

**HEARING ON NOW HIRING:
THE RISING DEMAND FOR OLDER WORKERS**

HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS
SECOND SESSION

WASHINGTON, DC

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HEARING ON NOW HIRING: THE RISING DEMAND FOR OLDER WORKERS

MONDAY, APRIL 3, 2000

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The committee met, pursuant to notice, at 1 p.m., in room SD-562, Dirksen Senate Office Building, Hon. Charles Grassley, (Chairman of the Committee) presiding.

Present: Senators Grassley and Breaux.

OPENING STATEMENT OF SENATOR CHARLES GRASSLEY, CHAIRMAN

The CHAIRMAN. I thank you all very much for your kind attendance, and giving attention to a very important issue that, as years pass, is going to become more important and more often in people's conversation, and that is the employment of older workers and the conditions for that, and the things that are disincentives to that sort of employment now.

Let me suggest before I start out, that I hope that keeping an environment for older workers who want to work is present in my own office. I have one employee, my personal secretary, Yvonne Goodman, who has worked for two Members of Congress in the 52 years that she has been in Congress. She has worked for me now for 26 years and prior to that she worked for Congressman H.R. Gross for 26 years, and working full-time and regularly, and doing her job.

I have another person, Betty Berger, who is my chief case worker, who has been an employee of Congress for 33 years. I never exactly know how old Betty is, because I have learned not to ask her, but I know her oldest son was born in 1948, and she is a person who has been around the hill for a long time, for those 33 years, but prior to that was in the work force.

So I thank all of you for joining us today on this hearing for the employment of older workers. In today's tight labor market, there are just too few workers for our job openings. Employers everywhere are competing for every available employee. This is especially true in my home State of Iowa, where in February our unemployment was 2.2 percent, compared to the national unemployment rate of 4.1 percent, which I think is still at about a 30-year low.

As the labor pool seems to be shrinking and as the baby boomers age and begin to drop out of the labor market, we will see more creative ways than ever before to entice these baby boomers to stay in the work force. Employers will be looking to retain as much of

their institutional knowledge as possible. In any case, how are employers filling jobs now? In part, they are in fact turning to older workers.

They use recruitment campaigns and creative programs to attract and retain older individuals on their payrolls. Just 2 weeks ago Sunday, as I was standing in line at the Cedar Rapids Iowa airport, a friend of mine who has a trucking company was standing in line ahead of me and he was following this issue of Congress taking the earnings limitation off of people 65 to 69.

And he said, "I sure hope you do that, and just as soon as you do that, I'm going to put ads in the newspaper inviting all former truck drivers to come back and tell them that we will put in a schedule that meets their flexible requirements, any way they want to write their ticket, because we need truck drivers so badly."

I have two other examples of innovative programs coming from Iowa employers, who are represented by the witnesses today. We have Mr. Stephen Meyer, from Hy-Vee, Inc., of West Des Moines, IA. For those who have not been in Iowa, Hy-Vee is a large grocery store chain, and it is in almost every community of our State. The company makes a special effort to attract older workers. Hy-Vee seems to offer policies such as flexible scheduling as an incentive to keep older workers with them.

An older worker can work at Hy-Vee in Des Moines all summer and play golf in the winter in Orlando. I am not saying that very many do that, but that is possible.

We also have Ms. September Dau, from Iowa Lakes Rural Electric Cooperative at Estherville IA. Her company offers something called planned retirement. That allows employees to work part-time and collect partial retirements. It is a good way to keep experienced, valuable workers on the job longer.

These witnesses are exciting because they represent the future, and I hope it shows that my State of Iowa employers are looking to the future and that older workers are in that future. But as the labor pool shrinks and as baby boomers age, we will see yet more creative ways to retain older employees than ever before, more customized retirement arrangements and flexible scheduling will be the norm. Policy makers will have to respond in kind.

Our first witness is Congressman Earl Pomeroy of North Dakota. Congressman Pomeroy and I have had a long-term interest in retirement savings and pension plans. We both believe in a diversified retirement program. What does that mean? Imagine if your retirement consists of only Social Security, as it does, and we always hear about the three-legged milking stool. I brought along a one-legged milking stool.

Now, none of the milking stools I ever used ever had a varnished surface like this, but this still will tell you what a one-legged milking stool is, and this would be just Social Security. Well, obviously, we talk about the necessity for a three-legged milk stool, or I should say stool, but in farming country, they are always milking stools.

But, anyway, regardless, this would be Social Security, a defined benefit pension, and a private savings plan, like let's say even private savings accounts or let's say like 401(k) plans. You can see here that when you have a three-legged milking stool, it is much

more stable than others, and that is what we want for our workers today.

One of the most important things that we can do in Congress then is to pass laws that encourage retirement savings. We should encourage the formation of savings plans like 401(k) plans and defined benefit pension plans, which pay benefits to their retirees over their lifetime. In that way, we have more workers retire with the three-legged stool for retirement income.

Congressman Pomeroy will talk to us about his efforts in these areas. He will give us his ideas about how to fix our current problem regarding phased retirement. Many employers feel that we need to clarify the phased retirement program so that they are allowable. Common sense dictates that clarifying rules that restrict individuals from receiving part-pay and part-retirement would help both older workers and their employers.

In other words, we cannot force workers to work if they do not want to and we do not pretend to do that. We cannot force employers to hire people who are older if they do not want to hire them. But when there are public policies that are outright disincentives to employment, it seems to me that we have a responsibility in Congress to address those issues.

Then, when we get to our second panel, we are going to hear Mr. Joseph Perkins, from the AARP, give his views and those of the largest organization representing individuals over age 50. I think he is going to talk about the challenges and barriers to the employment of older workers.

Then we have the Committee for Economic Development with us, as well, Mr. Scott Morris, who is representing the Committee. The Committee on Economic Development has just completed an excellent report on the importance of employment of older workers, both from the perspective of promoting longer work lives and examining barriers for older workers to work longer.

Then we will have Mr. Stephen Meyer of Hy-Vee, as I mentioned. Our final panel will examine the barriers to offering phased employment—Ms. September Dau of the Iowa Lakes Rural Electric Cooperative, to discuss her retirement, phased retirement plan, and Ms. Wilma Schopp of the Association of Private Pension and Welfare Plans, to discuss her group's deliberation on the need for government to facilitate phased retirement.

I think that phased retirement is an important legislative matter to which we will all be paying more attention, so I would like to see our government follow the private sector's lead, and allow for more flexible retirement options. Our Nation's financial bread and butter depend on it.

Now I call on our distinguished ranking member, Senator Breaux of Louisiana.

[The prepared statement of Senator Grassley and Senator Craig follow:]

PREPARED STATEMENT OF SENATOR CHARLES GRASSLEY

Thank you all for joining us today for our hearing on the employment of older workers. In today's tight labor market, there are just too few workers for the job openings. Employers everywhere are competing for every available employee. This is especially true in my home state of Iowa where in February, unemployment was just 2.2 percent. Nationally unemployment was 4.1 percent.

How are employers filling jobs? In part, they're turning to older workers. They use recruitment campaigns and creative programs to attract and retain older individuals on their payrolls.

Two examples of these innovative programs come from Iowa employers, which are represented with a witness today. We have Mr. Stephen Meyer from Hy-Vee, Inc. of West Des Moines, IA. For those who haven't been to Iowa, Hy-Vee is a large grocery store chain and it is in almost every community in the state. The company makes a special effort to attract older workers.

Hy-Vee offers policies such as flexible scheduling, to keep older employees with them. An older worker can work at Hy-Vee in Des Moines all summer and play golf all winter in Orlando.

We also have Ms. September Dau from the Iowa Lakes Rural Electric Cooperative in Estherville, IA. Her company offers something called "phased retirement." That allows employees to work part-time and collect partial retirements. It's a good way to keep experienced, valuable older workers on the job longer.

These witnesses are exciting because they represent the future. As the labor pool shrinks, and as baby boomers age, we'll see more creative ways to retain older employees than ever before. More customized retirement arrangements and flexible scheduling will be the norm.

Policymakers will have to respond in kind. Our first witness is Congressman Earl Pomeroy of North Dakota. Congressman Pomeroy and I have had a long term interest in retirement savings and pension plans.

We both believe in a diversified retirement program.

What does that mean? Imagine if your retirement consists of only Social Security, as it does for many Americans. Well, your retirement would be just like this one-legged milking stool. It's not comfortable for very long - and it's not particularly stable.

A secure retirement is a three-legged stool. It has Social Security, a defined benefit pension and private savings, like a 401(k) plan.

Here is that three-legged stool of retirement security. Just look at how much more stable and comfortable it would be.

One of the most important things we can do in Congress is to pass laws that encourage retirement savings. We should encourage the formation of savings plans, like 401(k) plans, and of defined benefit pension plans, which pay benefits to their retirees over their lifetime. In that way we help more workers retire with a three legged stool for their retirement security.

Congressman Pomeroy will talk to us about his efforts in these areas. He'll give us his ideas about how to fix a current problem involving phased retirement. Many employers feel we need to clarify that phased retirement programs are allowable. Clarifying the rules that restrict individuals from receiving part-pay and part-retirement would help both older workers and their employees.

Our next panel looks at older employment generally. Mr. Joseph Perkins from the AARP will give the views of the largest organization representing individuals over the age of 50. He will talk about the challenges and barriers to employment of older workers.

The Committee for Economic Development is also with us. Mr. Scott Morris is representing the committee. The CED has just completed an excellent report on the importance of employment of older workers both from the perspective of promoting longer work lives and examining barriers for older Americans to work longer.

Then we have Mr. Stephen Meyer of Hy-Vee, as I mentioned.

Our final panel will examine the barriers to offering phased retirement.

Ms. September Dau of the Iowa Lakes Rural Electric Cooperative will discuss her employer's phased retirement program.

Ms. Wilma Schopp of the Association of Private Pension and Welfare Plans will discuss her group's deliberations on the need for government to facilitate phased retirement programs.

I think phased retirement is an important legislative matter to which we will all be paying more attention. I'd like to see government follow the private sector's lead and allow for more flexible retirement options. Our nation's financial bread and butter depends on it.

PREPARED STATEMENT OF SENATOR LARRY CRAIG

I would like to thank the Chairman for holding this hearing today. I would also like to thank the witnesses for taking the time to appear before the Committee to testify.

Expanding employment opportunities for older workers is a timely and relevant issue in this country today. There are many seniors who would like to work, but are prevented from doing so for a variety of reasons. This hearing is especially relevant in light of the legislation recently passed by both the House and Senate. After numerous attempts in the past, this legislation finally repeals the earnings limit for seniors over age 65. Some of America's best and brightest workers are being treated unfairly by the current Social Security structure. Their wages are being tapped by the Federal Government at an extremely high rate because they are aged 65 or older and receiving Social Security benefits.

The practice began with the creation of Social Security back in the 1930s, when there were 50 workers paying into the system for every one Social Security beneficiary, and older workers were encouraged to make way for younger, unemployed workers. The demographics of the American work force have shifted dramatically to create a long-term need for these skilled older workers. Instead of penalizing senior workers, the Social Security system should say to them, "We value you, we need you, we will treat you fairly." For these reasons, I am proud Congress passed the Social Security Earnings Test Elimination Act.

This legislation is only the first of many steps that need to be taken to guarantee that those seniors who want to work can continue to do so. Some of our witnesses will discuss additional options for working seniors, such as part-time work, phased retirement or flexible retirement programs. I am excited about these types of proposals and look forward to hearing about them.

Our society can only benefit from the valuable experience, tested skills, and wisdom that older Americans have to offer, and it is now time to demonstrate that this country needs and values our senior workers.

Again, I thank the Chairman and the panel of witnesses. I look forward to the benefit of the insight of today's witnesses.

PREPARED STATEMENT OF SENATOR BLANCHE LINCOLN

Thank you Mr. Chairman and Senator Breaux for holding this hearing on older workers and employment issues.

As a Baby Boomer serving on this Committee, I believe that holding a hearing on older workers and employment builds nicely upon the hearing this Committee held on baby boomer issues last fall. It is time that we think "out of the box" about what life will be like for baby boomers in retirement.

The fact is, older persons are healthy and want to work. The Senate Special Committee on Aging is wise to get ahead of the pending "age wave." As baby boomers retire, greater numbers of seniors will want to work part-time or even full-time for pay.

As a nation, we must find ways to reduce barriers to employment for seniors. Congress took the first step last week when it repealed the Social Security income earnings tax so that older workers will no longer be penalized for their "can do" spirit. President Clinton is expected to sign this legislation into law shortly.

Today we will examine a variety of ways in which barriers to employment can be reduced for older workers. This is important for several reasons. First, seniors who stay active lead longer, healthier and more fulfilling lives. Second, if the United States expects to keep its competitive edge in the global economy, it will need to embrace and encourage older workers to remain in the workforce.

Thank you Mr. Chairman for time to make this statement and now I look forward to hearing from our expert witnesses.

STATEMENT OF SENATOR JOHN BREAUX

Senator Breaux. Thank you very much, Mr. Chairman, and you have mentioned visiting Iowa. I have come to the conclusion that I will never have to visit Iowa in order to meet half of Iowa, because I am certain by now at least half of Iowa has testified before the Aging Committee at some point in time.

I am happy with that, and I think that is good news for Iowans to have you in that position, and I am always happy to hear from them. Let me just say out front that I am against arbitrary retirement, whether it is in Congress or anywhere else. I think people should be encouraged to work and make contributions to society as long as they are, in fact, capable of doing so, and I think arbitrary retirement ages are just that, arbitrary, and do not take into consideration the ability of people to make very positive contributions.

I mean, some people should retire at 40 and others are still making major contributions at 80. It really depends on the individual, and yet society too often sets arbitrary numbers as a number that fits everybody, and clearly it really does not. The recent actions by Congress, I dare say, are pretty inconsistent with what is happening and what we are trying to do.

We, just in the last couple of weeks, removed the earnings limitation on retirees, to encourage them to continue to work as long as they possibly can, and yet we continue to have early retirement statutorily set at 62, which in no way is in keeping with life expectancy in this country. So we are talking at one end to, say, retire earlier, and yet we are encouraging people to work longer, and a lot of these policies seem to me to be somewhat inconsistent.

But this hearing is very important, in the sense that it does hopefully address some of the problems that we are facing. It is clear that with very low unemployment today and with the baby boom generation looking at far fewer children per family being born, that we will continue to see a shortage in the work force, and that is why it is important to find ways to encourage phased retirement, to encourage people to be able to continue to work as long as they possibly can be contributing members of society, something I happen to believe very strongly in.

Obviously, medical science has brought about major changes in the ability of people to be functioning in a very positive way much later in life than was thought of just a generation ago, or even 10 years ago. So it is a fascinating issue that we are considering and we are delighted to have Congressman Pomeroy here to listen to his suggestions and the leadership that he has taken in this area. We are pleased to have him and other panelists as well, as well as the ones from Iowa, too. [Laughter.]

Senator BREAUX. Thank you, Mr. Chairman.

The CHAIRMAN. I met all the people from Louisiana last year. [Laughter.]

Senator BREAUX. We have not had them since we lost control of the Senate.

The CHAIRMAN. Congressman Pomeroy.

STATEMENT OF THE HON. EARL POMEROY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. POMEROY. Mr. Chairman and Senator Breaux, you are both right on the money on your observations that people want to work longer, have an ability to work longer. At the same time, the labor force is tight with available workers and we need them in the work force more than ever. This, to my knowledge, is the first hearing held in Congress on the whole issue of phased retirement, whether we have in the tax code restrictions that get in the way of this market need with the availability and the ability of workers to meet that need.

So let's talk about it quickly. You have a very impressive roster, and I am going to try to abbreviate my comments as we go along.

The CHAIRMAN. Your entire statement will be printed in the record, as well.

Mr. POMEROY. I thank you for that, Mr. Chairman. We do face a significantly changing demographics as we look at the American work force. The face of America's is aging; 76 million members of the baby boom generation in this country, a quarter of whom are already at least 48, and by the year 2006, 44 percent of U.S. workers will be 45 or older, and the number of younger workers will shrink by 9 percent.

Life expectancy is longer, as well, as you each have noted. In 1935, average life expectancy, 61 years. Today, a 65-year-old American man can expect to live another 15 years; a 65-year-old woman, another 19 years. Interestingly, and disturbing to me, is that poverty rates track so closely with increased age. In fact, someone over 75 is three times as likely to be in poverty than someone in the 64-70 age bracket, largely as a factor of not having accumulated enough savings.

Savings rates are very disturbing, as you look at whether or not people will have the means to live comfortably in retirement for this longer period of time. Our savings rates have averaged 8 percent from World War II to 1960, falling to about 2 percent during 1999; fully 30 percent of Americans have not even begun to save for retirement, one-third of the country; 51 percent have never determined how much they will need to save, which means some that are putting a little money away have not at all mustered up with what their realistic need will be.

In this environment, I think, defined benefit plans, the pension plan, is a critical part of meeting the retirement income needs of American workers. I say this even though the number of defined benefit plans has fallen; and, in fact, retirement savings at work of defined benefit or defined contribution options only cover about half of the people in the work force today, and in rural areas like North Dakota, it is less than that. Six out of 10 North Dakota workers in the work force today have no at-work place or ability to save for retirement.

I believe, just like that milking stool you held up, Mr. Chairman, that an optimal approach to retirement income is the three-way approach, Social Security pensions, the defined benefit plan, and the defined contribution amount representing additional savings the worker can accumulate in the work force.

Now, although we recognize that the pension plays a critical role, it continues to fall. I have been looking at addressing this with legislation that I have called the Defined Benefit Revitalization Act or DBRA. After significant work we are now just weeks from introducing this legislation. One feature of the bill will address this area of phased retirement and, in fact, in a bill that is quite technical in nature, this will probably be the most discussed portion of the legislation.

Presently, if you are in the defined contribution plan, you can access the benefits therein when you turn 59½; if you are in the defined benefit plan, you cannot, unless the age of retirement or particulars of the pension program within the place of employment would allow you to. Assuming that the age of retirement is past 59½, which is commonly the case, the tax code does not allow you, in the defined benefit context, to access that savings.

So the result is to disadvantage defined benefit plans relative to defined contribution plans in the perceptions of workers looking at these respective retirement options. Well, I think that by facilitating phased retirement, my legislation will benefit workers in two important ways.

It will expand options for the growing number of workers who are not ready to retire at today's average retirement age of 62. Second, it will improve the economic security of older Americans by allowing them to maximize their pension benefits while continuing to earn income in the final years before retirement.

Without making this change, in a commonly constructed defined benefit plan, there is almost a compelling financial incentive put before the worker to retire, because continuing in retirement, they take basically a significant effective wage cut by not accessing their retirement benefit, but by continuing on wages. It is kind of the reverse of golden handcuffs, where you try and keep someone at work. This is kind of the golden boot out the door as the construct of the benefit forces them to leave to access that benefit.

Now, there are a number of loopholes, to circle back, quit, and come on as an independent contractor. There are a number of different loopholes or games people have been forced to try and access this.

Obviously, it is just such an obvious need. Employers need the services of the employees. Employees want to work longer and people will find their way around the tax code that does not make sense. But let's make the tax code make sense and eliminate the games. I think that by allowing the employers to, on a voluntary basis, extend the flexibility to use phased retirement to retain older workers, you will clean up the situation here and facilitate a strong market need.

To underscore the market need, a Watson-Wyatt study conducted in 1999, found that of 586 large employers, 60 percent of employers reported they were having difficulty attracting workers, 70 percent agreed that implementing a phased retirement program is a viable strategy for the labor shortages, 16 percent indicated they had already worked at trying to get some kind of phased retirement in place, while another 28 percent said they are interested in establishing such programs in the next 2 to 3 years.

Clearly, in this backdrop, I think it is important that we take the step to facilitate this very legitimate need that we are seeing in the marketplace and recognizing the changing nature of the work force and of retirement by passing this legislation. Just as Senator Breaux mentioned, I think this is really the defined benefit equivalent of what we did with the earnings test on Social Security, recognizing that people want to work, have the ability to work, and, in some instances, need to work longer and we work to facilitate it.

I look forward, Mr. Chairman, to continuing our close bipartisan and bicameral cooperation, as we find ways to help Americans deal with their income needs in retirement years. That concludes my statement. I will be happy to take any questions.

[The prepared statement of Mr. Pomeroy follows:]

**The Special Committee on Aging
United States Senate
April 3, 2000**

Testimony of the Honorable Earl Pomeroy (D-ND)

Good afternoon. Mr. Chairman, thank you for the opportunity and the privilege of appearing before you this afternoon to discuss what I believe is one of the foremost public policy challenges of our time — ensuring the retirement security of older Americans. I salute you, Mr. Chairman, and the other members of the committee for your attention to this matter and for the initiatives you have put forward to advance this critically important cause.

As a nation, and family by family, we face unprecedented challenges in trying to achieve financial security in retirement. The face of America is aging, and the challenge of providing a secure retirement for the baby boom generation is one of the biggest domestic policy challenges facing our country. There are 76 million members of the baby boom generation in this country, a quarter of whom (18 million) are already at least 48. By the year 2006, 44 percent of U.S. workers will be 45 or older and the number of younger workers will shrink by nine percent.

Not only are more Americans nearing retirement, but we are also living longer in retirement. In 1935, the average life expectancy in this country was 61 years. Today, a 65-year-old American man can expect to live on average another 15 years; a 65 year old woman, another 19 years. A critical component of retirement policy must be to ensure that older Americans don't outlive their income in retirement.

Although Americans are living longer in retirement, as a nation we are not fully prepared for it financially. For most of the post-World War II period, personal savings rates in this country averaged almost 8 percent. In recent years, however, personal savings rates have fallen dramatically, and are estimated to have been at about 2 percent during 1999. Not surprisingly, then, fully thirty percent of Americans have not begun to save for retirement, and 51 percent have never determined how much they need to save.

The Importance of Defined Benefit Plans

Just as today's workers must evaluate their own retirement security, so must policymakers assess the viability of the nation's aging-related programs and policies. In particular, I believe that Congress should strengthen the ability of the current private pension system to provide adequate retirement income security. Currently only half of all American workers are currently covered by an employer-sponsored pension plan. In my view, increasing the availability of and participation in employer-sponsored retirement plans should be one of Congress' first retirement policy priorities. Specifically, I believe that Congress should recognize the critical role of defined benefit pension plans in providing a secure stream of income in retirement.

