payee found during this study would be forwarded to our Office of Investigations and SSA, as appropriate. This multi-year approach would allow us to direct our contractual resources at specific representative payee groups each FY and provide a mechanism to report findings on an annual basis.

This study will allow us to project with statistical validity the extent to which representative payee funds are being mismanaged and abused. This is important, because the 5.4 million representative payees manage over \$44.4 billion for 6.7 million individuals. As a result of these studies, we will be able to help the performance of representative payees and make recommendations to address systemic problems and issues.

With such legislation, and the continuing dedication of the Government agencies involved, and of this Special Committee, I am confident that we can reverse the pernicious abuse of older and disabled Americans by dishonest representative payees. SSA, my office, the Congress, and the American people must act together to accord those at risk the protections they deserve.

Thank you, and I'd be happy to answer any questions.