Over the past two decades or so we have witnessed a dramatic decrease in the number of defined benefit plans as compared to defined contribution plans. Private workforce participation in defined benefit plans declined from 39 percent in 1975 to 23 percent in 1995-- a decline of over 40 percent. Furthermore, the number of defined benefit plans dropped from 114,000 in 1987 to 45,000 in 1997.

The shift away from defined benefit plans has been accompanied by a corresponding growth in defined contribution plans. In 1980, defined contribution plans represented 33 percent of all employer-sponsored retirement plans. By 1995, this figure had risen to 64 percent.

As someone who has devoted much of my time and attention in Congress to retirement policy, I believe that the combination of a defined benefit pension plan supplemented with a defined contribution savings plan is precisely the retirement arrangement we want for all American workers. I am also a strong believer in the strengths of defined benefit plans. In my view, defined benefit plans offer some distinct advantages both for participants and for advancing sound retirement policy. Specifically, defined benefit plans protect workers' retirement income security by providing benefits to all eligible workers, protecting workers from investment risk, preventing leakage, and by providing lifelong, guaranteed benefits.

The Defined Benefit Revitalization Act

Despite the many advantages to workers of defined benefit plans, federal law does not encourage, and in some cases actually discourages, employers from maintaining them. I have drafted legislation, which I will introduce within the next few weeks, to address this problem. The working title of my legislation is the "Defined Benefit Revitalization Act"

Reversing the trend in defined benefit plans will take some time -- and I believe Congress must start now. Passage of the proposals in my bill will demonstrate the government's commitment to changing the atmosphere surrounding DB plans, encouraging companies that do not have DB plans to adopt them, and encouraging companies that already sponsor DB plans to keep their plans and use them to provide future benefit improvements to their workers.

Many of the provisions in this bill have been put forward in other bills by Representatives Portman and Cardin, Nancy Johnson, Senators Graham and Grassley, and the Clinton Administration. To their excellent proposals I have added others.

I would like to focus, however, on one provision in my legislation, which addresses phased retirement. As currently drafted, my legislation would allow employers to voluntarily provide in-service distributions (in the form of an annuity only) to workers age 59 ½.

The Benefits of Phased Retirement

I believe that by facilitating phased retirement, my legislation will benefit workers in two important ways. First, it will expand options for the growing number of workers who are not ready to retire at today's average retirement age of 62. Secondly, it will improve the economic security of older Americans by allowing them to maximize their pension benefits while continuing to earn income in the final years before full retirement.

Many older Americans who want to continue working for their employer find it makes more sense to switch jobs simply so that they can continue working and receive a pension benefit. Other workers retire from their employer, start receiving pension benefits, only to be rehired, either as a full-time employee or as an independent contractor. While these arrangements have allowed some workers to take advantage of partial retirement, I believe permitting in-service distributions from defined benefit plans at age 59 ½ should also be an option available to employers.

My legislation will also benefit employers by allowing them the flexibility to use phased retirement to retain older workers. We are currently experiencing the longest economic expansion in our nation's history, and the record-low unemployment levels reflect that. In today's tight labor markets, employers must be able to access non-traditional labor sources to keep their business going. In this environment, facilitating phased retirement will provide vibrant and healthy senior citizens of the opportunity to contribute to the economic vitality of this country and share their expertise and positive work ethic with younger workers.

Not surprisingly, employers have expressed a keen interest in phased retirement as a method of retaining skilled older workers. In a survey conducted of 586 large employers in 1999 by Watson Wyatt, sixty percent of employers reported they were having difficulty attracting workers. Fully 70 percent agreed that implementing a phased retirement program is a viable strategy for addressing labor shortages.

Sixteen percent of employers surveyed reported that they offer phased retirement, while another 28 percent said they are interested in establishing such programs in the next two to three years.

Employers that currently offer phased retirement report that it enables them to retain skilled workers. Retaining older workers rather than replacing them with younger, less-skilled workers gives employers several advantages, including the retention of institutional knowledge and specialized skills as well as lower hiring and training costs.

While the concept of phased retirement is attractive, federal law currently discourages it by prohibiting in-service distributions from defined benefit plans. As a point of contrast, in-service distributions from 401(k) plans are permitted without penalty once a participant reaches age 59½

Mr. Chairman, Congress recently recognized the changing nature of the workforce and of retirement by passing legislation to eliminate the Social Security earnings test for beneficiaries age 65 and older. I strongly supported that legislation, and I also believe it is time that Congress took a similar step to facilitate phased retirement in the employer-sponsored pension system by examining phased retirement proposals.

In closing, Mr. Chairman, I would just like to thank you again for the opportunity to join you here this morning. I believe that through innovative approaches such as facilitating phased retirement, we can advance our national retirement policy in a way that will bring tangible results to the nation's older workers. I look forward to continuing our close bipartisan, bicameral cooperation on retirement security issues.

The CHAIRMAN. I have three questions I would like to ask. Would you keep track of the 5 minutes for each of us so we do not lose track of time?

You have implied that one of the problems with implementing a phased retirement program is that some older workers may not even be covered by any type of plan, adding to pension insecurities is that defined benefit plans are in a state of serious decline. Do you agree that one of the most important jobs should be to expand coverage of defined benefit pension plans wherever that is possible?

Mr. POMEROY. I absolutely do. I do not think that a defined benefit model is some kind of out-of-date model that no longer has relevance to the workers' needs relative to retirement income. In fact, I think it is best suited to meeting the needs over the long haul. So, we want to look at those things that have precipitated its rapid demise among employers offering the plans.

One of the biggest reasons is, employers have told me, workers want the defined contribution alternative. Perhaps this phased retirement issue is one of the things that is on the worker's mind as they look at the appearance of an advantage over a defined contribution format, over defined benefit.

I think we should make the change and other changes, as well, as will be represented in the upcoming defined benefit revitalization legislation, to keep defined benefits attractive to employees, but also to employers.

The CHAIRMAN. I also heard that some companies who would like to use phased retirement are worried about running afoul with nondiscrimination rules, and so this brings us to the fact that many of those people could find themselves, who are retired, outliving their savings.

So would clarifying the rules surrounding flexible retirement programs encourage more companies to implement them for their workers?

Mr. POMEROY. It certainly would, Mr. Chairman. I think we have kind of the equivalent of mandatory sentencing in application of the present nondiscrimination tests at the Department of Labor. We need to move more to a consideration on a case-by-case basis of what is going on with an individual plan.

I will have, in the DBRA legislation, authorization that the Labor Department can and must consider the facts and circumstance of the given plan at issue. So, for example, as applied to phased retirement, if it was the phased retirement feature that people were using that appeared to skew whether or not this plan was in compliance with nondiscrimination tests, they would be able to consider those facts and circumstances in making that determination.

The CHAIRMAN. Do you agree that better financial planning and retirement savings education, along with the options for phased retirement, could help individuals better prepare for easing into retirement?

Mr. POMEROY. Absolutely. Let's face it, part of the phased retirement emphasis is that people, too late, are dealing with what their income needs will be in retirement and they are finding they need to work longer, maybe, than they originally planned. If we can deal with retirement savings in our schools, not just high schools, I

mean right down into the junior high and maybe even grade schools and ever after, through college, and to continue vigorous public education for people not in the formal school process, but literally throughout their participation in the work force, we are going to have people who are preparing for retirement income needs a much earlier point.

Again, one-third of all Americans have not begun to save for retirement, and you lay that against the demographic information you and I have talked about, we know that means a lot of folks about our ages are just beginning to think how they are going to make it through. We need to get them thinking at an earlier standpoint than that. I think retirement education is a good way to do it.

The CHAIRMAN. Now, some people say we should not mandate things because it discourages employers, particularly small employers, from implementing a phased retirement plan or anything for that matter, any public policy that affects business. On the other hand, if you do not mandate something, sometimes it never happens. Have you come down on either side or found a comfortable middle ground about mandating or not mandating phased retirement programs?

Mr. POMEROY. Well, I certainly do not think they should be mandated. I think they have to operate in the context of the pensions themselves, and that is wholly voluntary. The last time, in Washington, there was policy consideration of even changing that and having pensions be mandatory was under the Carter administration and produced an administration recommendation that was not even put into bill form.

We have made a conclusive judgment in this country that this was going to be under a voluntary backdrop. With that in mind, you cannot make parts of it mandatory and have the thing work. For example, if we do mandatory phased retirement for defined benefit plans, I believe we would probably accelerate the collapse of defined benefit plans at the very time we are trying to stimulate them.

So we would have to be voluntary, Mr. Chairman. I know, from your record, you would probably be in agreement on that one.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you very much, Earl, for your excellent statement. I think it really covers the topics that need to be discussed, and your call for legislation is moving in the right direction. Are you recommending some type of a combination, I guess, between defined benefit and defined compensation?

Mr. POMEROY. What I would like to see Senator, is, in the work force, much like we have as Federal employees, you have your defined benefit, your pension program, and in addition you have got a thrift savings plan which represents a defined contribution program. That is replicated throughout the work force. And an awful lot of employers have that, particularly the larger ones.

What I would like to do—unfortunately, changes over the years have, I think, imposed significant, discouraging, rather than incenting small employers, in particular, from offering defined benefit plans, we have disincented them. We need to revisit that and

find out how we can keep this to be an attractive employment benefit that employers will consider offering.

Senator BREAUX. Do employers have legitimate concerns about age discrimination and how the phased-in retirement programs would be run? I mean, who is picked and who is not picked; who benefits from the pension plans and who does not?

Mr. POMEROY. Well, under fairly common pension regulation, they would have to be available to everybody on equal terms. What the discriminatory impact could ultimately be is if you have a certain group, particularly highly paid, accessing that particular option and skewering the ultimate test on to your nondiscrimination tests.

Now, that is why I think we need to have, back at the Department of Labor, a facts and circumstances test where they are actually looking at the plan itself. Now, they kind of just have these benchmarks and if you flunk them, you flunk them. We need to do a little better than that.

Senator BREAUX. Well, we appreciate very much your time and your recommendations. Thank you very much for your good work.

Mr. POMEROY. I appreciate the leadership each of you have brought and not just on this issue. I have worked on Social Security as well, and our paths cross very frequently on that one. It is my honor to appear before two leaders who have worked so hard on this topic. Thank you very much.

The CHAIRMAN. Thank you, Congressman. I have already introduced our next two panels, so I am going to call the second panel, at this point, just by name. Mr. Joseph Perkins, President of the American Association of Retired Persons, now just going by the letters AARP; Mr. Scott Morris, Vice President and Senior Economist, Committee on Economic Development, Washington D.C.; and Mr. Stephen Meyer, Vice President, Secretary, and Corporate Counsel, Hy-Vee, Inc., West Des Moines, IA.

We will go in that order. Then we will ask questions after all three of you have testified. As I indicated in the previous panel, since we have asked you to be within a certain time limit, your entire statement will be put in the record and we would hope that you would use your time to summarize.

STATEMENT OF JOSEPH PERKINS, PRESIDENT, AMERICAN ASSOCIATION OF RETIRED PERSONS, WASHINGTON, DC

Mr. PERKINS. Thank you, Mr. Chairman and Senator Breaux. I am pleased to be here on behalf of AARP. More than half of AARP's 34 million members work full or part-time. We therefore have a keen interest in the policies and practices that affect the work lives of our members and all older Americans.

As we all know, the work place is changing dramatically. The 76 million baby boomers will reshape the nature of work and retirement in the 21st century. Employers need these workers. With unemployment at record lows and the need for highly skilled and competent workers at record highs, employers will have to rethink their attitudes about older workers and their labor practices if they want to encourage good workers to stay on the job longer or reenter the marketplace.

At present, fewer than 13 percent of the 65 plus population is in the labor force. That figure only rises to 32 percent among those 55 and above. Over the years, AARP has conducted numerous surveys of employers and human resources managers attitudes toward, opinions on, and policies and practices for older workers.

Our most recent study, which is based on interviews with representatives of 400 organizations, found that older workers continue to be recognized and valued for having a good work ethic and for providing experience, for providing knowledge and stability in the work place. They are viewed as loyal workers and can be counted on in a crisis, all attributes that ought to make them desirable workers in our service-oriented economy.

Despite the good news, though, the future is by no means certain for those who want to remain at work. These same managers also view older workers as inflexible, adverse to change, not technologically up-to-date, and resistant to learning new technology. However, numerous studies have shown that the ability to learn new skills and concepts continues well into advanced ages.

In a further twist in this same study, finding and keeping skilled employees emerged as the most important issue facing employers today. Training the current work force was a close second, but skills training for older workers is not yet the industry norm, despite the aging of the work force, and older workers remain under represented in the company training programs that do exist.

Perhaps the most important change in employer practices that would encourage older workers to remain or reenter the work force, is providing appealing part-time employment opportunities and phased retirement that we are discussing today. Although few companies in the United States have formal phased retirement programs, many businesses, especially in Europe, have begun to experiment with them with great success. I refer you to those studies and my written testimony.

Pre-retirees in the United States say they, too, are interested in phasing into retirement. Nearly three-fourths of the respondents in the first wave of the health and retirement study, funded by the National Institutes on Aging, said they would prefer to phase down from full-time work to part-time work preparing to retire, but few of them believed that their current employers would provide them an opportunity to do so.

A recent AARP study confirms that assessment. AARP sought to examine companies with formal phased retirement programs, but unfortunately, few such programs could be identified. This is somewhat surprising, in light of the many advantages that phased retirement offers to employers and workers. We do mention one program and I will refer you, again, to my written statement.

There is no question that interest in phased retirement options will grow in the coming years, and there is no one way to design a phased retirement plan. More appealing part-time jobs, more work at home, or telecommuting, and more flexible work schedules are some of the options employers should be offering older workers whose skills and abilities they wish to retain, and we stress, here, the words skills and abilities.

Training programs and phased retirement hold great promise for prolonging work lives in the coming decades in ways that benefit

everyone. And AARP urges policymakers and employers to work together to eliminate barriers to making these options more widely available and acceptable and to adopt and enforce policies and laws that ensure that older workers are welcomed and treated fairly in the labor market.

In particular, we certainly commend Congress for its passage of legislation to eliminate the Social Security earnings limit for beneficiaries aged 65 to 69, which AARP has long supported. The Federal Age Discrimination Employment Act is another critical tool in any effort to encourage older workers to remain productive.

This important civil rights law must be strengthened and vigorously enforced to ensure that older workers can work free of discrimination. For example, those provisions that prohibit employers from reducing or eliminating credits to the pension accounts of workers of the age, which was authored by you, I understand, Mr. Chairman, were added to the ADA in 1986 and remain just as important today. But these provisions are now under attack by employers adopting cash balance pension plans that reduce accruals based on age and freeze some older workers' pension accruals and transition periods.

Few older workers will want to stay on the job if their pension benefits do not continue to accrue. As part of any effort to introduce formal phased retirement systems, we must also provide all those good important benefits: health, pension, disability, at least on a pro rata basis. I want to thank you for this opportunity to speak with you, and on behalf of AARP, we look forward to working with you on these and many other issues of concern to older Americans.

Thank you very much.

[The prepared statement of Mr. Perkins follows:]



TESTIMONY
BEFORE THE
SENATE SPECIAL COMMITTEE ON AGING
ON
EMPLOYMENT OF OLDER WORKERS

APRIL 3, 2000
WASHINGTON, D.C.

Witness: Joseph Perkins
President

For Further Information:
Michele Pollak
Federal Affairs Department
(202) 434-3760



Mr. Chairman and Members of the Committee:

I am pleased to be here on behalf of AARP, the nation's largest organization representing the interests of older Americans.

More than half of AARP's 34 million members work full or part time. We therefore have a keen interest in the policies and practices that affect the worklives of our members and all older Americans.

As we all know, the workplace is changing dramatically. The 76 million baby boomers marching into and through their middle years are poised to reshape the nature of work and retirement in the 21st century. They are living longer healthier lives; are better educated than their parents; and are used to having more options with regard to their work and leisure lives.

And, employers need these workers. With unemployment at record lows, and the need for highly skilled and competent workers at record highs, employers will have to re-think their attitudes about older workers, and their labor practices, if they want to encourage good workers to stay on the job longer or reenter the marketplace.

At present, fewer than 13 percent of the 65-plus population is in the labor force. That figure only rises to 32 percent among those 55 and above, and when limited to workers age 55 to 64, the participation rate is substantially higher. These figures represent an increase in employment on the part of older men and women since the mid-1980s. Prior to that time, labor force participation rates for older Americans had steadily fallen since World War II.

Over the years, AARP has conducted numerous surveys of employers' and human resources managers' attitudes toward, opinions on, and policies and practices for, older workers. Our most recent study, which was based on interviews with representatives of 400 organizations, found that older workers continue to be recognized and valued for

having a good work ethic and for providing experience, knowledge, and stability in the workplace. They are viewed as loyal workers who can be counted on in a crisis—all attributes that ought to make them desirable workers in our service-oriented economy.

Despite the good news, the future is by no means certain for those who want to remain at work. These same managers also view older workers as inflexible, averse to change, not technologically up to date, and resistant to learning new technology. However, numerous studies have shown that the ability to learn new skills and concepts continues well into advanced age.

In a further twist, in this same study “finding and keeping skilled employees” emerged as the most important issue facing employers today. Training their current workforce was a close second. But, skills training for older workers is not yet the industry norm, despite the aging of the workforce. And older workers remain underrepresented in the company training programs that do exist.

Perhaps the most important change in employer practices that would encourage older workers to remain – or reenter – the labor force is providing appealing part-time employment opportunities and “phased retirement.” Although few companies in the United States have formal phased retirement programs, many businesses, especially in Europe, have begun to experiment with them with great success. Older workers may move from a career job to bridge or transitional employment before full retirement; may opt for part-time employment in their career job; or may be rehired for short term projects.

One of the best and most successful examples of formal phased retirement is in Sweden, which introduced a national phased retirement or partial pension program in 1976. Workers ages 60 - 65 may reduce their work hours and offset the salary reduction by receiving partial pension benefits. In any given year, approximately 24% of eligible workers have participated in the program.

Preretirees in the United States say they, too, are interested in phasing into retirement. Nearly three-fourths of the respondents in the first wave of the Health and Retirement Study funded by the National Institutes on Aging said they would "prefer to phase down from full-time work to part-time work when they retire," but few of them believed that their current employers would provide them an opportunity to do so.

A recent AARP study confirms that assessment. AARP sought to examine companies with formal phased retirement programs, but few such programs could be identified. That assessment appears to be correct, at least according to another recent AARP study that sought to examine companies with formal phased retirement programs. Unfortunately, few such programs could be identified. This was somewhat surprising, in light of the many advantages that phased retirement offers to employers and workers.

However, one program did stand out. This program, which takes the form of a job-sharing program for older workers, allowed eligible employees to work 40 hours over two weeks and retain full health insurance benefits, prorated vacation leave, and the corporate match to their own 401(k) contributions. The employer is a clothing manufacturer and the program was offered to factory production and day care workers. The stated goal of the program, now nearly ten years old, is to increase the retention of skilled older workers. It is notable that factory work is typically associated with early retirement, so these workers probably would not have remained in the labor force without this program. The company's representative described the decision to implement the program as a "no brainer," particularly in light of his inability to offer significantly higher wages.

The company also believes that the program keeps older workers' production rates high and reduces equipment "down time." One supervisor found her job sharers to be very conscientious about arranging schedules so that machines were rarely idle.

Nonetheless, the AARP study identified a number of employer concerns that might undermine the development and implementation of similar programs in other companies. For example, there were concerns about age discrimination claims arising from an employer's discretion as to who was eligible to job share; another concern was whether the program would pass employee benefit nondiscrimination requirements if only highly compensated employees opted for it. However, the clothing manufacturer described above addressed this by making the formal phased retirement program available only to lower-wage (factory and day care) workers.

Another issue highlighted by employers is the difficulty of allowing participants who have chosen phased retirement to supplement their part-time income with distributions from their pension plans. Some companies have responded by requiring workers to retire formally, after which they are rehired as retirees.

There is no question that interest in phased retirement options will grow in the coming years. And, there is no one way to design a phased retirement plan. More appealing part-time jobs, more work at home, more telecommuting, and more flexible work schedules are some of the options employers should be offering older workers whose skills and abilities they wish to retain. I stress the words "skills and abilities," as did my colleague from the Committee for Economic Development earlier. These skills must be enhanced with the same access to employer provided training as their younger colleagues, and strong encouragement to seek such training.

Training programs and phased retirement hold great promise for prolonging working lives in the coming decades in ways that benefit everyone. AARP urges policymakers and employers to work together to eliminate barriers to making these options more widely available and acceptable, and to adopt and enforce policies and laws that ensure that older workers are welcomed and treated fairly in the labor market.

In particular, AARP commends Congress for its passage of legislation to eliminate the Social Security earnings limit for beneficiaries ages 65-69. AARP has long supported changes to the earnings limit. Americans aged 65-69 should be able to supplement their Social Security benefits with earned income without being penalized for working, just as they can supplement it with pensions and unearned income without penalty. At a time when labor shortages loom on the horizon, this is an important inducement to older productive persons to remain in the labor force. This change in the law sends a signal to older workers that their skills and abilities are needed and welcome.

The federal Age Discrimination in Employment Act is another critical tool in any effort to encourage older workers to remain productive. This important civil rights law must be strengthened and vigorously enforced to ensure that older workers can work free of discrimination. For example, those provisions that prohibit employers from reducing or eliminating credits to the pension accounts of workers as they age, which were authored by you, Mr. Chairman, were added to the ADEA in 1986 and remain just as important today. But, these provisions are now under attack by employers adopting "cash balance" pension plans that reduce accruals based on age and freeze some older workers' pension accruals in transition periods (the "wearaway"). Fewer older workers will want to stay on the job if their pension benefits do not continue to accrue.

Indeed, benefits of all types – health, pension, disability – are important inducements to all workers, not just older workers. As part of any effort to introduce formal phased retirement systems, we must consider providing these benefits, even if on a pro rata basis.

Thank you for this opportunity to speak with you. On behalf of AARP, we look forward to working with you on these and many issues of common concern to older Americans.

The CHAIRMAN. Thank you, Mr. Perkins.
Now, Mr. Morris.

STATEMENT OF SCOTT A. MORRIS, VICE PRESIDENT AND SENIOR ECONOMIST, THE COMMITTEE FOR ECONOMIC DEVELOPMENT, WASHINGTON, DC.

Mr. MORRIS. Thank you, Mr. Chairman, for the opportunity to be here before your committee today. My name is Scott Morris and I am Vice President and Senior Economist at the Committee for Economic Development. The Committee on Economic Development is a nonprofit, nonpartisan research and policy organization, comprised of over 200 business executives and academic leaders.

I am here today to present some of the findings and recommendations of CED's report, *New Opportunities for Older Workers*. I have included in my written testimony the executive summary of our report.

CED's business trustees are all too familiar with a corporate culture that, in the words of Frank Doyle, our project's chairman, esteems the young tigers, but has little regard for the old lions. Our trustees also know, from their experience running large companies, that older workers are a tremendous source of productive value, yet corporate and government policies too often ignore these workers or, worse, raise barriers to their employment, making it difficult for them to keep the jobs they have or to find new jobs elsewhere.

These barriers are not just bad for the many older Americans who want to work. They are bad for business and, ultimately, they are bad for the U.S. economy. As we described in the report, leveling the playing field for older workers is not only desirable, but will be a necessity in the light of the well-known demographic changes looming on the horizon. I encourage you to examine the report's findings on this critical point.

Today, I would like to mention briefly a few of the barriers that older Americans face in the work place and how, in CED's opinion, we might go about eliminating them. But first, let me also congratulate you and your colleagues in the Senate and House on two important actions—first, repeal of the Social Security earnings limit, and passage of the Work Incentives Improvement Act which will allow disability insurance recipients to earn a paycheck without losing their D.I. benefits.

Both pieces of legislation will make it easier for older Americans to remain in the work force longer and both were highlighted in our report as important areas of reform. Taken together, these actions indicate substantial progress in insuring that Federal policy supports work, rather than punishes it.

As to the barriers to work that remain, first, pension and benefit policies are often a problem. Many pension plans continue to impose financial penalties on those who work past a so-called normal retirement age, which may be as young as 55. As a means of retaining valued older employees, CED urges businesses to pursue actuarial neutrality in their pension plans so that the lifetime value of benefits does not decline after the plan's retirement eligibility age.

Second, we also urge policymakers to revisit ERISA provisions that limit employers' ability to offer flexible work arrangements for

older workers. For example, current rules effectively treat all employees working more than 1,000 hours a year as full-time when it comes to benefit requirements. This rigid regulatory framework is not consistent with the growing demand for flexible work arrangements, particularly among workers at or near retirement age.

Third, CED calls upon employers and government to step up their efforts to educate workers in the area of financial planning. Too many workers have not fully considered the financial implications of retiring with one-third or more of their lives ahead of them. Workers approaching retirement have focused too much on financing their 60's, giving little thought to financial health in their 80's or even in their 90's. Employers and government need to do a better job of educating workers on this issue.

Finally, I would like to briefly mention the issue of training, which CED believes is absolutely critical to a successful older worker's strategy. If older workers are continuing to be productive, they must keep their skills up-to-date. We believe that workers themselves are primarily responsible for maintaining their own skills.

However, we are also convinced that access to training is a problem for many older workers and, in this regard, employers bear some responsibility. Employers have long argued that training older employees is a bad investment because these workers are likely to retire in just a few years. But in today's economy, when the shelf life of training is often counted in months rather than years, this argument simply does not ring true. We urge employers to insure that older employees are afforded the same access to training opportunities as their younger colleagues.

These are just a few of the areas in which CED has identified barriers to work for older Americans. The report addresses other topics, including age discrimination, the role of phased retirement, and other aspects of Federal policy that can play a role in promoting work. I encourage you to take a look at our recommendations in these areas.

Let me close by saying that one of the great accomplishments of a wealthy society, like ours, is to make retirement a possibility for its older citizens, but it should not be the only possibility. Older Americans who want to work should be given a fair chance to do so, and CED urges businesses, policymakers, and workers to replace the culture of retirement with one of productive aging, a change that is for each group a matter of self-interest as much as it is in the national interest.

Thank you.

[The prepared statement of Mr. Morris follows:]

**Statement of Scott A. Morris
Vice President and Senior Economist
The Committee for Economic Development**

**Before the U.S. Senate Special Committee on Aging
Monday, April 3, 2000**

Thank you Mr. Chairman for the opportunity to appear before your Committee today. My name is Scott Morris. I am Vice President and Senior Economist at the Committee for Economic Development. CED is a nonprofit, nonpartisan research and policy organization comprised of over 200 business executives and academic leaders. I am here today to present some of the findings and recommendations of CED's report, *New Opportunities for Older Workers*. Included in my written testimony is the report's Executive Summary. The report itself is available on CED's website at www.ced.org or by contacting our offices.

CED's business trustees are all too familiar with a corporate culture that, in the words of Frank Doyle, the project's Chairman, "esteems the young tigers but has little regard for the old lions." Our trustees also know from their experience running large companies that older workers are a tremendous source of productive value. Yet corporate and government policies too often ignore these workers, or worse, raise barriers to their employment, making it difficult for them to keep the jobs they have or to find new jobs elsewhere. These barriers are not just bad for the many older Americans who want to work, they are bad for business and ultimately they are bad for the U.S. economy. As we describe in the report, "leveling the playing field" for older workers is not only desirable, but will be a necessity in light of the well-known demographic changes looming on the horizon. I encourage you to examine the report's findings on this critical point.

Today I would like to briefly mention a few of the barriers that older Americans face in the workplace and how, in CED's opinion, we might go about eliminating them. But first let me congratulate you and your colleagues in the Senate and the House on two important actions: repeal of the Social Security Earnings Limit and passage of the Work Incentives Improvement Act, which will allow Disability Insurance recipients to earn a paycheck without losing their DI benefits. Both pieces of legislation will make it easier for older Americans to remain in the workforce longer and both were highlighted in our report as important areas of reform. Taken together, these actions indicate substantial progress in ensuring that federal policy supports work rather than punishes it.

As to the barriers to work that remain:

1. Pension and benefit policies are often a problem. Many pension plans continue to impose financial penalties on those who work past a so-called "normal retirement age", which may be as young as age 55. As a means of retaining valued older employees, CED urges businesses to pursue actuarial neutrality in their pension plans, so that the lifetime value of benefits does not decline after the plan's retirement eligibility age.

2. We also urge policymakers to revisit ERISA provisions that limit employers' ability to offer flexible work arrangements to older workers. For example, current rules effectively treat all employees working more than 1,000 hours per year as "full-time" when it comes to benefit requirements. This rigid regulatory framework is not consistent with the growing demand for flexible work arrangements, particularly among workers at or near retirement age.
3. CED calls on employers and government to step up their efforts to educate workers in the area of financial planning. Too many workers have not fully considered the financial implications of retiring with a third or more of their lives ahead of them. Workers approaching retirement have focused too much on financing their 60's, giving little thought to financial health in their 80's and even 90's. Employers and government need to do a better job of educating workers in this area.
4. Finally, I'd like to briefly mention the issue of training, which CED believes is critical to a successful older workers strategy. If older workers are to continue to be productive, they must keep their skills up to date. We believe that workers themselves are primarily responsible for maintaining their own skills. However, we are also convinced that *access* to training is a problem for many older workers and in this regard employers bear some responsibility. Employers have long argued that training older employees is a bad investment because these workers are likely to retire in just a few years. But in today's economy, when the shelf life of training is often counted in months rather than years, this argument simply does not ring true. We urge employers to ensure that older employees are afforded the same access to training opportunities as their younger colleagues.

These are just a few of the areas in which CED has identified barriers to work for Older Americans. Our report addresses many other topics, including age discrimination, the role of phased retirement, and other aspects of federal policy that can play a role in promoting work. I encourage you to take a look at our recommendations in these areas as well.

Let me close by saying that one of the great accomplishments of a wealthy society like ours is to make retirement a possibility for its older citizens. But it should not be the only possibility. Older Americans who want to work should be given a fair chance to do so. CED urges businesses, policymakers, and workers to replace the culture of retirement with one of productive aging – a change that is, for each group, a matter of self-interest as much as it is in the national interest. Thank you.

**Executive Summary of *New Opportunities for Older Workers*
A Statement of the Research & Policy Committee of
The Committee for Economic Development**

Older workers offer tremendous value to American businesses and the economy. Unfortunately, they represent a largely *untapped* resource, since public and private workplace policies encourage older Americans to choose retirement instead of employment. These policies are relics from an era of labor surpluses and reflect a view of aging that is quickly becoming outdated. Rather than counting the days to retirement, many baby boomers are looking forward to working longer, or expect to continue to work out of economic necessity. Businesses and lawmakers should look beyond old stereotypes about aging and revamp workplace policies and practices to benefit from the growing number of older Americans who would like work.

CED believes that extending work lives will serve the national interest while benefiting workers and employers. The aging of America will present an unprecedented demographic shift with far-reaching economic consequences. Baby boomers' decisions about work and retirement will play an important part in either alleviating or exacerbating the strains on the economy that will result from these dramatic demographic changes. From a business perspective, one important strain will be an increasing scarcity of new workers. As the baby boomers begin to retire within a decade, fewer young adults will enter the workforce to replace them. Given this impending labor crunch, employers would be well served by efforts to encourage longer work lives.

New Opportunities for Older Workers brings together the most current data on demographic projections, employment and retirement trends, and surveys on workplace attitudes and practices affecting older workers. CED's findings indicate that the status quo, in which older workers are overlooked and underutilized, is no longer desirable or sustainable for businesses, workers, or the economy.

FINDINGS

- **Americans are living longer and retiring earlier than ever before.** Since 1940, the life expectancy for 65-year old men has increased from 12 to 16 additional years. For women, the increase has been from 13 to 19 years. Longer, healthier lives have not, however, resulted in longer *working* lives. Today's average age of retirement is 62, compared with 65 only 30 years ago.
- **America as a nation is growing older.** In just 30 years, 20 percent of the U.S. population will be 65 or older, compared with just 12 percent today. By 2025, 39 states will have the same or greater share of elderly as Florida, the "retirement state," has today.
- **The combination of more retirees and fewer workers will have significant economic consequences.** In 1950, there were 7 working age persons for every elderly person in the United States. By 2030, when the bulk of baby boomers reaches retirement age, the ratio will dwindle to less than three-to-one. In addition to producing labor shortages, this demographic shift will squeeze both national saving and investment, as entitlement programs become more burdensome and retirees draw down their savings.
- **Current policies and practices, both public and private, create financial disincentives to continued employment for older Americans.** For example, many private pensions penalize

work after a certain age, frequently as low as 55. Similarly, some Social Security provisions, including earning limits for beneficiaries, discourage continued work.

- **Older Americans often face additional non-financial obstacles to work.** These barriers include workplace discrimination and limited opportunities for professional development. The real or perceived lack of opportunities for advancement discourages older workers from updating their skills, seeking new employment, or continuing in current jobs.
- **More Americans will be willing and able to continue working later in life.** Whether out of financial necessity or personal preference, more older Americans --and baby boomers in particular--indicate a willingness to continue to work. Many have not saved enough to maintain their existing lifestyles in retirement unless they continue to work. As our economy continues to shed physically demanding jobs, there are fewer physical impediments to work for older people. Further, there are no discernible differences between the intrinsic ability of most older workers and those of their younger colleagues to perform today's jobs.
- **Older workers represent a tremendous source of experienced human capital.** Employers report that the judgment skills of older workers exceed those of younger employees and that they often demonstrate a greater flexibility in work arrangements. Surveys and tenure data show a higher degree of loyalty to employers among older workers than their younger counterparts. New employees who are older have higher retention rates than those of younger hires, making new skills training for them a sound but often overlooked investment.

RECOMMENDATIONS

Remove public disincentives for older Americans to continue working.

- Eliminate the Social Security earnings test.
- Increase Social Security's normal and early retirement ages to 70 and 65, respectively, over the next 30 years.
- Eliminate the employer first-payer provision in Medicare.
- Reform Social Security Disability Insurance (DI) to promote work by DI recipients while maintaining an adequate safety net of benefits.
- Amend current federal laws to allow greater flexibility in hiring older workers for contingent and part-time work

Reform workplace policies and practices to "level the playing field" for older workers.

- Reconsider private pension plans that penalize work by older employees and revise them to be more age-neutral.
- Explore innovative ways to avoid career stagnation for long-tenure employees.
- Consider greater use of "cafeteria"-style benefit packages to facilitate the hiring of older workers in flexible work arrangements.
- Pursue phased retirement as an alternative to standard retirement policies.

Combat negative stereotypes.

- Offer management-level training and employee workshops to eliminate age-related bias in the workplace and educate managers about the value of older workers.
- Ensure that age bias plays no part in hiring, training, or retention decisions.

Promote opportunities for older workers to update their skills.

- Ensure that older workers receive the same access to employer-provided training as their younger colleagues.
- Encourage older workers to seek training to stay competitive in the increasingly technology-based economy.
- Urge educational institutions to offer expanded job-training programs for the largely untapped market of older Americans seeking to update their skills.

Create recruitment strategies targeting older workers.

- Partner with senior associations to advertise positions.
- Supplement standard recruiting packages with materials designed for older workers.

CED believes that these recommendations can alleviate the looming economic problems of an aging America. But they must be implemented now, before the bulk of the baby boomers retire. Increasing the labor force participation of older Americans will provide a broader taxpayer base, enhance the lives of older Americans, and enable businesses to profit from the talent and resources of their older employees.

The CHAIRMAN. Now we will hear from one of the progressive employers of Iowa, to set a good example for the rest of the Nation. Mr. Meyer.

STATEMENT OF STEPHEN MEYER, VICE PRESIDENT, SECRETARY AND CORPORATE COUNSEL, HY-VEE, INC., WEST DES MOINES, IA

Mr. MEYER. Thank you, Mr. Chairman, Senator Breaux. I am Steve Meyer, Vice President, Secretary and Corporate Counsel for Hy-Vee, Inc. I am extremely honored to have the opportunity to testify before this panel. My company very much appreciates your efforts to promote the employment of older workers.

Hy-Vee is a food and general merchandise retailer with its corporate home in West Des Moines, IA. Hy-Vee operates 210 stores in the states of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. We have served our customers for over 70 years and have over 43,000 employees of all ages. We take pride in being employee-owned.

I understand that this committee is today considering the dynamics of the employment of older workers. Hy-Vee very much values its older workers and the benefits they provide our company. Hy-Vee recognizes and appreciates the work ethic, the loyalty and the devotion of its older employees. Frequently, older employees have greater experience, job skills, and flexibility than their younger counterparts.

Current economic trends encourage Hy-Vee and other private sector employers to employ increasing numbers of older workers. As we all know, our population and the work force is aging. In many of Hy-Vee's trade areas the population is also declining. Coupled with the current economic boom and consequential labor shortage, the recruitment and retention of older workers becomes an imperative, as well as a desire and a goal. Hy-Vee's economic survival is tied to a fully staffed and motivated work force, of which our older workers are integral part. Hy-Vee presently has approximately 2,000 workers over the age of 60, even though the work is often physical and demanding. Of those 2,000, we have nearly 700 workers who are over the age of 70.

Hy-Vee realizes there are substantial barriers and impediments to the employment of older workers. Some pension plans, and to an extent the Social Security system, impede the employment of older workers by imposing financial disincentives to work. At times, pension plans even penalize older workers who desire to work. Likewise, the income limitations and tax consequences of Social Security also impose obstacles to employment after retirement. There are also non-economic factors which create barriers to the employment of older workers. Oftentimes, employers are hesitant to devote extensive training to older employees because the employer fears that the employment will be short-term. In addition, there can be significant discrimination against older workers who are perceived and stereotyped as less productive, more costly employees. Society must remove these impediments before older workers can be fully integrated into the work force.

As I stated, Hy-Vee appreciates its older workers a great deal. We constantly strive at developing methods to attract workers and

particularly older workers. We do our best to recruit, accommodate, and retain older workers.

Hy-Vee actively pursues the recruitment of older workers. We worked through the various job service agencies and senior organizations to seek out older citizens who wish to work. We have our current employees promote older worker recruitment by word-of-mouth.

Hy-Vee advertises its desire to employ older workers through postings and the media. I have attached a typical recruitment poster to my written statement. Hy-Vee maintains programs to accommodate and retain its older workers. Our company has extremely liberal policies regarding work scheduling. Older employees are able to schedule work at convenient and desirable times. Special needs are normally accommodated. Hy-Vee permits and encourages not only flexible scheduling on a daily and weekly basis, but also seasonally.

If the employee so desires, he or she may work in the spring, summer, and fall; and yet spend winters in Arizona or Florida. Hy-Vee has enacted policies which enable older employees to be a part of the Hy-Vee team. All employees, regardless of age, receive the same training and opportunities. The company does not tolerate unfair perceptions, stereotypes, or other incidents of age discrimination. On an individual level, Hy-Vee does its utmost to accommodate employees with less physically demanding jobs, if necessary, to continue a worker's employment.

Hy-Vee's employee benefits also encourage the employment of older workers. We do not have a pension plan, but rather a profit-sharing and 401(k) plan. Hy-Vee contributes a significant portion of its profits to the profit-sharing plan. All employees who work at least 1,000 hours per year are eligible to participate in the plan, regardless of age or retirement status. The plan has an ownership interest in Hy-Vee which makes all participants owners of the company. Likewise, the 401(k) plan is available to all. Hy-Vee's retirement plan rewards rather than penalizes older citizens who desire to work.

Hy-Vee's health plan is also available to its older workers who are full-time employees. Moreover, all full-time employees who retire and who attain a minimum length of service requirement and the age of 50, can continue in Hy-Vee's health plan at premiums far below the market. The continuation of health benefits allows older employees to be more secure and desirous of becoming part-time employees once they do retire.

Hy-Vee educates its employees about the circumstances of retirement so that employees can approach retirement age without fear or uncertainty. Upon reaching the age of 50, each employee is given a retirement booklet which sets forth the various changes and financial considerations, which everyone must face when they retire.

I have attached the cover page of the booklet to my written statement. The company also conducts periodic retirement seminars for its older employees and maintains an alumni association for those employees who do choose to retire. In summary, Hy-Vee believes that the economic and social well-being of our country depends upon the continued and expanded employment of its older citizens.

We strongly urge Congress to remove the barriers to the employment of older workers so that all citizens may be able to work if they so desire.

Thank you again for allowing me to testify.

[The prepared statement of Mr. Meyer follows:]

**Testimony by
Stephen Meyer
Vice President, Secretary, and Corporate Counsel
Hy-Vee, Inc.**

***Hy-Vee Programs to Recruit, Accommodate, and
Retain Older Workers***

**Before the U.S. Senate
Special Committee on Aging
April 3, 2000
Washington, DC**

Mr. Chairman and Members of the Committee:

I am Steve Meyer, Vice President, Secretary and Corporate Counsel for Hy-Vee, Inc. I am extremely honored to have the opportunity to testify before this panel. My company very much appreciates your efforts to promote the employment of older workers.

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our older workers are an integral part. Hy-Vee presently has approximately 2000 workers over the age of 60 even though the work is often physical and demanding.

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There are also non-economic factors which create barriers to the employment of older workers. Oftentimes employers are hesitant to devote extensive training to older employees because the employer fears that the employment will be short term. In addition, there can be significant discrimination against older workers who are perceived and stereotyped as less productive, more costly employees. Society must remove these impediments before older workers can be fully integrated into the workforce.

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HyVee
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Spare time on your hands? Let us help with work schedules that match your availability. Your experience and maturity are assets we find valuable to our success. Our new location at 1900 South Marion Road in Sioux Falls has part-time job opportunities available.

Some of the benefits of part-time employment

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- Employment and professional development opportunities
- Employee assistance programs

Your Retirement Planning Guide

Ready or Not



The CHAIRMAN. We thank you for coming here to do that. Before I ask questions, I want to pick up on something that Mr. Perkins brought up, and I thank him for bringing it up, because it gives me an opportunity to comment on our waiting for the Treasury Department to do something, and that is that subject of wear-away that you brought up.

This has been an issue before the Congress probably at least for the last year, maybe a little longer than that, and we are still waiting to hear from the Treasury Department about their specific views on wear-away. What we really hear from—is they speak out on the issue of disclosure, but they do not really deal with the pressing problem of wear-away.

They testified, I do not know how recently, maybe last fall, before Congress, and at that testimony, they said they did not have anything to say beyond just improve disclosure at the time. We asked what they would do in the future and they did not give a very direct answer. They spoke about thinking about it or coordinating it, but they have not done much else. Now, I think they kind of have given us some direction.

Now, whether this direction is good or bad, I think we will each have to draw our separate conclusions, but in 1991, they put out regulations on nondiscrimination requirements in the Federal Register on September 19, 1991. They opined on Code Section 411, (D)(1)(h), and there are also Treasury Department indications on this issue of benefit wear-aways and there are regulations at 1.401 (A)(4) through 13(C), and also some at 1.411(B). I can go on and on with a list that they have given in regard to some tax law that was previously dealing with wear-aways where it seemed to me there was an implication that, in some instances, they wanted some wear-away.

Now, that does not sound reasonable to me, but anyway, that is what they suggested. So I do not know of anyone who has had luck with them or with any of the other agencies concerned about it. I did write to Ms. Ida Castro of the EEOC last October, about the Age Discrimination and Employment Act implications of this. I met with her, as well, on that issue, but I have not heard a peep out of her since I wrote that letter last October and met with her last fall. So I can give you that update on my concern about that issue as well.

Mr. PERKINS. Thank you.

The CHAIRMAN. By the way, I am going to ask specific questions of specific witnesses, but if anybody else wants to enter an opinion on any of these questions, even if it is not directed to you; that is OK. I am going to start with you, Mr. Perkins.

In your statement, you have said that the way one employer made certain that it did not run afoul with the nondiscrimination rules by making phased retirement programs available was to do it only for the rank-and-file workers. What are your thoughts on whether these plans should only be offered to rank-and-file workers?

Mr. PERKINS. I would like to think that they could be used by everyone. We experimented with phased retirement programs at my company that I was with for 35 years, Polaroid Corporation,

just experimented with them, and even found that there were some at the managerial level that would like to try it.

Now, admittedly, when a person does phased retirement, there is some clout loss, some influence loss. Therefore, I would think that in the exempt payroll group, the salary payroll group, the manager group and whatnot, that there might be a reluctance to do it. But I think it should be available to everyone.

The CHAIRMAN. OK. I am going to ask Mr. Morris a question. This is such a general question, but think of it in terms of this hearing and what we face when we have the biggest demographic shift in the history of our country with the retirement of the baby boomers—whether or not the retirement is going to bankrupt our nation?

Mr. MORRIS. No. That is the very context of our report, what will this retirement do and why do we want to encourage longer work lives. The demographic shift is an economic problem. We are concerned about it and it is a very good reason to encourage longer work lives, but it is a problem that we should keep in context and in perspective. The most dramatic effects are on our entitlement programs, on government fiscal policy.

At the economy-wide level, by one estimate that we use, according to the OECD, we would see a 10-percent reduction in living standards compared to what they would be if we had the same ratio of workers to retirees over the next 50 years, if it didn't change at all. So given that it is going to shift dramatically, we will see this 10 percent reduction.

That does not mean people are going to be 10 percent poorer than they are today. It is compared to a baseline. But that is just an example to show that it is a significant effect, but is not a bankruptcy by any means.

The CHAIRMAN. How do you see the direct benefits in this environment you just described, answering my first question; if we are successful in extending the work lives of individuals, what are the likely economic benefits?

Mr. MORRIS. That 10 percent measure is one indication. If you are looking at the macro economy, you are talking about a number that is on the margin, but really very significant and something that would have a noticeable effect over time in living standards.

If you look at the individual level, though, this is important when we talk about the adequacy of savings of the baby boomers and that it is, in fact, inadequate on average. That is a key measure and longer work lives will take a step toward addressing that shortfall in personal savings.

The CHAIRMAN. Does CED support tax incentives or any hiring incentives to make older workers more attractive to their employers?

Mr. MORRIS. No, we do not. Our standard in this report for our recommendations is leveling the playing field for older workers. It is not tipping the balance in the other direction. This was an issue that we debated on the committee. The feeling was that that kind of approach may attach a stigma to older workers that they do not deserve.

These are very productive workers. They do not need special carrots for employers to want to hire them. It really is a matter of re-

moving the barriers and not providing all of these additional incentives.

The CHAIRMAN. Mr. Meyer, from the large number of people that you are able to encourage to stay employed after the normal age of retirement; what job characteristics do older workers desire most in post-retirement employment?

Mr. MEYER. Well, I am not sure that they desire anything more or less than an ordinary worker does, Senator. I think they want to be treated as a valuable and integral part of the work force. They want to be trained, they want to know what they are supposed to do. They want to know what sort of rewards they are going to get if, in fact, they do do it. What they do not want is to be treated differently than anyone else.

The CHAIRMAN. Well, is this flexibility you spoke of more significant to them than an employee under age 65?

Mr. MEYER. Well, I think so, and only because certain things are desired when you have a younger family and that sort of thing. They like to do that and, in many instances, they are not working for the economic benefits of working. They are working for what maybe should loosely be termed the social benefits of working.

It retards getting older, and it makes them feel as though they have an important role in society. Over the last 50 years, we seem to have taken actions through the Social Security system and other ways to deter that—to make people feel they should retire when they are 65, to a large extent to make room for younger workers, which is becoming moot at this point in time.

The CHAIRMAN. What is the greatest barrier to private sector employment of older workers as you found in your experience in Iowa.

Mr. MEYER. Again, perception, I believe. The perception that these older workers do not want to work or, for some reason, they are not as valuable as younger workers, all of which we know are not true.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you very much, Mr. Chairman, and I thank the panel members very much for an excellent presentation. We have heard a great deal about the importance of creating circumstances where older workers can continue to work for longer periods of time and how valuable they are, Mr. Meyer, to your operations.

I think that is indeed very good news. Mr. Perkins, let me ask you; is it easier for older workers today to continue working past the age of 65 than it was a generation ago?

Mr. PERKINS. I think it is probably a little more difficult. In the manufacturing industry in this country, with the down sizing that has occurred, the intent is to offer benefits to workers to leave. Those who had been in the work place for longer periods of time tend to be older ones. So that is one of the reasons I think why the average age of retirement has actually reduced and is a little bit below age 62, 61.8 or something like that.

I do not think managers, employers, have woken up to the fact of the demographic shift and the fact they are going to have to find ways to hold on to workers, rather than release them when they get older. I think there has got to be a sea change in their attitude.

Like so many things in life, you sometimes wonder if it is going to come when it becomes a crisis, rather than planning ahead for it.

Senator BREAUX. So, if it is more difficult for seniors to work past 65 today, that is not because of physical impairments, but because of legal rules that exist.

Mr. PERKINS. It is not even the legal rules that exist. A lot of times is the subtle discrimination that occurs. I mean, there are protections for older workers. We do not have mandatory retirement in this country for almost 20 years now, but the subtle acts of discrimination—and it does not always come from bosses. It comes from fellow employees and it can come from family. “Gee whiz, why don’t you want to retire, Dad? What’s the matter with you?” And it is just traditionally that age 62 retirement right now, which you spoke of earlier, is an 80 percent amount for the individual. It now, admittedly, as time goes on, that age 62 amount is going to decrease down as low as 70 percent of a figure. Probably it will be much less incentive for a person to retire at age 62 than it is now.

We simply support what has come out—hopefully, will be signed momentarily, in the 65 to 69 area. I think that is fantastic that workers 65 and older would be able to continue and still collect Social Security.

Senator BREAUX. If we continue to try to address the problems with regard to older people working longer, and obviously the removal of the earnings gap is one of the things that I supported and which will be eliminated. If we do that to encourage more people to work longer, should we consider tying their eligibility for retirement to the life expectancy age?

Mr. PERKINS. I think there should be just total flexibility. I do not think there should be any changes in that. The life expectancy, of course, no one lives to life expectancy. It is either something more or something less. We certainly would not want to support the increase in Social Security any more than it is going to by law go to, now, to age 67.

I, myself, can have a concern at times about the fact that Social Security at 62 is going to be down to 70 percent in a number of years, because there are those in the work place that are not disabled. There are still some jobs which have some heavy lifting, and the opportunity now to retire at 62 and have a very gracious amount, 80 percent, is nice to have there.

That is going to go away over the years when it reduces down to 70 percent. So, I think things should stay the way they are. I would like to think that the Social Security limit will not go above 67 and that is what AARP supports.

Senator BREAUX. Thank you. Mr. Morris, are arbitrary retirement ages either necessary or advisable in some areas?

Mr. MORRIS. You mean structured into programs?

Senator BREAUX. Employment contracts or whatever—

Mr. MORRIS. Yes, sure they are. In fact, as much as we urge employers in general in here to pursue actuarial neutrality, basically make these arbitrary ages disappear in some sense, we recognize that for some employers in some industries, these have been useful tools and necessary tools for encouraging retirement.

In a declining industry or a company that is down sizing, which is inevitable in our economy, there is no question that will happen. It is not to say that encouraging early retirement is worse than having to close an entire plant down and we do think employers, in general, need flexibility to stick to these ages when they deem it necessary.

Senator BREAUX. What does your group think about companies that just say there is going to be an arbitrary retirement age of 60 years of age, for instance, for the executive offices within the company? Are those things generally advisable or inadvisable or what would your comments be?

Mr. MORRIS. We did not address the issue of how executive officers would be treated within the company. We were looking very broadly at company plans in general. I will say our committee is comprised of these executive officers and I think that brought a certain sensitivity to this issue, in general, as they approached it.

I think their perspective in general is, "Of course, we should all be working longer. We work longer. We are retired from our CEO jobs, some of us, but we serve on boards and we are working 40-plus hours a week." That is the perspective they brought to this issue.

Senator BREAUX. I have always been particularly bothered by just arbitrary retirement ages that I know some companies have. For instance, I have seen multinational companies that have just said, when their executive officers reach 60, they have to retire regardless of their health, regardless of their condition, regardless of the contribution they are making to the company.

I just think that is arbitrary without a reason. On the other hand, I think that there are some instances when a retirement age can be picked, particularly because of health and safety areas that may be appropriate and proper, but it has to be, I think, tied to the performance of the individual. Some individuals obviously should be retired at a much earlier age than is currently on the books, and others can be very positively contributing to their profession at a much later age.

Obviously, no one has talked to Strom Thurmond about an arbitrary retirement age and we are not going to start. But anyway, I just think that arbitrariness is just totally wrong, so, thanks.

The CHAIRMAN. Mr. Meyer, one more question for you. I hope you did not address this already, but, government regulation—to what extent, if any, does this pose as an impediment to employment of older workers, and maybe the regulation—there might be some government regulation on law and tax and pension policy and stuff like that—is there anything in that as you have sought to retain 700 employees that are over age 65; have you found any impediment?

Mr. MEYER. I think the biggest impediment was one that was addressed as far as the Social Security system and the limitations on income and the tax consequences of the Social Security system also.

The CHAIRMAN. OK. Maybe along the same lines, Mr. Morris, let me ask you this. Your testimony seems to indicate that employers represent significant barriers to keeping older workers in the work place. Does this suggest a greater regulatory role for the Federal Government, for instance, by mandating age neutrality in pensions

and what about mandating training programs or incentives for hiring older workers?

Mr. MORRIS. Well, again, no. As much as our orientation is toward moving employers in a certain direction, we do not believe that creates an opening for yet another layer of regulation in this area. We have a flexible economy, and putting in another rigidity that employers face as they try to make decisions about how to control the size and makeup of their work force is not advisable, in our opinion. Over time, we do believe employers will go in the right direction, and they are. One very positive benefit of the economy we have had in the past few years is that we do see more activity toward encouraging older workers to stay on the job. Employers are doing this now. They will continue to do it; as they feel the need to do it, they will. The demographics show that that will be inevitable.

So, no, we do not believe it is advisable for government to step in right now and introduce a new round of regulation.

Senator BREAUX. Just one short question—I wanted to ask you and I forgot, Mr. Morris, after I asked Mr. Perkins a question about increasing Social Security's retirement age. It seems to be somewhat inconsistent that we are encouraging people to work longer and trying to eliminate all the barriers and saying that even after you are retired you can continue to work and draw your retirement pension benefits without penalty, and I am all in favor of that, but it seems to me in keeping the early retirement age at 62 when life expectancy goes up every year; I take it that the Committee on Economic Development has a different position. Would you—

Mr. MORRIS. We do, in fact, support an increase in the early retirement age, for the very reasons you have stated. If you are looking at this as a very long-term issue, as we do, you have to consider the impact of life expectancy on these programs. For that reason, and coupled with the increase in the normal retirement age—

Senator BREAUX. I take it you would favor, also, phasing it in?

Mr. MORRIS. Exactly. This is a phase-in. This does not affect people retiring today. It does not even affect many of the baby boomers, but we do it as a necessity over the long term. For the reason Mr. Perkins pointed out, what happens to the benefit level at early retirement as you have normal retirement increasing? Poverty rates do increase as older people get yet older. People in their 80's and 90's have higher instances of poverty.

That is not going to be helped at all if we have an early retirement age that stays the same, and the benefit declines as a result.

Senator BREAUX. I appreciate it. Thank you.

The CHAIRMAN. I am done with questioning. Let me advise you, although it may not happen, that sometimes members that cannot come to these hearings have questions that they will submit to you for answers in writing, and we will keep the record open until Friday for that. And then in turn, if you could, within 10 days after you receive your questions, get them returned to us, we would appreciate it very much.

Thanks to each of you for your kind attention.

Now, I call our third and last panel, Ms. September Dau, CPA, Director of Finance and Human Resources, Iowa Lakes Rural Elec-

tric Cooperative, at Estherville, IA, and she is representing the National Rural Electric Cooperative Association; and then we have Ms. Wilma K. Schopp, Director of Compensation, Benefits and Human Relations Systems, Monsanto/Pharmacia and Upjohn, St. Louis, Missouri, representing the Association of Private Pension and Welfare Plans.

We will take you in that order. So, would you start, Ms. Dau.

STATEMENT OF SEPTEMBER L. DAU, CPA, DIRECTOR OF FINANCE AND HUMAN RESOURCES, IOWA LAKES ELECTRIC COOPERATIVE, ESTHERVILLE, IA, REPRESENTING THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Ms. DAU. Thank you, Senator Grassley, Senator Breaux. I am pleased to have this opportunity to address the committee regarding the need for a thorough review of the current rules limiting an employer's ability to offer phased retirement programs. I ask that my entire testimony be included in the record.

My name is September Dau and I am Director of Finance of Human Resources at Iowa Lakes Electric Cooperative in Estherville, IA. I am here not only representing the employees of Iowa Lakes, but also National Rural Electric Cooperative Association, a Washington, D.C. based association of the nation's nearly 1000 consumer-owned, not-for-profit electrical cooperatives.

NRECA provides pension and welfare benefits to over 130,000 rural electric employees, dependents, directors, and consumer members in 46 states. That statistic illustrates both the size and diversity of the rural electric cooperative work force. Much has changed since 1948 when NRECA began offering a qualified defined benefit plan to its member cooperatives, not the least among them is the employees themselves.

NRECA's multiple employer defined benefit plan has evolved from a one-size-fits-all sort of retirement savings plan to a very complex array of plans, including both defined benefit and defined contribution plans that are increasingly viewed by NRECA's membership as an important tool for attracting and retaining the right employee for the job.

NRECA defines phased retirement as a program of incentives targeting older workers to encourage them to remain actively employed, rather than to retire. In the NRECA defined benefit plan, this program of incentives is called quasi-retirement. NRECA has offered a phased retirement option since 1983. The provision was included in response to requests from cooperative managers who understood the realities of the tight skilled labor market in rural America.

The current economic environment has only heightened the need for significant incentives to keep more mature skilled labor on the job at rural electric systems. In addition to offering a way to manage the problem of the diminishing pool of new and younger skilled workers, phased retirement programs can reduce and even avoid the expense to the employer of recruiting and training new employees, while retaining institutional memory of long-service employees.

Phased retirement incentives address three specific issues for participants in the NRECA defined benefit plan. First, phased retirement allows the workers to lock in an advantageous interest

rate. This is important because the majority of workers reaching normal retirement age elect to receive a lump sum rather than an annuity payment. There is no leakage issue because the distribution amount is transferred to NRECA's 401(k) plan or into an IRA.

Second, retirement payments are necessary in order to maintain a comfortable lifestyle, while working a reduced schedule. Third, an employee will begin to lose the value of subsidized early retirement benefits once he or she reaches 30 years of service without retiring. NRECA maintains a defined benefit plan on behalf of its cooperative members. The plan is a multiple employer plan qualified under section 401(a) of the Internal Revenue Code.

The plan, created in 1948, includes 850 cooperative employers which in turn offer retirement benefits to 50,000 participants. The plan has assets in excess of \$3 billion and contains a flexible menu of options that allows the cooperative employer to design a plan that meets its specific employee benefit goals and plan cost criteria. Normal retirement age in the NRECA defined benefit plan can be 60, 62, 65, or 30 years of benefit service or age 62, whichever comes first. About 50 percent of the cooperatives have elected 62 as normal retirement age; 15 percent have selected 65; and approximately 35 percent of the cooperatives have opted for the 30-year age 62 plan. Less than 1 percent of the cooperatives have selected 60 as the normal retirement age.

Participants in the plants may elect to receive retirement benefits in the month in which the employee reaches normal retirement age while continuing to work. Under current law, defined benefit plans are permitted to make in-service distributions to an active employee who has reached his or her plan's normal retirement age. For those co-op employees covered by a plan with an age 60, 62, or 65 retirement age, the rules work well.

It is uncertain under the current rules whether in-service distributions from a defined benefit plan may be made upon reaching a plan's early retirement age. Since a participant in a phased retirement program has not terminated employment, he or she will continue to accrue a benefit even as the employee draws down on the benefit already earned. In addition, all other employee benefits remain in place because the employee is still an active employee even if he or she has reduced their work schedule.

The discussion of phased retirement is a continuing one, dictated almost exclusively by the rapidly changing work force. For this reason it would be difficult to make an exhaustive list of the necessary changes to ERISA and the code. However, it is clear that employees often terminate employment to obtain an early retirement subsidy, to lock in an advantageous interest rate, or to provide them with enough income to reduce their work schedules.

Based on NRECA's own experience with phased retirement, I hope you would consider legislation that would allow defined benefit plans to make in-service distributions to any employee who has reached age 50 or 30 years of service. The in-service distributions could take the form of a lump sum as well as an annuity. Finally, the provision ought to be permissive. We would welcome the opportunity to work with you and your staff to explore ways of improving current law, to expand the use of phased retirement plans.

I look forward answering questions you may have.

Thank you.
[The prepared statement of Ms. Dau follows:]



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**Testimony of
September L. Dau**

Director of Finance and Human Resources

Iowa Lakes Rural Electric Cooperative

Before the

**Special Committee on Aging
United States Senate**

April 3, 2000

INTRODUCTION

Chairman Grassley and members of the Committee, I am pleased to have the opportunity to testify before you concerning the need for a thorough reexamination of the current rules limiting employers' ability to offer phased retirement programs. I ask that my entire testimony be included in the record.

My name is September L. Dau. I am the director of Finance and Human Resources at Iowa Lakes Electric Cooperative in Esterville, Iowa. I am here not only representing the employees of my own electric cooperative, but also the National Rural Electric Cooperative Association, a Washington, D.C. based association of the nation's nearly 1,000 consumer-owned not for profit electric cooperatives. NRECA provides pension and welfare benefits to over 130,000 rural electric employees, dependents, directors and consumer members in 46 different states.

That statistic illustrates both the size and the diversity of the rural electric cooperative workforce. Much has changed since 1948 when NRECA began offering a qualified defined benefit plan to its member cooperatives - not the least is the employees themselves. NRECA's multiple employer defined benefit plan has evolved from a one size fits all sort of retirement savings plan to a very complex array of plans, including both defined benefit and defined contribution plans, that are increasingly viewed by NRECA's member cooperative-employers as an important tool for attracting and retaining the right employee for the job.

WHAT IS PHASED RETIREMENT

NRECA defines phased retirement as a program of incentives targeting older workers to encourage them to remain actively employed, rather than to retire. In the NRECA defined benefit plan this program of incentives is called "quasi retirement".

WHY IS PHASED RETIREMENT IMPORTANT TO NRECA

NRECA has offered a phased retirement option since 1983. The provision was included in the plan in response to requests from cooperative managers who understood the realities of the tight skilled labor market in rural America. The current economic environment has only heightened the need for significant incentives to keep more mature skilled labor on the job at rural electric systems.

In addition to offering a way to manage the problem of the diminishing pool of new and younger skilled workers, phased retirement programs can reduce and even avoid the expense to the employer of recruiting and training new employees while retaining the institutional memory of long-service employees.

Phased retirement incentives address three specific issues for participants in the NRECA defined benefit plan. First, phased retirement allows workers to lock in an advantageous interest rate. This is important because the majority of workers reaching normal retirement age elect to receive a lump sum rather than an annuity payment. There is no leakage issue because the distribution amount is transferred to NRECA's section 401(k) plan or into an IRA. Second, retirement payments are necessary in order to maintain a comfortable life style while working a reduced schedule. Third, an employee will begin to lose the value of subsidized early retirement benefits once he or she reaches 30 years of service without retiring.

DESCRIPTION OF NRECA'S DEFINED BENEFIT PLAN

NRECA maintains a defined benefit plan on behalf of its cooperative members. The plan is a multiple employer plan, qualified under section 401(a) of the Internal Revenue Code. The plan, created in 1948, includes 850 cooperative employers, which in turn offer retirement benefits to 50,000 participants. The plan has assets in excess of \$3 billion. The plan contains a flexible menu of options that allows the coop-employer to design a plan that meets its specific employee benefit goals and plan cost criteria.

The employer selects the benefit level, eligibility requirements, whether cost-of-living adjustments will apply, whether benefits will be based on years of benefit service or years of benefit service plus past employment. Finally the employer may choose the normal retirement date for the plan.

Normal retirement age in the NRECA defined benefit plan can be 60, 62, 65, or 30 years of benefit service or age 62, whichever comes first. About 50% of the cooperatives have elected 62 as normal retirement age, about 15% have selected age 65 as normal retirement age and approximately 35% of the cooperatives have opted for the 30-year/age 62 plan. Less than 1% of cooperatives have selected 60 as the normal retirement age. Participants in the plans may elect to receive retirement benefits in the month in which the employee reaches normal retirement age, while continuing to work.

PHASED RETIREMENT OPTION IN THE NRECA PLAN

Under current law, defined benefit plans are permitted to make in-service distributions to an active employee who has reached his or her plan's normal retirement age. For those cooperative employees covered by a plan with an age 60, 62 or 65 retirement age, the rules work well. It is uncertain under the current rules whether in-service distributions from a defined benefit plan may be made upon reaching the plan's early retirement age. The 30 year/age 62 plan is an extremely popular option for the cooperatives, covering approximately 35% of participating employers.

Since the participant in a phased retirement program has not terminated employment, he or she will continue to accrue a benefit even as the employee draws down on the benefit already earned. In addition, all other employee benefits (e.g.: health insurance, life insurance, disability insurance, paid vacation) remain in place because the employee is still an active employee even if he or she has reduced their work schedule.

NEED FOR LEGISLATION

The discussion of phased retirement is a continuing one, dictated almost exclusively by the rapidly changing workforce. For this reason it would be difficult to make an exhaustive list of the necessary changes to ERISA and the Code. However, it is clear that employees often terminate employment to obtain an early retirement subsidy, to lock in an advantageous interest rate, or to provide them with enough income to reduce their work schedules.

Based on NRECA's own experience with phased retirement I hope you would consider legislation that would allow defined benefit plans to make in-service distributions to any employee who has reached age 50 or 30 years of service. The in-service distributions could take the form of a lump sum as well as an annuity. Finally, the provision ought to be permissive.

We would welcome the opportunity to work with you and your staff to explore ways of improving current law to expand the use of phased retirement plans.

CONCLUSION

The National Rural Electric Cooperative maintains a retirement plan on behalf of its employer members for the same reason every other employer does: to help workers provide a comfortable and secure retirement for themselves. Economic boom times coupled with a tight and aging skilled labor market means employers will have to be more creative in offering incentives to attract and retain an increasingly finite resource - workers. Phased retirement is one such option.

I look forward to answering any questions you might have.

Thank you.

The CHAIRMAN. We accept your offer.

Ms. DAU. Great. Well, take me up on it.

The CHAIRMAN. Now, Ms. Schopp.

STATEMENT OF WILMA K. SCHOPP, DIRECTOR OF COMPENSATION, BENEFITS AND H.R. SYSTEMS, MONSANTO/PHARMACIA & UPJOHN, ST. LOUIS, MISSOURI, REPRESENTING THE ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS (APPWP)

Ms. SCHOPP. Good afternoon and thank you, Mr. Chairman, for the opportunity to appear. I am Wilma Schopp, and I am the Director of Benefits, Compensation, and H.R. systems with Monsanto, as of today, Pharmacia Corporation. I am here today representing the Association of Private Pension and Welfare Plans.

As you know, our Nation confronts a labor shortage and demographic trends indicate that this shortage will become more acute as our population ages. One way for companies to address this shortage is by retaining their own older employees. Such retention draws on the fastest growing segment of the work force, avoids the cost of recruiting and training new employees, and retains important institutional knowledge.

There are, however, significant challenges to retaining older employees. Many would like to reduce their workload, but cannot afford to give up part of their salary unless they receive supplemental income, such as from their employer-sponsored retirement plan. If retirement plan payments are unavailable, and current law often makes them difficult, such employees will often retire completely. Others may go to work for another company while receiving pension benefits from their first employer.

Phased retirement programs are in the early stages of development. Employers are pursuing a number of phased retirement strategies, today, including part-time employment of older workers, in-service withdrawals from 401(k) plans for those over age 59½, and lower normal retirement ages in defined benefit plans. Yet these approaches represent only partial solutions to the barriers to phased retirement found in current law.

Phased retirement arrangements can alleviate the inefficient, but very real economic pressures that today prompt individuals who would like to keep working for their company to terminate employment or to go to work for another firm. By encouraging older individuals to remain in the work force, phased retirement also broadens the tax base and reduces the burden on entitlement programs. Moreover, there are clearly personal satisfaction benefits for older workers. To achieve these goals and facilitate phased retirement, changes in the law are necessary.

In crafting such changes, APPWP believes that flexibility for employers must be ensured. Labor, economic, and demographic factors are continually changing, and employers' corporate cultures and their existing benefit plans vary widely.

As a result, employers must retain the ability to modify and terminate phased retirement arrangements. Employees often terminate employment to obtain an early retirement subsidy, a lump-sum distribution from a defined benefit plan based on a low interest rate, or the pension income necessary to enable them to work

part-time for another employer. Present law restrictions on making such pension payments when workers are still employed limit employers' ability to prevent such terminations.

We recommend that defined benefit and 401(k) plans be permitted to make these in-service distributions to older employees who have obtained a specified age, a specified amount of service, or a specified combination of age and service. APPWP is currently developing specific recommendations as to appropriate age and service levels and we would be pleased to advance our recommendations to the committee.

Properly conceived, a phased retirement program will not be discriminatory toward lower-paid employees. However, such a program could nonetheless violate today's mechanical nondiscrimination rules. A facts and circumstances nondiscrimination rule, on the other hand, would permit phased retirement programs while prohibiting abuse. Such a rule is contained in the comprehensive pension reform legislation of Senators Grassley, Gramm, and Breaux, and is now part of the minimum wage tax package approved by both the Senate and the House. We urge its enactment as an important step in facilitating phased retirement.

There are numerous other technical rules contained in the code, ERISA, and the corresponding regulations that were designed without consideration of phased retirement. In order to facilitate the development of phased retirement programs, many of these rules need to be reevaluated.

Accordingly, we recommend that the Secretaries of Treasury and Labor be directed to prescribe regulations permitted the maintenance of bona fide phased retirement programs. Such a directive would be similar to the one included in the Taxpayer Relief Act of 1997, instructing these agencies to facilitate the use of electronic technology in retirement plan administration. The resulting regulations would enable phased retirement programs to operate effectively without running afoul of today's myriad technical pension rules.

The repeal of the Social Security earnings test is critical to the facilitation of phased retirement, and we thank the Senate for its commitment to removing this outdated employment disincentive. The repeal of the test enables workers who have reached age 65 to phase down their workload instead of terminating employment, while supplementing their reduced salary with Social Security benefits. Because of the advantages associated with repeal, APPWP urges this committee to also explore elimination of the test for those age 62 to 64.

As our labor shortage grows and our population ages, the need for phased retirement programs increases correspondingly. APPWP hopes our preliminary recommendations have been helpful and looks forward to working with the committee to develop more detailed legislative proposals in the months ahead.

Thank you for the opportunity to testify.

[The prepared statement of Ms. Schopp follows:]

The Benefits Association

APPWP

Association of Private Pension and Welfare Plans

**Testimony of Wilma K. Schopp
Monsanto/Pharmacia & Upjohn**

**On Behalf of
The Association of Private Pension and Welfare Plans
(APPWP - The Benefits Association)**

**Before The
Special Committee on Aging
United States Senate**

**Washington, D.C.
April 3, 2000**

Good morning and thank you, Mr. Chairman, for the opportunity to appear today. I am Wilma Schopp, and I am the Director for Benefits, Compensation, and Human Resource Operations with Monsanto/Pharmacia & Upjohn. As a life sciences company, Monsanto is committed to finding solutions to the growing global needs for food and health by sharing common forms of science and technology among agriculture, nutrition and health. I am here representing the Association of Private Pension and Welfare Plans (APPWP - The Benefits Association). APPWP is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, APPWP's members either sponsor directly or provide services to employee benefit plans covering more than 100 million Americans.

Older Americans today have new opportunities in work and retirement but at the same time confront barriers that prevent them from seizing these opportunities. My testimony will review the interest in and trend towards phased retirement programs, under which older employees who might otherwise completely retire are provided with incentives to remain actively employed.¹ I will then briefly review the reasons behind this trend and why we at APPWP believe that phased retirement ought to be encouraged by public policy. I will also review how employers have tried to implement phased retirement and how the law and regulations governing employee benefit plans might be modified to facilitate phased retirement programs.

INTEREST IN PHASED RETIREMENT BY EMPLOYERS AND EMPLOYEES

Labor shortage. As you know, today our nation confronts a labor shortage; a large demand for skilled workers is coinciding with an aging workforce and a diminishing number of new entrants

¹ There is no formal definition of "phased retirement." Retirement is traditionally viewed and practiced as a discrete period of life that follows the period of an individual's working career without any overlap between the two. For the purposes of this testimony, phased retirement will refer to the situation in which an older individual is actively working for an employer part-time or on an otherwise reduced schedule as a transition into full retirement. Phased retirement may also include situations in which older employees receive some or all of their retirement benefits while still employed full-time.

in the workforce. Today, fourteen states have unemployment rates of 3% or less while only 6 states have unemployment rates above 5%.²

Moreover, demographic trends indicate that this shortage will become more acute as our population ages. The total fertility rate (the average number of children born to a woman in her lifetime) has dropped from 3.61 in 1960 to 2.04 in 1998, and it is expected to decline to 1.90 by 2025.³ At the same time, life expectancy has increased from 66.7 and 73.2 years for men and women, respectively, in 1960 to 73.4 and 79.4 in 1998, with steady increases expected through the 21st century.⁴ Consequently, the median age of workers will increase from 35 years old in 1976 to almost 41 years old in 2005.⁵

Advantages of retaining older employees. A clear way for a company to address this shortage of workers is by retaining its own older employees. Such retention addresses labor shortages by drawing on the fastest growing segment of the working population. According to the Bureau of Labor Statistics, in the year 2008, workers age 55 and older will comprise 16.3 percent of the workforce, up from 12.4 percent in 1998. Over the same period, workers age 25 to 54 will decline as a percentage of the workforce from 71.7 percent to 67.4 percent.⁶ Retention of older workers avoids the costs of recruiting and training new employees, and retains the institutional knowledge possessed by a company's long-service employees.

Continued employment of older employees is also desirable from the worker's perspective. As life expectancies increase, employees may often need to work longer to achieve financial security. Moreover, many older, vital individuals find the challenges of continued employment very rewarding.

² Testimony of Richard W. Judy, Director, Center for Workforce Development, Hudson Institute, before the Subcommittee on Oversight and Investigation, Committee on Education and the Workforce, U.S. House of Representatives, February 17, 2000.

³ Table ILD2, 1999 OASDI Trustees Report, Social Security Administration.

⁴ Table ILD2, 1999 OASDI Trustees Report, Social Security Administration.

⁵ "Phased Retirement: Reshaping the End of Work," Watson Wyatt Worldwide, 1999.

⁶ "Labor Force Projections to 2008: Steady Growth and Changing Composition," Fullerton, *Monthly Labor Review*, November 1999, U.S. Department of Labor, Washington, D.C.

Obstacles in retaining older employees. There are, however, significant challenges to overcome in retaining older employees. For example, many such employees would like to begin to reduce their workload gradually. They may, for example, need time to provide care to elderly parents or they may simply want more leisure time. However, in many instances, older workers cannot afford to give up part of their salary unless they receive supplemental income, such as payments from their employer-sponsored retirement plan.

If retirement plan payments are generally unavailable to an employer's current employees, such employees will often retire completely; others may go to work for another company -- perhaps a competitor -- on a part-time basis, while receiving retirement plan payments from their first employer.

There are also older employees who would like to continue to work full-time but find it difficult to forego enhanced benefits available under the company's defined benefit pension plan if they retire immediately. For example, an employee might retire to obtain a valuable early retirement subsidy or to take advantage of low interest rates (which produce larger lump sum payments under a defined benefit plan). Again, many in this situation will cease working altogether or will decide that they can achieve both of their objectives -- continued work and receipt of the enhanced benefit from a defined benefit pension -- by becoming employed by another company.

Accordingly, a number of companies find themselves -- or foresee finding themselves -- confronted by the real possibility of losing critical, experienced workers in the midst of a labor shortage. This has led many companies to contemplate phased retirement programs.

Government Should Facilitate Phased Retirement Programs. As a matter of public policy, there are good reasons to encourage phased retirement. Phased retirement programs produce at least two efficiencies. First, as noted above, many employees who would like, and are able to, continue working on a full or part-time basis cease working because of economic incentives to do so. In the midst of a labor shortage, this is clearly inefficient. Second, also as discussed above, many other employees leave their employer for another employer due to similar economic

pressures. This creates inefficiencies in terms of recruiting and training costs for both the old and the new company.

Phased retirement programs have other beneficial effects. By encouraging older individuals to remain in the workforce, phased retirement programs broaden the tax base and reduce the burden on governmental entitlement programs. Moreover, there are clearly benefits in terms of personal satisfaction for the older workers involved. Employees who can continue working in jobs that they enjoy will be more satisfied in general.

Government leadership on this issue is needed. As will be discussed below, changes in the law are necessary in order for phased retirement programs to operate most effectively. In addition, government leadership on phased retirement, by removing barriers to employment opportunity, can play a large role in improving the social and economic position of the elderly.

CURRENT APPROACHES TO PHASED RETIREMENT

Phased retirement programs may take many different forms, and the workplace is certainly still learning about the variations. This is in large part attributable to the fact that the programs are in the early stages of development. A recent survey found that only 16% of employers have such a program. However, of the companies without a phased retirement program, 28% have a moderate to high interest in adopting a program in the next two to three years. And 45% of the companies with a current phased retirement arrangement anticipate program growth over the next five years.⁷

Phased retirement programs will inevitably vary sharply from one employer to another, and from one period of time to another. The labor shortage we are facing nationally obviously does not have a uniform effect on all industries or on all regions; even within one industry in one region, there are marked differences in labor demand based on recruiting and retention practices, recent business growth, workforce age, etc. In addition, programs will vary widely from one company

⁷ "Phased Retirement: Reshaping the End of Work," Watson Wyatt Worldwide, 1999.

to another due to differences in their cultures and existing benefit plans. It is critical, therefore, that any legislative or regulatory action must contain substantial flexibility in order to accommodate the variety of programs that will be crafted to respond to these diverse needs.

Mr. Chairman, let me now describe some of the approaches employers have taken in attempting to design phased retirement programs. These approaches represent only partial solutions to the barriers in current law to employment opportunity for aging workers.

In-service distributions from a defined benefit plan. As discussed above, many older employees who would like to continue to work full-time terminate employment in order to avoid losing valuable benefits -- such as early retirement benefits or a favorable interest rate -- under their employer's defined benefit plan. To prevent such terminations of employment, the plan's normal retirement age could be amended to be the earlier of (1) age 65, or (2) a combination of a lower age and an amount of employment service. All employees who have attained this modified normal retirement age would be permitted to elect to receive a distribution of their benefit without terminating employment. Yet such an approach can prove costly and can produce problems under the pension nondiscrimination rules.

In-service distributions from a 401(k) plan. If an employee works for a company that has no defined benefit plan, the company's 401(k) plan may be the only source of supplemental income. If the employee is over age 59½, the section 401(k) plan rules permit withdrawals while the employee is still working. However, the law does not permit such "in-service" withdrawals from a 401(k) plan (in the absence of hardship) when the employee wishing to phase down employment is under age 59½.

Part-time employment issues. Phased retirement programs can facilitate part-time employment by older workers, but such programs may need to address the treatment of part-time employees under the employer's retirement and other employee benefit plans. Employers who might wish to eliminate the less favorable treatment of part-time employees under its benefit plans in the case of older employees who are phasing down could cause the affected plans to run afoul of various technical rules.

PUBLIC POLICY RECOMMENDATIONS

General Principles. APPWP believes that certain general principles should guide the development of legislative and regulatory proposals concerning phased retirement. First, flexibility for employers must be ensured. Economic and demographic assumptions will always be changing, and companies should not be caught in rigid benefit structures. Employers must retain the ability to modify and terminate any phased retirement arrangement they adopt, or such programs will not be implemented. Thus, flexibility must be a guiding principle of any policy initiative affecting phased retirement if such initiative is to meet with success in today's workplace. Second, any changes in the law should be predicated upon the knowing and voluntary participation of the employees eligible for a phased retirement program.

In-service distributions. As discussed above, employees often terminate employment to obtain an early retirement subsidy, a lump sum distribution from a defined benefit plan based on a low interest rate, or enough money to enable them to work part-time for another employer. Present-law restrictions on in-service distributions limit employers' ability to prevent such terminations of employment. To address this problem, we recommend that defined benefit plans and 401(k) plans be permitted to make in-service distributions to older employees who have attained a specified age, who have completed a specified amount of service, or who have achieved a specified combination of age and service.⁸ APPWP is currently developing specific recommendations in this regard and would be pleased to advance our recommendations to the Committee. An employer could, of course, decide not to offer such in-service distribution options at all under its plan, or could decide to offer it only to a nondiscriminatory subset of the employees who have qualified for it.

We would recommend that such in-service distributions may be of some or all of an employee's benefit and may be made in any form that the phased retirement program permits (subject, of

⁸ An example of a trigger for such in-service distributions would be the attainment of age 55 or completion of 30 years of service with the employer. As noted in the text, different age and/or service triggers could be used. APPWP strongly urges the Committee in considering such modifications to give ample regard to providing as much flexibility as possible to employers who have different and fluid employee demographics and unique competitive considerations.

course, to otherwise applicable rules, such as the rules regarding spousal consent to distributions not in the form of a qualified joint and survivor annuity). In addition, distributions would be permitted without regard to whether an employee actually reduces his or her work schedule.⁹

Facts and Circumstances Standard for Nondiscrimination Rules. Properly conceived, a phased retirement program will not be discriminatory towards lower paid employees. However, such a program could nonetheless violate the mechanical nondiscrimination rules that apply under the Internal Revenue Code (Code).¹⁰ A facts and circumstances nondiscrimination rule, on the other hand, would permit a phased retirement program while prohibiting any abusive programs that primarily benefit highly compensated employees. We want to thank you, Mr. Chairman, for including such a provision in the comprehensive pension reform legislation, S. 741, introduced by you and Senator Graham of Florida.¹¹ As you know, this proposal to add a facts and circumstances standard to the nondiscrimination rules is now part of the minimum wage/tax package that has been approved by both the Senate and House of Representatives. We thank you for your championing of this provision and urge the members of this Committee to assist in its passage.

Regulatory Flexibility. There are numerous technical rules contained in the Code, the Employee Retirement Income Security Act (ERISA), and the corresponding regulations that were designed without consideration of phased retirement, which has only recently surfaced as a critical issue.

⁹ Any rule that conditioned in-service distributions on a prescribed reduction in an employee's work schedule would fail to be effective with respect to employees who would like to continue to work full-time but terminate to obtain a current distribution. Such a rule would also be exceedingly difficult to administer. It would require hour counting not required for any other purpose and would require a host of exceptions and special rules, such as for sick leave, vacation leave, variations in schedule, project-based work, etc.

¹⁰ Currently, the nondiscrimination rules under Code section 401(a)(4) and the coverage rules under section 410(b) consist of a series of complicated mechanical tests that seek to measure the coverage and benefits afforded to highly compensated employees relative to nonhighly compensated employees. When these rules were first developed, they were generally not mechanical but rather were applied based on all the facts and circumstances. However, the flexible facts and circumstances standard was replaced with more rigid mathematical tests.

¹¹ Section 605 of The Pension Coverage and Portability Act (S. 741) provides in pertinent part that the "Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if--

- (1) the plan satisfies conditions prescribed by the Secretary to appropriately limit the availability of such test, and
- (2) the plan is submitted to the Secretary for a determination of whether it satisfies such test."

In order to facilitate the development of phased retirement programs, many of these rules need to be reevaluated. However, because phased retirement programs are at a very early stage, it is not yet clear which rules need to be modified and how they should be modified. All of us have limited knowledge regarding how tomorrow's phased retirement programs will be structured.

Accordingly, we recommend that the Secretary of Treasury and the Secretary of Labor be authorized and directed to prescribe regulations by a specified date permitting the maintenance of bona fide phased retirement programs. It is intended that the regulations would enable such programs to operate effectively without running afoul of the myriad of technical rules that apply under the Code and ERISA. Treasury and Labor would have broad authority to provide appropriate relief from both statutory and regulatory requirements that would have unintended adverse effects on phased retirement programs. Of course, if it becomes clear that legislative modifications are necessary, these can be pursued at a later date to supplement this more general grant of regulatory authority. APPWP urges in particular that the following issues be addressed under this grant of phased retirement regulatory authority:

- An important issue for the regulations would be to clarify the notice rules with respect to an employee who meets the age and/or service requirements applicable under a phased retirement program to receive in-service distributions under the employer's defined benefit plan. A clear explanation of the available in-service distributions must, of course, be set forth in the plan's summary plan description. However, as under present law, the harsh and burdensome suspension of benefits rules should not apply prior to a plan's normal retirement age. Thus, in the case of an active employee who does not elect in-service distributions after qualifying for such distributions under an employer's phased retirement program, the plan should not be subject to the suspension of benefits rules.
- Any regulations should permit employers to experiment with phased retirement programs without commitments to continue to maintain the program (or any feature of the program). Of course, at the same time, the regulations should ensure that employees' legitimate expectations are protected by requiring clear notice of who is eligible for the program and of the employer's right to terminate the program.

Social Security Retirement Earnings Test. The Senate recently passed H.R. 5 (which the President is expected to sign) to repeal the "Retirement Earnings Test" ("RET") for workers aged 65 and older. APPWP has long advocated the repeal of the RET and applauds the action of Congress. Prior to this change, in the case of a Social Security beneficiary who has attained age 65 but not age 70, Social Security benefits in 2000 would be reduced \$1 for every \$3 of earned income above \$17,000. For beneficiaries who have attained age 62 but not 65, the reduction in 2000 is \$1 for every \$2 of earned income above \$10,080.

This RET provides an incentive for an older individual to cease working, and its repeal by the Congress removes an important disincentive to work that has hampered phased retirement arrangements. Moreover, repeal of the RET enables a worker who has reached age 65 to phase down his or her workload (instead of terminating employment) and supplement his or her reduced salary with Social Security benefits. In this way, repeal of the RET is critical for the millions of workers who wish to continue working but whose employers do not have a phased retirement program. When a worker's employer has a phased retirement program, repeal of the RET can provide an important complement to the employer's program. Because of the many beneficial effects associated with the RET repeal, APPWP urges the Committee and the Congress to also explore elimination of the earnings test for those workers aged 62 to 64.

CONCLUSION

As our labor shortage grows and our population ages, the need for phased retirement programs increases correspondingly. These programs bring a wide array of benefits to employers, employees, and the government. Government support and recognition of the need for flexibility are critical to the growth of these programs. APPWP urges this Committee to consider the issues and recommendations found in our testimony, and we would welcome the opportunity to provide additional information and recommendations as the Committee delves more deeply into this important, emerging retirement policy issue.

Thank you for the opportunity to testify today, and I welcome any questions that you may have.

The CHAIRMAN. Your association has a good record of working with Congress on various changes in pension legislation, and we not only appreciate your doing that, but you offer a lot of expertise and technical help in the process.

Ms. SCHOPP. Thank you.

The CHAIRMAN. And you have a great deal of patience, because it takes a long time to get some of that legislation put together, as you have found over the last 2 to 3 years. I am going to start with Ms. Dau, but any of you, if you have something to add, please feel free to jump in.

You mentioned that leakage is not a concern under your phased retirement program, notwithstanding the fact that so many of your members opt to take a lump sum at normal retirement age. I would like to have some more details on that, if you could.

Ms. DAU. Yes, I appreciate your concern regarding this matter. An ability to take a lump-sum distribution is very, very important to our employee base. To mitigate any leakage issues, there are a number of programs that we have in place. First of all, one of them is the fact that the employees can either roll over their defined benefit plan, benefits into either the 401(k) plan or into an IRA.

Additionally, we have the same philosophy as Congressman Pomeroy, in that education of our employee base is very, very important. We address retirement planning through a number of different avenues. They may include a retirement planning software, a financial planning software, to help them meet their needs or projected needs. Additionally, we look at a number of retirement planning newsletters, as well as retirement planning seminars, and we feel it is never too early to start planning for retirement.

We offer these to our entire employee base. Additionally, we do tend to have a somewhat conservative work force in nature, so there are number of programs in place that address this leakage issue.

The CHAIRMAN. Yes. Evidently, you have been very successful, because you have a very flexible program for employees that would be of retirement age if they chose to retire. Elaborate on that.

Ms. DAU. Yes, we do have a very flexible plan in place, in that once they reach the normal retirement age, they can draw down on that lump-sum benefit, transfer it, as I mentioned, into either the 401(k) or to an IRA, and we realize, as part of our corporate culture, that these long-service employees have a lot of institutional memory, they are very valuable to our organization, and we do everything we can to keep them actively employed.

We may have to be flexible in work arrangements, those types of things, but it is very important to us. Actually, the most two recent employees that have had the opportunity, or actually that have reached normal retirement age, have taken advantage of their quasi-retirement benefit and have stayed on with the co-op longer. It has been great for us. It is a win-win for the employee and the employer.

The CHAIRMAN. Do you think that a phased retirement plan would now be necessary, considering the fact that Congress just took the earnings limitation off for Social Security, age 65 to 69?

Ms. DAU. Yes, especially in light of the fact that it does not affect employees age 62 to 64, and that earning limits are especially restrictive for that group.

The CHAIRMAN. You offer your phased retirement program only to rank-and-file workers, as Mr. Perkins' example suggested. In the example he gave, it was a means of passing the nondiscrimination test, or is yours offered to all workers, regardless of their position with your rural electric cooperative?

Ms. DAU. Our quasi-retirement benefits are offered to all employees, regardless of position.

The CHAIRMAN. What is the average age of the work force there at your cooperative?

Ms. DAU. The average age of our work force is age 40, and a full 25 percent of our employees are 50 or older, so you can see phased retirement is definitely an issue in which we are interested.

The CHAIRMAN. What other retirement vehicles are available to your cooperative's employees? Do they complement a phased retirement program, and, as the plan is designed, are they intended to do so?

Ms. DAU. Yes, we have a number of opportunities available to our employee base. As we have been talking about, we have a defined benefit plan, but we also have a 401(k) defined contribution plan in place, and due to the very different natures of these plans, they do serve well to complement one another.

Additionally, our employees do have the opportunity to payroll deduct for contributions to IRA accounts.

The CHAIRMAN. Does Iowa Lakes Cooperative have any special demographics that affect how your workers view the phased retirement program?

Ms. DAU. Yes. In the past several years, we have undergone both a merger and a consolidation of smaller electric co-ops, and the fact that we have a phased retirement program did help facilitate a smooth transition from one organization to the next.

The CHAIRMAN. Now, Ms. Schopp, why is flexibility in implementing and maintaining a phased retirement program so important to employers?

Ms. SCHOPP. Mr. Chairman, I think at this point in the development of phased retirement programs, many employers are in the situation of really needing to experiment to see what will work with their benefit plans, their populations, their employees, and they really want to have the flexibility to know that they can try some things now and see if they work, and adjust them if they do not.

In addition, various employers around the country have such differing conditions to deal with, and the kind of flexibility that is being advocated really lets employers do what is best from a business perspective while retaining older workers.

The CHAIRMAN. What is the most important action the Congress could take to make the continued employment of older workers more attractive to your company?

Ms. SCHOPP. Sir, I think this is really a critical question, and I think the key issue is to keep things simple. In the early 1990's, Monsanto implemented what we called the Retiree Resource Corps, and that was a formal program to bring back former Monsanto em-

ployees to work as a retired person. Basically, we limit that employment to 1000 hours a year, and so on, to meet various legal restrictions.

However, over the years, both in terms of the implementation of that plan and the maintenance of that plan, it has been very difficult because there are so many legal and tax implications that we need to keep dealing with—a larger employer like Monsanto or Pharmacia Corporation can deal with those. However, smaller employers could truly be overwhelmed. So I think that, to summarize, really to make things simple and not to create a lot of barriers to implementation.

The CHAIRMAN. In other words, do not do so much government.

Ms. SCHOPP. That is right.

The CHAIRMAN. You mentioned some of the advantages of phased retirement to employers and to the economy. Could you give us some sense of the problems that aging workers who are not in a phased retirement program currently face when they wish to continue working on a less than full-time, year-round basis?

Ms. SCHOPP. Sure. If employees want to continue working with their current employer, it can also be very difficult, because, as in our case, for example, we have break-in-service rules, so we require that employees leave Monsanto for a certain period of time before they can come back as a part-time employee to meet those tax regulations.

That creates difficulties, and what you may find in the work force in general is that when workers then go to find jobs elsewhere in the economy because they cannot come back to a major employer, it may be difficult to find good jobs, and they may not be able to find jobs at the level that they have been used to.

In other cases, they may feel as though they need to terminate employment to have access to their defined benefit or defined contribution plan, as we have discussed earlier today, and, of course, the Social Security earnings test is a barrier. Part of that, of course, has been eliminated.

The CHAIRMAN. You mentioned in your testimony that there are all sorts of briar patches that employers have to go through with the phased retirement, and one of them is the inadvertent violation of pension nondiscrimination rules. Could you explain how this can happen in terms that—well, I know it is very technical, but in terms that we can understand?

Ms. SCHOPP. So let me just kind of generally talk about some of the regulatory issues that can have an effect. One, of course, is that, because of the discrimination rules, it can be difficult for plans to have different normal retirement ages and use the safe harbor nondiscrimination testing. Using the safe harbor—it would be a more simple approach to dealing with this issue.

As I mentioned earlier, it is very important for employers now to be able to experiment, and some of the regulations that currently govern benefits would require that once a rule is put in place, that it must remain in place. If employers are to experiment and to try some new things, they need the flexibility to be able to put a rule in place and not have it stay with the plan for time eternal.

The CHAIRMAN. Do you agree with Mr. Perkins? Remember, he said one of the ways to protect—for a company to protect themselves is just to give it to rank-and-file people. Now, how would that impact your managers in your company, if that were to be what you would do to protect yourself under nondiscrimination?

Ms. SCHOPP. Unfortunately, I think that would certainly not be most advantageous to either the people who work at Monsanto or the company, because obviously any employer wants to be able to maintain the most talented and critical employees for the future of the company, and while rank-and-file employees certainly are very critical, it would be a shame to have to limit any kind of phased retirement approaches to only one population, because it does not provide the flexibility that we have been advocating.

The CHAIRMAN. For both of you, are there any other regulatory hurdles that phased retirement program can encounter that we have not touched on? Maybe you do not both have to have an answer, but maybe there is no answer. Maybe we have covered all the major issues.

Ms. SCHOPP. Just generally, and I think we have kind of touched on it, is just there are a lot of integrated issues between Social Security, benefit plans and the various regulations. They are very complex issues, and I think it is just very important that the regulations that deal with them, deal with them in the simplest way possible so that they can be used by employers.

The CHAIRMAN. Ms. Schopp, you heard Ms. Dau speak about how the age span of their workers and 25 percent of the people are over age 50, I believe; so obviously, it looks to me like they are planning on this to fill a void down the road in 10 years or so. With your company, how was the labor shortage affecting your company and how do older workers fit into your company's response to that challenge?

Ms. SCHOPP. Well, older workers are very important. I think, unlike Ms. Dau's company, many employees of Monsanto tend to retire at earlier ages, more probably at 55, in that range, than 65. As I mentioned before, the Retiree Resource Corps really helps us fill a void in terms of bringing some of those workers back to remain very productive for Monsanto going forward.

Another thing that Monsanto has done is that all of our employees have been eligible for incentive programs, and part of that incentive plan is based on personal development of the individual. I know that, earlier, there was some concern that older workers may not have access to training and development. I think that this program that Monsanto has put in is one way to ensure that all workers of the company do have access to development, to be able to stay productive workers for the future.

The CHAIRMAN. Well, that concludes my questioning, and obviously concludes the hearing. I think it is clear from our hearing that Congress can do some other things to help, although I sense from all of the witnesses that sometimes government can do too much in this area, or maybe the problem is correcting some of the things because we have already done too much.

One of the things, obviously, we have corrected by the passage of the legislation on the Social Security earnings limit, and the President will probably sign that, and that will take some impedi-

ment out of the way. I am very much interested in the concept of phased retirement, and will, through this committee, step up the examination of it. I ask anyone who has any ideas on this issue to submit them to my staff as soon as possible; if you want them to be part of the record, probably another 2 weeks for that purpose. But for any other purpose, any time would be open to that.

Thank you all very much for your kind attendance.

[Whereupon, at 2:42 p.m., the Committee was adjourned.]

APPENDIX



The University of Oklahoma

COLLEGE OF LAW

April 19, 2000

Senator Chuck Grassley
Chairman
Special Committee on Aging
U.S. Senate
G31 Dirksen Senate Office Building
Washington, DC 20510-6400

Re: Letter for the Record of the Committee's April 3rd Hearing on Now Hiring: The Rising Demand for Older Workers

Mr. Chairman and Members of the Committee:

I am pleased to submit this letter for the record you are compiling on Now Hiring: The Rising Demand for Older Workers. I am submitting this letter in my individual capacity as a Professor of Law at the University of Oklahoma College of Law, where I teach and research primarily about tax and pension policy. This letter discusses how federal pension laws should be changed in order to encourage older workers to remain in the work force./*

HOW FEDERAL PENSION LAWS INFLUENCE INDIVIDUAL RETIREMENT DECISIONS

Millions of Americans retire while they are still productive. Of these, many will have the resources to enjoy all of their golden years. Unfortunately, many others will face economic hardships after they have exhausted their own resources but have become too frail to return to work. Part of the problem is that the current pension system is fraught with financial incentives that push able-bodied elderly workers into retirement just when they should instead be encouraged to remain in the work force to accumulate additional retirement assets.

A. CHANGE SPECIFIC PENSION LAW PROVISIONS

1. Raise the Eligibility Age for the Penalty on Premature Withdrawals from 59½ to 62

Under current law, for example, Internal Revenue Code (I.R.C.) § 72(t) generally imposes a 10-percent tax on distributions made before an individual reaches age 59½. Changing this

* This letter is based on the author's recent presentation: How Federal Pension Laws Influence Individual Work and Retirement Decisions, paper for the Society of Actuaries et al. conference on Retirement 2000: A Multi-disciplinary Symposium in Washington, DC (February 23-24, 2000, forthcoming in a monograph 2000).

Professor Forman - 2

penalty on premature withdrawals could have a significant impact on the timing of retirement. In particular, it could make sense to raise the eligibility age to 62 and keep it tied to Social Security's early retirement age. It could also make sense to eliminate virtually all of the exceptions to the premature distribution penalty, and it could make sense to increase the 10% tax rate significantly.

2. Raise the Minimum Distribution Age or Repeal the Rule

Under current law, I.R.C. § 401(a)(9) generally requires participants in retirement plans to begin taking distributions soon after they reach age 70½. An exception now allows older workers with a pension plan from their current employer to delay distributions until they retire, but IRA holders and workers with pensions from prior employers must still begin taking distributions soon after they reach age 70½.

Admittedly, most elderly Americans have retired long before age 70½. Nevertheless, by compelling many of the remaining elderly American workers to take retirement distributions soon after age 70½, these rules invariably prod still more elderly workers into retirement. Consequently, it could make sense to repeal or reform these rules. At the very least, it could make sense to raise the required starting date from 70½ to 76.

3. Repeal the Age Discrimination in Employment Act Exceptions

Congress should also repeal the exceptions to the Age Discrimination in Employment Act that allow employers to use traditional defined benefit plans to push their older workers into retirement. The Age Discrimination in Employment Act generally prohibits discrimination against workers over the age of 40. Unfortunately, exceptions to the Age Discrimination Act allow pension plans to limit the total amount of benefits paid to a retiree or the total number of years of service used to compute benefits. Still other exceptions allow pension plans to provide subsidized early retirement benefits and Social Security supplements. Employers use these exceptions to push older workers into early retirement.

From a public policy perspective, I just do not see why federal retirement policy allows employers to use tax-preferred retirement savings to push their older workers into early retirements. So I think that Congress should repeal all of these exceptions to the age discrimination rules. Repealing these exceptions would prevent employers from using tax-favored pensions to push older workers into premature retirement. As a result, more older workers would remain on the job, and that would be good for them and good for the country.

B. MANDATE AGE NEUTRALITY

A more comprehensive approach would be for the government to require pension plans to achieve age-neutrality. For example, beyond some minimum age, the government could simply require that all retirement plans be designed to be neutral as to the timing of retirement. An age-neutrality mandate would ensure that older workers would continue to earn meaningful retirement

Professor Forman - 3

benefits every year that they continued to work. Presumably, under an age-neutrality standard, each worker would earn pension benefits at a constant annual rate, just like they do now under a typical defined contribution or cash balance plan.

Indeed, most defined contribution plans already meet an age-neutrality standard. For example, a simple defined contribution plan might provide that an employee is entitled to a contribution of 6% of salary each year and that individual account balances earn a market rate of interest on those contributions. Such a plan does not impose any financial penalty at all on workers who delay retirement. In short, it is age neutral. On the other hand, most defined benefit plans would clearly flunk an age neutrality mandate. After all, the typical defined benefit plan invariably penalizes workers who stay past a certain age.

In an age-neutral world, workers would see significant increases in their pensions if they postponed retirement. Consequently, more workers would remain in the work force, accumulating assets for their eventual retirement.

C. REQUIRE INDEXED ANNUITIES

Finally, I believe that the government should encourage or even require that benefits be paid in the form of annuities, perhaps even indexed-for-inflation annuities. Many Americans retire too early because they underestimate their life expectancies, overestimate their financial resources, and fail to understand the deleterious effects of inflation. These "early" retirees are at serious risk of outliving their resources. Annuities help ensure that workers and their families do not outlive their retirement savings. Consequently, it could make sense to require that all retirement plans pay at least a portion of their benefits in the form of an inflation-adjusted annuity. At the very least, retirement plans should be required to offer participants the *option* of taking benefits in the form of an inflation-adjusted annuity.

Thank you for this opportunity to share my views with you.

Sincerely,



Jonathan Barry Forman
Professor of Law

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**INVITING FRAUD: HAS THE SOCIAL SECURITY
ADMINISTRATION ALLOWED SOME PAYEES TO
DECEIVE THE ELDERLY AND DISABLED?**

HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

WASHINGTON, DC

MAY 2, 2000

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INVITING FRAUD: HAS THE SOCIAL SECURITY ADMINISTRATION ALLOWED SOME PAYEES TO DECEIVE THE ELDERLY AND DISABLED?

TUESDAY, MAY 2, 2000

**U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.**

The committee met, pursuant to notice, at 10:05 a.m., in room SD-562, Dirksen Senate Office Building, Hon. Charles E. Grassley, (Chairman of the Committee) presiding.

Present: Senators Grassley, Burns, Santorum, Breaux, Wyden, and Lincoln.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY, CHAIRMAN

The CHAIRMAN. While I am waiting for my colleagues, I am going to advise everybody of a few administrative housekeeping matters that are important for every committee.

No. 1, for every witness, whether private citizen or Government official, who is before us, my staff has advised you of the 5-minute time limit. Beyond that, though, we will incorporate all statements in their totality in the committee record, so you can be assured that every point that you want to make on this issue will be included in the printed record.

The second thing is that even when some colleagues show up, with 20 people on this committee, particularly on a Tuesday, Wednesday, or Thursday, there are so many other committee meetings going on at the same time that many of my colleagues cannot attend. If this happens sometimes they will submit questions for response in writing that they would have asked if they had been present. So if you are the recipient of some questions from members who cannot be here, we would ask that those be, first of all, submitted by members by the end of the week and sent out to the various participants for their response in about a 2-week period of time. If any of you who are not familiar with such a process, my staff here will be glad to help with the process and with the responses as well.

I want to welcome everybody to our hearing, and I particularly want to thank my fellow members who have been able to attend. I am sure we all agree that it is very important for the Special Committee on Aging to do oversight of the bureaucracy generally. But, with the issues of aging, since the Social Security Administra-

tion is in the middle of most of these, we from time to time conduct oversight of the agency.

So today, the committee will examine the misuse of benefits by those serving our most vulnerable citizens, the elderly and the disabled. Hundreds of these individuals have lost these benefits to really bad actors. Many more are potential victims. That is because the Social Security Administration may not be doing enough to protect them.

The situation is like this. As you can see from this first chart, 45 million Americans received Social Security and Supplemental Security Income benefits in 1998. Of that 45 million, 6.5 million people need help managing their money. For those folks, the Social Security Administration then appoints someone to manage their benefits. The managers are called "representative payees."

Most of the time, the payees happen to be family members or family friends, but some beneficiaries have no one who will serve in this capacity. In those cases, the Social Security Administration appoints an organization to handle their benefit checks.

The next chart that we are putting up shows that approximately 750,570 beneficiaries have an organization handling their monthly checks. These organizations include social service agencies, banks, and hospitals. The majority of these organizations provide much-needed help to beneficiaries without abusing their payee responsibilities.

However, the Social Security Administration's Office of Inspector General has recently investigated several instances of misuse. An example would be a payee in West Virginia who pled guilty just a few weeks ago to using his clients' benefits for his own purposes. This man, Greg Gamble, agreed to pay back \$303,314. One of his victims will testify today about the hardship that she endured at his hands.

Another payee will tell us how she embezzled money from her disabled clients in Washington State. She agreed to pay back \$31,757. She has come from prison today to testify.

A payee serving 320 beneficiaries in Phoenix and Denver agreed to pay back \$274,000. She used that money for a down payment on a car, home furnishings, and art work.

There may be many more horror stories to come. The Inspector General expects the number of abuse cases to increase as the Social Security Administration increases its review of payee records.

The abuses I have described, along with others, are completely unacceptable. First, the victims have fixed incomes. They rely on monthly benefit checks to pay the rent and to buy their groceries. If their money disappears, they will obviously suffer. They may end up hungry and homeless. We will hear a devastating story along these lines from one of our witnesses.

Second, and very important to the Congress of the United States, because we represent the taxpayers, this is taxpayers' money. Working Americans pay into Social Security. Their money is intended to serve them when they can no longer work. Stealing Social Security benefits is stealing from the taxpayers.

Senator Breaux and I have taken steps to nip these abuses in the bud, and we do it specifically so that our country, our Government, our people are ready for the baby boomer retirement which is just

a few short years away. So the two of us have introduced S. 2477, the Social Security Beneficiaries' Protection Act. This bill would require greater accountability from organizations that handle Social Security benefits. It would restore benefits to wronged beneficiaries much more quickly than under present law and practice of the Social Security Administration.

So I want to thank Senator Breaux for his support of this investigation and his cosponsorship of this legislation, and I will yield to him at this time for an opening statement.

STATEMENT OF SENATOR JOHN B. BREAUX

Senator BREAUX. Thank you very much, Mr. Chairman, once again for having hearings in which we take the opportunity to look at how the most vulnerable in our society are sometimes taken advantage of.

It is very clear that any time you have millions and millions of dollars involved in a Federal program that too often, that money leads to fraud, waste, and abuse and, in too many instances, actual criminal activity as we have discovered in this particular Social Security program.

I think the Aging Committee has done a great service in letting people know about the problems. Whether in telemarketing fraud or in misuse of Medicaid nursing home funding or in pharmaceutical fraud, we have found people who are willing to take advantage of those who are the least able to take care of themselves in society. And certainly when you are talking about someone who is disabled to the point of not being able to manage their own financial affairs, and the fact that there are people who would take advantage of them is something that I think we in the Government must do everything we can to make sure this does not continue.

Whether it is the defense program or the agriculture program or the Medicare program or the Social Security program, any time you have a program that spends billions of dollars annually, the potential for illegal activity is there. But I think this committee has an opportunity to make recommendations to the Congress to see how we can tighten up the rules and regulations to make sure it does not happen.

Finally, Mr. Chairman, the legislation that we have sponsored says to the innocent victims that the Government will not leave them hanging, that if they have been taken advantage of, they do not have to wait until the court system runs its course before they can get any compensation. The Social Security Administration which approves the people who take care of these funds also has the responsibility to make sure the innocent victim is protected.

Clearly, people who engage in these activities, which in many cases are very necessary, should be licensed, they should be bonded, and they should follow the law, and hopefully, our hearing today will find ways to ensure that that in fact is done.

Thank you.

The CHAIRMAN. Thank you, Senator Breaux.

Now, Senator Burns, then Senator Lincoln, and then Senator Santorum. And I would invite all of my colleagues, if they have not cosponsored our bill, to do so.

Senator BREAUX. Yes—better late than never.

STATEMENT OF SENATOR CONRAD BURNS

Senator BURNS. Do I get a message there, Mr. Chairman? Do I have to commit before I can speak? [Laughter.]

The CHAIRMAN. No.

Senator BURNS. Thank you, Mr. Chairman, and I think you can add my name to the list of cosponsors on this legislation.

I do not have a formal statement for this hearing, but I appreciate the work that you have done and that our good friend from Louisiana has done on this. As long as there are old people around, I guess they will always fall prey to those folks who would exploit a situation.

I just went through a situation with an elderly aunt of mine, and whether it be phone scams, marketing fear, HCFA, home health care—Mr. Chairman, you had hearings on fraud and abuse in our home health care industry, and these stories are almost unspeakable—we are going to continue to have these problems. We can pass laws, but it still seems like they do not do anything in the way of prevention.

This legislation at least accepts the fact that we will have the problems, but it also accepts the fact that we have to make the adjustments if people are taken advantage of.

So I appreciate your work on this, and I look forward to working with you as it makes its way through the Senate.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Lincoln.

STATEMENT OF SENATOR BLANCHE L. LINCOLN

Senator LINCOLN. Thank you, Mr. Chairman.

Today we have a chance to examine a piece of the Social Security program that not many people may be aware of but which impacts approximately 10 million Americans.

The representative payee program was established for those Social Security beneficiaries who are unable to manage money on their own. These individuals are some of the most vulnerable in our society, as my colleagues have stated, and certainly it is our responsibility to ensure that the Government is acting correctly on their behalf.

For this reason, when I think of the term "representative payee," I envision a trusting, caring, loyal person who acts on behalf of a Social Security, SSI, or SSDI beneficiary. Unfortunately, we are here today because representative payee are not always honest and do not always act in the best interest of those who rely on them.

In a letter to Chairman Grassley, the Social Security Administration's Inspector General acknowledged that since FY98, the IG's office has opened 1,352 cases of representative payee fraud and abuse, which has led to 313 convictions. As a result, American taxpayers lost \$7.5 million.

As an advocate for older Americans and the disabled, I am most concerned by the harm that is done to Social Security beneficiaries who are cheated and betrayed. This must be a terrifying and devastating experience for older, frail, and disabled persons. If money earmarked for food, shelter, clothing and medical care is stolen or misused, beneficiaries can literally be turned out on the street and

left to fend for themselves. This is unfair and dangerous for their physical and mental health until the situation can be fixed.

While we all recognize that abuse by representative payees is not widespread, fraud and abuse could increase as more baby boomers retire and the demand for representative payees increases. That is why I am pleased to hear that the Social Security Administration has already begun to put measures in place to weed out fraud and abuse by representative payees. That is why I also plan, and will certainly tell the chairman right now that I plan to cosponsor the legislation that the distinguished chairman of this committee and the ranking member have introduced—the Social Security Beneficiaries' Protection Act—to prevent further abuse and to protect beneficiaries who are preyed upon by unscrupulous persons. It is the least we can do to try to ensure that Government is running efficiently and effectively, especially on behalf of the most vulnerable in our society.

So Mr. Chairman, I appreciate your leadership and Senator Breaux' leadership on this issue and I look forward to working with you.

The CHAIRMAN. Thank you for your cooperation not only on that point but throughout a long period of time of membership on this committee; and the same for Senator Santorum.

You may proceed, Senator Santorum.

STATEMENT OF SENATOR RICK SANTORUM

Senator SANTORUM. Thank you, Mr. Chairman, and as my rite of passage, I too will sponsor your legislation, so you can add my name to the list.

The CHAIRMAN. Good.

Senator SANTORUM. I know how things work around here. [Laughter.]

My comments will be brief, also. I do not have any formal remarks, but I will say that this is an issue that I have been involved with actually from my days back in the House when I was the ranking member on the Human Resources Subcommittee of Ways and Means, and we dealt with the issue of individual representative payees and some of the problems associated with that. There were several famous cases out there at the time that we needed to address, and we were successful working with Senator Moynihan over here in passing some things that have hopefully been appropriate in the area of individual representative payees, and now we are back on the issue of organizational representative payees.

I just want to commend the chairman for getting right on top of this issue and for working it. I think Senator Breaux said it right. The fact of the matter is the beneficiaries here are the people in need, and they have to have the confidence in the system that we are going to be overseeing the people who are representative payees to make sure those benefits properly get to the people who are in desperate need of those resources.

This is a very important oversight of this committee and a very important hearing to make sure there is confidence in the system for the people who participate in it.

With that, I join in your legislation and I thank you for this hearing.

The CHAIRMAN. Thank you, Senator Santorum.

Before we turn to the witnesses, we are going to have a 5-minute shortened version of the "20/20" television program entitled, "When Nobody is Looking, People Robbed of Life Savings by a Man Recommended by the Social Security Administration." I think it has been properly edited; I did not want to play the whole thing because we did not have time, but we will now see the most important parts.

Please proceed.

[Videotape shown.]

The CHAIRMAN. I thank "20/20" for the use of that tape and also as a broad picture of what our hearing is all about today.

Our witnesses today will be divided into two panels. On the first panel, we will hear from a convicted former organizational payee, Theresa King. Ms. King served as an organizational representative from March 1994 through 1996 to over 200 Social Security beneficiaries. On May 21, 1999, she pleaded guilty to fraudulently obtaining Social Security benefits and was sentenced to 30 months in jail, 3 years probation and was ordered to \$31,757 in restitution. Ms. King is serving her sentence at the Federal prison in Tallahassee, Florida.

Also on the first panel is Betty Byrd, a senior citizen who was victimized by a convicted payee in West Virginia.

Our second panel will consist of Susan Daniels, Deputy Commissioner, Disability and Income Security Programs with the Social Security Administration, and Jim Huse, Jr., Inspector General of the Social Security Administration.

I will ask Ms. King and then Ms. Byrd to give their testimony, and then we will have questions of you at the end of your testimony.

Please proceed, Ms. King. Thank you for coming.

STATEMENT OF THERESA KING, CONVICTED FELON, FEDERAL CORRECTIONS INSTITUTION, TALLAHASSEE, FL

Ms. KING. Thank you. Good morning.

I was first introduced to payee services through Mr. Dale Parsons, who was the owner of Ace Payee Services in Tacoma, WA. I was a resident of a work release facility seeing employment and responded to an ad in the newspaper for a secretary. When I interviewed for the position, I informed Dale that I was a convicted felon, residing in a halfway house, and that my counselor from that facility would call to verify employment as well as visit the office.

I worked for Dale for a little over a year. For the first few months, Dale would always be present for the mail delivery on the first and the third of each month to personally deposit the Social Security checks we received. He would give me a copy of certain checks that came in; I would post them to the client accounts and then disburse the funds for the expenses of each client—for example, their rent, their utilities, spending checks, et cetera. I did not realize at the time that I was only receiving copies of certain checks and that Dale was actually receiving back payment awards, benefits for people who had died, and benefits for people who were hospitalized or incarcerated.

When a Social Security recipient receives benefits through a representative payee service, the payee service can have all correspondence sent directly to the payee office. In other words, the person receiving the benefits never has any contact directly with the Social Security Administration.

For example, a letter sent notifying the recipient of an award for back payment, unless the representative payee shows that letter to the recipient, the recipient never knows of the award or the amount of the award. Dale would never show award letters to clients, and if he was ever questioned about the amount of an award, he would simply lie.

Many of the clients received welfare, which in our State were called GAU benefits, while waiting for approval from Social Security. Dale would tell them that their back awards were sent directly to the State of Washington and that there was nothing left. It was true that the State of Washington was repaid for GAU benefits received while individuals were waiting to be approved by Social Security, but that amount was usually much lower than the amount of the Social Security benefits. I personally saw checks in excess of \$7,000, \$9,000, and in one case, a check for over \$18,000. The recipients for whom these checks were intended never saw these funds. Several of them did not even know they existed.

The State of Washington reviews GAU benefits every 6 months. There were many times when the Social Security Administration would approve a recipient for benefits just after the State had approved them for 6 months. Dale would keep the Social Security checks and not tell the client that they had been approved until the first month when the GAU check was not received. Then he would inform the client that the Social Security Administration had approved them just in time. In the meantime, he had kept several months' worth of Social Security checks—benefits the clients did not know they were entitled to.

When a person who is receiving benefits dies, it is the responsibility of the representative payee to notify the Social Security office and to return all remaining funds left in the recipient's account. Dale would continue to receive benefits for people who had died. After several months, he would contact the Social Security office and tell them that he had not seen the person for a few weeks, and what should he do with this month's check. He would then return one check to the Social Security office and keep the balance of the funds.

When a Social Security recipient is hospitalized or incarcerated for over 30 days, the benefits are suspended. Again, it is the responsibility of the representative payee to notify the Social Security Administration. Unfortunately, this leaves the recipient without funds to maintain their monthly expenses like rent and utilities. Upon their discharge or release, it takes approximately 30 to 60 days to be reinstated for benefits. Dale simply would not notify the Social Security Administration and would continue to receive checks. Sometimes he would continue to pay the monthly expenses of some of the clients, but mostly he would not.

When the recipient would come to the payee office upon discharge or release, Dale would tell them not to contact the Social Security office, that he would handle all the paperwork for them;

and of course, their checks would show up again on the first or the third of the following month. The recipient never knew that the checks had never been stopped and that Dale had continued to receive them.

After working with Dale for a little over a year, I quit. I was the one who worked with these people and their limited funds every day. I spent countless hours trying to find low-cost or subsidized housing, food banks, utility programs, and even shelters. Dale was stealing thousands of dollars monthly for his own extravagant expenses, and some of these people were without shelter or heat in the dead of winter.

I would come to work some mornings, and Dale had written numerous checks from the account for personal expenses. Dale would ask me at the end of every month to list the clients and their account balances and compare them to the actual funds that were in the bank. The account was always short thousands of dollars. I can remember the shortages exceeding \$10,000 on more than one occasion. The following month, the shortages would be made up with new deposits.

I opened CLC Payee Services in the spring of 1994. The only requirements the Social Security Administration required of me were that I was a nonprofit corporation and that I had to have been a representative payee for a certain number of people before. Having worked for Ace Payee Services for over a year and being in constant contact with the local Social Security office, I had no problem getting approved. I was not asked to produce any type of insurance bond, prove any formal education, required to give fingerprints, or even asked about a criminal history. I was not even personally interviewed; all of this was done over the telephone.

Unfortunately, after a few months of starting and stopping benefits, I also found it easier not to report hospitalizations and incarcerations. I continued to receive benefits for recipients who were not legally entitled to them. I would continue to pay their monthly expenses and would send money to the institutions where they were hospitalized or incarcerated. Because I was the representative payee, and I was the person responsible for reporting to the Social Security Administration any change of circumstances, I was the one charged with defrauding the Social Security Administration.

The Social Security Administration has no way to verify whether a representative payee is actually stealing an elderly or disabled person's benefits. There is an audit form sent once a year for the payee to fill out. The recipient never sees this form. It asks very minimal questions and requests no verification of actual expenses. The payee signs on behalf of the recipient as their representative, and this is the only form of checking the Social Security Administration does. As long as the audit forms are returned in the time allotted, there is no further contact.

There are many, many ways in which to take money from Social Security recipients and never be questioned. The job as representative payee for numerous clients is demanding and stressful. It can get to even the most well-intentioned person. As you are aware, I am currently serving a 30-month sentence for defrauding the Social Security Administration. I am a minimum/out custody inmate and

will be transferred to a halfway house in September. I will be released in March.

I believe that theft of Social Security benefits is much more widespread than is commonly known. I have seen recipients living on the streets while payees kept their monthly benefit checks. I have seen bar owners receive checks as a payee and kept them to pay monthly bar tabs. I have seen group homes receive checks, giving the recipient less than \$20 of those funds and keeping the balances every month. And I saw Dale Parsons steal thousands and thousands of dollars from people without shelter or food. There has to be a better way.

The CHAIRMAN. Thank you, Ms. King.

Ms. Byrd.

[The prepared statement of Ms. King follows.]

TESTIMONY OF THERESA KING

I was first introduced to payee services through Mr. Dale Parsons, the owner of Ace Payee Services in Tacoma, Washington in early 1993. I was a resident of a work-release facility seeking employment and responded to an ad in the newspaper for a secretary. When I interviewed for the position I informed Dale that I was a convicted felon, residing in a halfway house and my counselor at the facility would call to verify employment as well as visit the office.

I worked for Dale for a little over a year. For the first few months Dale would always be present for the mail delivery on the 1st and 3rd of each month to personally deposit the Social Security checks. He would give me a copy of certain checks that came in, I would post them to the client accounts and then disperse the funds for the expenses of each client. (i.e., rent, utilities, personal spending checks, etc.) I did not realize at this time that I was only receiving copies of certain checks and that Dale was actually receiving back payment awards, benefits for people who had died and benefits for people who were hospitalized or incarcerated.

When a Social Security recipient receives their benefits through a representative payee service the payee service can have all correspondence sent directly to the payee office. In other words, the person receiving benefits never has any contact directly with the Social Security Administration. For example, a letter is sent notifying the recipient of an award for back benefits, unless the representative payee shows the letter to the recipient, the recipient never knows of the award or of the amount of the award. Dale would never show award letters to the clients and if he was ever questioned about the amount of an award, he would lie. Many of the clients received welfare (GAU benefits) while waiting for approval from Social Security. Dale would tell them that their back awards were sent directly to the State of Washington and there was nothing left. It was true that the State of Washington was repaid for GAU benefits, but that amount was usually much lower than the amount of the Social Security benefits that were received. I personally saw checks in excess of \$7,000.00, \$9,000.00 and in one case a check for over \$18,000.00. The recipients for whom these checks were intended never saw the funds. They were not even aware of them.

The State of Washington reviews GAU benefits every six months. There were many times when the Social Security Administration would approve a recipient for benefits just after the State had approved them for six months. Dale would keep the Social Security checks and not tell the client that they had been approved until the first month a GAU check was not received. Then he would inform the client that the Social Security Administration had approved them just in time. In the mean time, he had kept several months worth of Social Security benefits without the client knowing.

When a person who is receiving benefits dies, it is the responsibility of the representative payee to notify Social Security and to return all remaining funds left in the recipient's account. Dale would continue to receive benefits for people who had died. After several months he would contact Social Security and tell them that he had not heard from a person and have the benefits suspended.

When a Social Security recipient is hospitalized or incarcerated for over thirty days, the benefits are to be suspended. Again, it is the responsibility of the representative payee to notify the Social Security Administration. Unfortunately, this leaves the recipient without funds to maintain their monthly

expenses such as rent and utilities. Upon their discharge or release it takes approximately 30 to 60 days to be reinstated for benefits. Dale simply would not notify the Social Security Administration and would continue to receive checks. Sometimes he would continue to pay the monthly expenses of some clients, but mostly he would not. When the recipient would come to the payee office upon discharge or release, Dale would tell them not to contact the Social Security Administration that he would handle all the paperwork for them. And of course their checks would show up on the 1st or 3rd of the following month. The recipient never knew the checks had never been stopped and that Dale had continued to receive them.

After working with Dale for over a year, I quit. I was the one who worked with these people and their limited funds everyday. I spent countless hours trying to find low-cost or subsidized housing, food banks, utility programs and even shelters. Dale was stealing thousands of dollars monthly for his own extravagant expenses and some of these people were without shelter or heat in the dead of the winter. I would come to work some mornings and Dale had written numerous checks from the account for personal expenses. Dale would ask me at the end of every month to list the client account balances and to compare that to the actual funds in the bank. The account was always short thousands of dollars. I can remember the shortage exceeding \$10,000.00 on more than one occasion. The following month the shortages would be made up with the new deposits.

I opened CLC Payee Services in the spring of 1994. The only requirements the Social Security Administration required of me was a non-profit corporation and that I had to have been a representative payee for a certain number of people before. (I cannot remember if that number was three or five.) Having worked for Ace Payee Services for over a year and being in constant contact with the local Social Security office, I had no problems getting approved. I was not asked to produce any type of insurance bond, prove any formal education, required to give fingerprints or even asked about a criminal history. I was not even personally interviewed. All of this was done over the telephone.

Unfortunately, after a few months of starting and stopping benefits, I also found it easier not to report hospitalizations and incarcerations. I continued to receive benefits for recipients who were not legally entitled to them. I would continue to pay their monthly expenses and would send money to the institutions where they were hospitalized or incarcerated. Because I was the representative payee and I was the one responsible for reporting to the Social Security Administration any change of circumstances, I was the one charged with defrauding the Social Security Administration.

The Social Security Administration has no way to verify whether a representative payee is actually stealing an elderly or disabled persons benefits. There is an audit form sent once a year for the payee to fill out (the recipient never sees the form). It asks very minimal questions and requests no verification of actual expenses. The payee signs on behalf of the recipient as their representative. This is the only form of checking the Social Security Administration does. As long as the audit forms are returned in the time allotted there is no further contact.

There are many, many ways in which to take money from Social Security recipients and never to be questioned. The job as representative payee for numerous clients is demanding and stressful. It can get to even the most well intentioned person. As you are aware, I am currently serving a 30-month sentence for defrauding the Social Security Administration. I am a minimum/out custody inmate and will be transferred to a halfway house in September. I will be released from the halfway house in March.

I believe theft of Social Security benefits is much more widespread than is commonly known. I have seen recipients living on the streets while payees kept their monthly benefit checks. I have seen bar owners receive checks as a payee and keep them to pay monthly bar tabs. I have seen "group homes" receive checks giving the recipient less than \$20.00 of those funds and keeping the balances every month. And I saw Dale Parsons steal thousands and thousands of dollars from people without shelter or food. There has to be a better way.

STATEMENT OF BETTY BYRD, MARTINSBURG, WV

Ms. BYRD. Thank you. Good morning.

The CHAIRMAN. Good morning.

Ms. BYRD. My name is Betty Byrd. I am 70 years old, and I have lived in Berkeley County, WV since 1975. During my life, I was employed primarily in secretarial positions. I retired from the workforce and started receiving Social Security benefits in 1992. I worked approximately 15 years contributing to the Social Security fund. Presently, I am drawing from my deceased husband's contribution; that is the way that I have my money coming in now.

In 1996, Greg Gamble and the Aurora Foundation were referred to me with the understanding that they were approved to be representative payee to handle my Social Security benefits. I needed a representative payee because I was hospitalized over 100 miles from my home. After I was hospitalized, I was then placed in an assisted living facility. Mr. Gamble and Aurora still acted as payee for my Social Security benefits. When he received my Social Security benefits, he was required to pay my electric bill, phone bill, the lot rent for my trailer, my medical expenses, and my prescription bills.

In 1998, Mr. Gamble stopped paying my lot rent. As a result, I was forced to sell my trailer to satisfy the rent arrangement. He also stopped paying the utility bills for the trailer, and the power was turned off.

In 1999, I heard from my care facility that Mr. Gamble was several months behind in making nursing home payments. The facility threatened to evict me for nonpayment. Not only was I going to be homeless as a result of the payee's action, I was also placed at medical risk because Mr. Gamble did not pay for my medications, and of course, I could not get medications if I was not paying for them.

As a result of the action of Social Security not monitoring Mr. Gamble, I was left almost homeless, without medical care, and in serious financial trouble.

If it were not for the generous people in our community, I would not be alive today.

Thank you.

The CHAIRMAN. Thank you, Ms. Byrd.

We are not used to such short testimony, so I was a little surprised at your brevity.

I am going to ask some questions, and we will proceed in the order in which members arrived at the committee, and we will follow a 5-minute rule. And if I ask Ms. Byrd a question, and Ms. King has something she wants to say about it, please respond as well, but otherwise I will direct my questions to specific people.

I will start with you, Ms. Byrd. First of all, let me tell you how much we appreciate your willingness to come and testify before the committee. What happened to you obviously should not happen to anyone.

In your testimony, you state that Greg Gamble and the Aurora Foundation were "referred" to you. Could you explain in more detail to the committee how you came to have the Aurora Foundation named as your representative payee?

Ms. BYRD. Through the Berkeley County courts. They said that they had just one that handled these accounts, and they said it was the Aurora Foundation and Mr. Gamble. I had no one else to turn it over to at that time.

The CHAIRMAN. So the answer is that a court recommended the Aurora Foundation.

Ms. BYRD. Yes, they did.

The CHAIRMAN. Ms. King, you seemed to say in your testimony that there was no concern on the part of your employer, representative payee Dale Parsons, about your past as a convicted felon. Do you believe that a convicted felon should be permitted to serve as a representative payee for Social Security recipients?

Ms. KING. Within limitations. I do not believe anyone who has been convicted for fraud, larceny, embezzlement, any type of conviction like that should be allowed. As far as a personal representative payee, there are some family members who have prior convictions, and I believe that a family member should be a payee before an agency if that is possible.

The CHAIRMAN. Do you know whether any paperwork was filed with the Social Security Administration about you as a new employee and what it told the Government about you?

Ms. KING. To the best of my knowledge, no, there was none.

The CHAIRMAN. Betty, what was your relationship with Mr. Gamble and the Aurora Foundation on a daily, weekly, monthly, or annual basis? For instance, did Mr. Gamble or anyone from the Aurora Foundation visit with you periodically?

Ms. BYRD. They did not visit with me, but I did contact them on the first of the month and gave them my bills, which usually would consist of enough to take up most of the money that was in the account. So that was the only contact I had, unless the bills started being late; then I would call them and contact them to find out why it had not been paid when the money was there for it.

The CHAIRMAN. Were there any other responsibilities that Mr. Gamble and the Aurora Foundation had in your case, other than paying the electric bill, phone bill, trailer lot rental, as well as medical and prescription expenses?

Ms. BYRD. Just to pay the bills on time; that was all.

The CHAIRMAN. Ms. King, when you described how Mr. Parsons was always present on the first and third of the month to personally deposit the Social Security checks, did you find it unusual that he only gave you a copy of the checks to post to the clients' accounts?

Ms. KING. Not at first. We were dealing with large sums of money. There was \$100,000 a month coming in through the account. I thought he was being responsible. I thought he was making the bank deposits, giving me copies of all checks that had come in. I did not realize there were checks coming in for people whom I had never heard of.

The CHAIRMAN. How did you come to realize that Mr. Parsons was pocketing back payment awards and benefits for people who had died or were hospitalized or incarcerated, and did you ever discuss it with him?

Ms. KING. It was not so much that I first realized that he was pocketing the payments. What would happen was all of these

checks were out of the general account for personal expenses—American Express bills; restaurants; motels; Las Vegas trips. All of these funds were coming out of the account. Well, obviously, they could not come out of the account, or the account would run out of money. So when the monthly bank statements would come in, there were deposits there that I did not know about. I did not know those deposits had been made. I had never seen copies of those checks.

This went on for several months until Mr. Parsons was busy with his girlfriend, was taking more extended vacations, and he missed the first of the month, and all these checks showed up for people I had never heard of. These were not people I was seeing weekly. These were not people whose expenses I was paying. I did not know who the checks belonged to.

The CHAIRMAN. You stated in your testimony that Mr. Parsons never showed award letters to clients. How do you know that he lied about it to the clients who asked, and did you personally observe him lying about it, and can you describe what happened?

Ms. KING. Yes. He would ask me to lie. That is what he would do. I saw many award letters come in. I saw checks for \$7,000, \$9,000, \$18,000. These people did not know this money came in. If they did not know it was coming, he would not tell them. If they asked about a back payment or an award, he would simply tell them that money was spent to pay back welfare, or he would lie about the amount. If they received a \$10,000 check, he would tell them their check was for \$1,700. He just bald-faced lied, and there was no way for these people to verify that. We had received the award letters, and we received the funds. They and no way to know there was any more money than what we told them.

The CHAIRMAN. Do you believe that beneficiaries should also receive their own copy of award letters so they would be informed about such awards, maybe like sending out notices to the payee and the beneficiary, would cut down on the type of fraud?

Ms. KING. Absolutely. I think they should also be signed and returned to the Social Security office.

The CHAIRMAN. Senator Breaux.

Senator BREAU. Thank you, Mr. Chairman. I apologize for having to step out to take a phone call.

I want to thank both of the witnesses. For both of you, I think it is difficult to come here and tell your stories from completely opposite directions, obviously. I appreciate you telling your story, Ms. Byrd, so that others will not have to tell the same story perhaps in the future. And Ms. King, I think that for you, it also is good that you are here, and I know it is not easy for you as well. I think your appearance can be very helpful in helping us understand what happened to make sure we take steps that ensure it does not happen again from your standpoint as well.

I have to think it is naturally suspicious to have a company named "Ace" Payee Services. Sort of a red flag goes up when you hear, "Hire Ace Payee Services" to handle your mother's business or anything of that nature.

Where is Dale today?

Ms. KING. To my understanding just here recently, Dale was finally indicted, and Dale is serving a 33-month sentence. I believe

there was in excess of \$300,000 that he embezzled. I believe he did plea agreement that down. But he is currently serving time just as of recently, the last few months.

Senator BREAUX. I was interested in your testimony about how, when you started your own business, you said you had no problems getting approved.

Ms. KING. No, sir.

Senator BREAUX. And that is a Government problem there, because you were approved by the Social Security Administration, and you were not licensed, you were not bonded; and you had a prior conviction.

Ms. KING. Yes, sir.

Senator BREAUX. What did you tell them when you walked in? Simply, "I want to do this business"?

Ms. KING. I did not even walk in; I did it over the telephone.

Senator BREAUX. So you never even had an interview with Social Security?

Ms. KING. No.

Senator BREAUX. And they stamped that you were approved as a payee?

Ms. KING. Yes, sir.

Senator BREAUX. If you are looking for a problem, it seems to me that that is it. I mean, to get a permit to dig a ditch in Louisiana, you have to go through a lot more red tape and bureaucracy to get approved, certainly, than you did to be approved to handle people's money, and large sums of money at that.

Well, obviously, I think that gives credibility to the fact that we have legislation now that is cosponsored, I think, by everyone here which would place some responsibility on the Social Security Administration.

You were never bonded at all?

Ms. KING. No, sir.

Senator BREAUX. Tell me a little bit about—I understand that you continued to accept money from Social Security which was probably in excess of what the person was entitled to because of a stay in a hospital.

Ms. KING. That is correct.

Senator BREAUX. But did you pay the hospital with the money, or did you give some to the hospital, and you kept some?

Ms. KING. No. When they were incarcerated or hospitalized, mostly my problem was that these people had gone to jail for things. I paid their rent, sent their wives the money; I continued to pay their utilities. And it does not sound like a whole lot, but when you have several clients who are in jail for 3 or 4 months at a time, that money adds up. That is how I wound up with the \$30,000 in restitution. I am responsible. I should not have done it.

Senator BREAUX. I think I am missing something. You got the person's check from Social Security which was earmarked for payment of their bills—

Ms. KING. Right.

Senator BREAUX [continuing.] And you actually paid their bills.

Ms. KING. Yes.

Senator BREAUX. Who are you referring to as the people who were incarcerated at that time?

Ms. KING. Clients who were incarcerated. They would go to jail for 90 days for a DWI. Well, as the representative payee, I am supposed to stop their benefits. They are no longer eligible once they are incarcerated.

Senator BREAUX. Oh, I see. OK.

Ms. KING. I continued to receive them.

Senator BREAUX. What did you do with the money—did you keep some yourself?

Ms. KING. No.

Senator BREAUX. You paid the bills?

Ms. KING. I paid their bills, and I sent them money in the hospital and in the county jails. In one case, one gentleman was in prison.

Senator BREAUX. Now, the hospital—did they ever say, "Wait a minute—you are giving us money that we are not entitled to, because this person's time in the hospital is no longer covered by Medicare"?

Ms. KING. No. The hospital I am referring to was Western State. I had several clients who were mentally unstable. Their stays in the hospital were covered under Medicaid, Medicare or State. I would send them spending checks.

Senator BREAUX. Did none of the people to whom you were paying the moneys ever raise a red flag of concern that perhaps they were not entitled to receive the money that you were paying them?

Ms. KING. No, sir; they did not know that.

Senator BREAUX. You think they did not know, or just did not care about the difference?

Ms. KING. I think it was my responsibility to know.

Senator BREAUX. Well, I thank you.

Ms. Byrd, I am asking Ms. King the questions, but in order to find out how we can make sure this does not happen again, we have to first learn how it happened the first time, and that is what we are trying to do. Your contribution, Ms. King, is very important, and we thank you for it.

Ms. Byrd, we are sorry you have had the problem. We are trying to make sure nobody else ever has to go through that again.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator BreauX.

Senator Burns.

Senator BURNS. Thank you, Mr. Chairman.

I think Senator BreauX has taken us down the same road that I had already drawn a conclusion to, that maybe "the enemy is us."

I have no questions for these witnesses. However, I would ask, Mr. Chairman, that I be permitted to ask some questions of Ms. Daniels and Mr. Huse, and I will do that in writing and would expect a response from them, because it is a no-brainer that you do not just haul off and authorize anybody to collect money and be responsible for handling the money without some sort of interview or qualification.

I cannot even sell an auction without a bonded account. My accounts have to be bonded. If I take money from people, and I am supposed to pay the consignors, I have to have a bonded account. I cannot trade cattle; I cannot buy cattle on order or ship them to Iowa for Chuck Grassley's customers unless I have a bonded ac-

count—and I am audited every year. I am expected to submit reports to the packers and stockyards, and if they do not like what my audit looks like when I mail it in, then they come walking through my door, and they will audit me.

I do not understand—it seems like we are our own worst enemy. So I think that probably both of your problems could have been avoided had there been some requirements on both of you. So I will ask some questions of them in writing, Mr. Chairman, if you do not mind, because I have an obligation at 11 o'clock, and I will expect some sort of response.

I can write them a rule book right now and do it on one page, which would have prevented the problems for both of you.

I thank you, Mr. Chairman, for this hearing, and I will submit those questions through the committee.

The CHAIRMAN. We thank you very much, and I have already announced that we will take questions by Friday for written response and will give people a couple of weeks to respond.

I have no further questions. I thank both of you for coming, particularly you, Ms. Byrd, for taking time out of a busy schedule to tell us about your traumatic experience.

Ms. King, we thank you for coming, too, and for being very candid with us and helpful to us in this process. And for you, if you will allow me to say it: This is the first day of the rest of your life. I think you probably have much that you can contribute to society above and beyond just being a productive citizen, and I hope you will do that; so, go and steal no more.

Thank you.

I will now call the second panel forward. I have already announced who the witnesses are on the second panel, so I will not repeat that.

We will start with you, Dr. Daniels, and would you please introduce the gentleman who is accompanying you?

STATEMENT OF SUSAN M. DANIELS, DEPUTY COMMISSIONER, DISABILITY AND INCOME SECURITY PROGRAMS, SOCIAL SECURITY ADMINISTRATION, WASHINGTON, D.C.; ACCOMPANIED BY LARRY MASSANARI, REGIONAL COMMISSIONER, PHILADELPHIA REGION

Ms. DANIELS. It would be my pleasure. I am accompanied today by Larry Massanari, the Regional Commissioner from the Philadelphia Office, and my colleague for a long time.

The CHAIRMAN. Thank you. Please proceed with your testimony, and then we will hear from Mr. Huse. Did Mr. Massanari want to speak?

Ms. DANIELS. Larry will help with questions and answers.

The CHAIRMAN. OK. Thank you.

We will hear from you and then ask questions after the panel has completed. So please go ahead with your statement.

Ms. DANIELS. Thank you.

Mr. Chairman, Senator Breaux, members of the committee, thank you for inviting me here today to talk about SSA's Representative Payee Program, particularly as it relates to organizational payees.

Today I will discuss a few general features of the program, the recent changes we have implemented in order to strengthen the payee program, the legislation that we sent to you and that you so graciously sponsored in order to improve the program, and of course, I will be delighted to take your questions at the end.

We have a remarkably successful Representative Payee Program. Almost all representative payees provide much-needed help to beneficiaries, carefully, compassionately, and on a totally volunteer basis. Eighty-four percent of the payees are family or friends. Only one in 10,000 representative payees cases result in some misuse.

I can truthfully tell you that millions of Americans are being assisted mostly by volunteers in a way that we can all be proud of.

Nevertheless, it is no comfort to a beneficiary who has lost his or her benefits as a result of misuse, nor is it acceptable to us at Social Security. SSA knew that the nature of our beneficiaries was changing over time, so we chartered an advisory committee, a panel of experts, to review our Representative Payee Program, and in 1995 and 1996, this committee met and held hearings and conducted research on key issues in the Representative Payee Program. We also asked the Office of the Inspector General to review and make recommendations to improve the Representative Payee Program.

Both the advisory committee and the Office of Inspector General made several recommendations, from how to select a representative payee to the kind of monitoring program we needed. SSA evaluated those recommendations within the framework of our competing priorities and the resources that we had. We have implemented many of these recommendations, including the development and distribution of a handbook for organizational payees; issuing instructions to the field to screen payees more thoroughly; conducting onsite reviews for fee-for-service and volume payees; developing and distributing pamphlets to beneficiaries informing them of their rights and responsibilities; and changing the focus of our current accounting system to a monitoring and compliance system.

In addition, we have the following initiatives under way: developing an accounting form tailored for organizational payees; expanding our automated system for keeping track of payees; developing and distributing a handbook for individual payees; and instructing our field offices to improve the way we control our documentation.

As a result of our review of the recent criminal enterprise you heard about today, SSA has strengthened our oversight of the payee process. Our new initiatives include triennial onsite review of all fee-for-service and volume payees. SSA has begun to review the approximately 855 fee-for-service payees on a triennial cycle. SSA will also perform triennial reviews of all volume organizational payees—that is, those serving more than 100 beneficiaries and of all individual payees serving more than 20 individuals. Three hundred of these reviews have already been conducted, and the rest are on a schedule for completion beginning this summer.

Second, we will have annual verification of bonding or licensing. Nongovernmental fee-for-service organizational payees must either be bonded or licensed as long as they serve as a payee. Beginning in June, SSA will require them to annually show that they continue to meet this requirement.

Third, we will conduct a 6-month review of all newly appointed fee-for-service payees. SSA will visit fee-for-service payees 6 months after their initial appointment as a payee to ensure that they fully understand their duties and responsibilities and are on the right track in recordkeeping and reporting.

Fourth, random reviews of volume and fee-for-service payees. Each year, SSA will conduct a random sample of 30 percent of our volume payees and fee-for-service payees. We will review a sample of beneficiary records for compliance with policies and procedures.

In addition, of course, SSA will continue to conduct reviews when trigger events such as third-party reports of misuse or complaints from vendors are made. This review will have an emphasis on compliance.

SSA will also continue to work in conjunction with the U.S. Attorneys, to assist in their prosecution of SSA criminal fraud, including representative payee misuse.

In February, we sent, and recently, you introduced, legislation to improve safeguards for beneficiaries. Currently, when any payee is determined to have misused an individual's benefits, SSA can re-issue those benefits only in cases where we can obtain restitution of the misused benefits or where we declare that we were negligent. We are asking in this legislation that SSA be allowed to reinstate those benefits for any beneficiary whose funds were misused by an organizational payee even if negligence is not declared on the part of SSA. We will, of course, continue to seek restitution as a safeguard and for its deterrent effect.

In addition, the legislation that you have proposed requires that nongovernmental fee-for-service organizational payees be bonded and licensed, not just licensed or bonded, and that they not be allowed to take a fee for any of the services that they provide if they are found to have misused benefits.

Finally, in the case of misuse of benefits, those benefits will be treated as an overpayment to the payees themselves on their own account.

Additionally, we are seeking civil monetary penalties for individuals who misuse SSA funds.

We urge the Congress to support your bill, Mr. Chairman, and we will certainly work closely with you to make that happen.

In conclusion—because I can see I am already out of time—let me convey to you our enormous gratitude to the millions of payees around this country who voluntarily assist our beneficiaries, and let me also convey our special concern for our beneficiaries with organizational payees, who are the most vulnerable because they do not have family and friends to serve as their payees.

Finally, we are very eager to work with you to strengthen the economic security of Americans who use payees through this legislation.

I will be delighted to take your questions at the end. Thank you, Mr. Chairman.

[The prepared statement of Ms. Daniels follows:]

PLEASE UPON DELIVERY

REPRESENTATIVE PAYEES



STATEMENT BY

**SUSAN M. DANIELS
DEPUTY COMMISSIONER**

for

**DISABILITY AND INCOME SECURITY PROGRAMS,
SOCIAL SECURITY ADMINISTRATION**

Before The

SENATE SPECIAL COMMITTEE ON AGING

May 2, 2000

**Testimony of Susan Daniels, Deputy Commissioner
for Disability and Income Security Programs,
Social Security Administration,
before the Senate Special Committee on Aging –
May 2, 2000**

Mr. Chairman, Senator Breaux, members of the Committee, thank you for inviting me here today to talk to you about SSA's representative payee program – particularly as it relates to organizational payees. Today, I will outline for you the Social Security Administration's representative payee program as it applies to organizations, the problems we have faced (including resource constraints), recent changes that we have implemented and legislation we have sent to Congress in order to improve our program. Then, of course, I would be happy to respond to your questions.

History of Representative Payments

Congress passed legislation in 1939 which granted SSA broad discretionary authority to appoint representative payees to receive and disburse benefits for those beneficiaries who were found to be incapable of managing or directing the management of their benefits. The appointment of a payee was intended to ensure that SSA's most vulnerable beneficiaries receive the full support and benefit that their payments are intended to deliver. In this same 1939 legislation, Congress extended benefits to wives of retired workers, and widows and dependent children of deceased workers. Accordingly, the representative payee program was initially designed with the needs of the elderly and children in mind.

Subsequent events, including the enactment of disability benefits in 1956, the enactment of Supplemental Security Income (SSI) in 1972, and demographic and political changes in American society -- such as the de-institutionalization of the mentally ill, and the increase in substance abusers -- have all contributed to the change in the nature of the beneficiary population served by representative payees. Thirty years ago, 5.2 percent of the Social Security population were paid through representative payees. Since the implementation of SSI, this has risen to about 13.3 percent of our 49 million beneficiaries have representative payees -- 6.5 million beneficiaries served by about 4.2 million payees. About 42 percent of beneficiaries who are paid through a representative payee today are disabled.

The Social Security and SSI disability rolls typically include people with special needs, such as the mentally ill and homeless, many of whom are substance abusers. (However, individuals whose sole medical disability is drug or alcohol addiction, no longer qualify for benefits.) Many years ago, these same individuals might have been institutionalized, with the institution serving as their payee. Today, these individuals are not institutionalized and often have no close family willing or able to serve as payee. When such beneficiaries need help in the management of their financial affairs, institutions and organizations, or sometimes acquaintances, have stepped in to act as payees. Many times, in addition to money management, these payees must address social service issues, such as finding shelter for the habitually homeless, dealing with medical decisions, and encouraging beneficiaries to seek treatment for substance abuse or mental illness.

We cannot over-emphasize the valuable role that representative payees serve. When an individual agrees to be a payee for a beneficiary, he or she takes on an important responsibility. Sometimes the task of managing another person's benefits can be a difficult one—especially if the beneficiary is not always cooperative—and payees deserve a lot of recognition for volunteering their time and effort. As I mentioned earlier, many representative payees go beyond fulfilling their basic responsibilities as a payee and provide other valuable services to the beneficiary.

Organizational Payees

As I mentioned earlier, about 6.5 million Social Security and SSI beneficiaries require representative payees. Family members serve as representative payees for about 84 percent of these beneficiaries. Payees for the remaining 16 percent are friends or institutions of various types, such as government or social service agencies, financial organizations and fee-for-service organizations. (Fee-for-service organizations meet the qualifications and are authorized to collect a fee from the beneficiary's payment for their services as representative payee.) Currently, about 45,000 organizational representative payees serve approximately 750,000 Social Security and SSI beneficiaries. Among those, there are approximately:

- 855 fee-for-service payees serving almost 60,000 SSA beneficiaries;
- 1,000 entities (excluding fee-for-service organizations), which we call "volume payees," serving 250,000 beneficiaries. (A "volume payee" is an organization that serves 100 or more beneficiaries.); and

- 360 State mental hospitals serving 80,000 beneficiaries.

In order to qualify to collect a fee, an organization must serve at least 5 beneficiaries and be a:

- State or local government agency whose mission is to carry out income maintenance, social service or health-care related activities;
- State or local government agency with fiduciary responsibilities, or
- Community-based, non-profit social service agency which is bonded or licensed in the state that it serves.

Determining the Need for Representative Payment

The law provides that if the Commissioner determines that it is in the interest of the individual, benefits may be paid to a representative payee. Generally, we appoint a payee if we determine that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. If the beneficiary is under age 18, payment is usually made to a representative payee. (Emancipated minors can receive benefits directly.) In the case of an adult beneficiary, benefits will be paid to a representative payee if the individual is legally incompetent, or mentally or physically incapable of managing or directing the management of his or her benefit payments.

To decide if an individual has a mental or physical impairment that prevents him or her from receiving benefits directly, we look at:

- medical evidence;
- the beneficiary's living situation (such as whether he/she lives alone, if anyone helps him/her manage their funds);
- how the beneficiary is handling money now; and
- what his/her needs are and how they are being met (whether they can obtain their own food, clothing and shelter or if he/she is dependent on others to supply those needs).

Once we determine that an individual needs a payee, SSA identifies persons who are willing and best able to serve in this capacity. Whenever possible, the preferred payee is a family member or friend who has shown interest in the well-

being of the beneficiary. When such persons cannot be found, SSA turns to certain organizations that have agreed to perform the duties of a representative payee.

SSA closely reviews all applications for representative payment before selecting a payee. Individuals must show their relationship and interest in the beneficiary. Plus, the beneficiary is given the opportunity to protest the selection of a prospective payee. We notify the beneficiary that someone has applied to be their payee and who that person or organization is. We ask the beneficiary to contact our field office if they disagree with either the fact that they need a payee or if they would prefer that someone else serve as their representative payee.

Representative Payee Responsibilities

The representative payee is to use the benefit payments only for the beneficiary's current and foreseeable needs or save and invest them, if the beneficiary's current needs are being met. We believe that the representative payment program best accomplishes this when we have a collaboration with the payee and the beneficiary. To that end, we strive for a payee program that:

- preserves the rights of beneficiaries and treats them with respect and dignity;
- keeps beneficiaries well-informed about their benefits;
- prepares new representative payees with a clear understanding of their role and our expectations of them;
- furnishes continuing support to payees as they execute their duties;
- ensures that benefits are used in the best interest of the beneficiary; and
- monitors the use of benefits in an effective and productive manner.

SSA informs the representative payee of his or her responsibilities at the time he/she files to be representative payee and also mails a more extensive guide to the payee once he/she has been selected. Once selected, all representative payees are required to:

- determine the beneficiary's needs and use his/her payments to meet those needs;
- conserve any money left after meeting those needs;
- report any changes or events which could affect the beneficiary's eligibility for benefits;
- help the beneficiary get medical treatment when necessary;

- maintain records of the money received on behalf of the beneficiary and records of all expenditures; and
- complete written reports accounting for the use of the funds.

Annually, SSA requires each representative payee – whether an individual who represents only one beneficiary or an organization that represents hundreds—to give an accounting of the benefits received for each beneficiary and how they were spent. More specifically, the accounting form asks how much of the benefits were spent on food, housing, personal items and how much was saved and in what type of account the money was conserved. (The only exception to this annual accounting process is for State mental institutions which undergo an onsite visit every 3 years.) Each accounting request is controlled to make sure it is completed. All returned forms are reviewed to ensure that responses are complete and acceptable. If incomplete, or if the accounting form raises questions, SSA will contact the payee to resolve the issue. If the representative payee fails to return the accounting form, our local field office conducts a face-to-face interview with the payee, the beneficiary and, if different from the payee, the custodian (e.g., the nursing home if a relative is the payee).

SSA Initiatives to Deter Misuse of Benefits by Organizational Payees

Almost all representative payees provide much needed help to beneficiaries without abusing this responsibility. Unfortunately, there have been some instances of misuse by representative payees. Misuse of benefits occurs when the payee neither uses benefits for the current and foreseeable needs of the beneficiary, nor conserves benefits for the beneficiary. Of the 6.5 million beneficiaries with representative payees, there are only about 650 instances of misuse confirmed per year, or only about 1 in every 10,000 representative payee cases. The amount of benefits misused by payees is a small percentage of the total benefits paid – about \$3 million per year of the \$30 billion in annual benefits for beneficiaries with payees. However, that is no consolation to a beneficiary who has lost his or her much needed benefits. Nor is it acceptable to those of us charged with administering the Social Security and SSI programs.

SSA is committed to protecting beneficiaries from benefit misuse. The recently televised representative payee misuse case, the Aurora Foundation, Inc., in Martinsburg, West Virginia, has resulted in the president of that organization pleading guilty to the embezzlement of Social Security and SSI beneficiary funds. As a result of our review of this criminal enterprise, SSA has strengthened our

oversight process. To that end, we have several new initiatives underway that will help prevent misuse by organizational payees.

1. Triennial Onsite Reviews of all Fee-for-Service Payees.

SSA has begun a review of the approximately 855 fee-for-service payees on a triennial cycle. SSA will also perform triennial reviews of all volume organizational payees – those serving 100 or more beneficiaries – and of all individual payees serving 20 or more beneficiaries. SSA's Office of the Inspector General will participate, as necessary, in these reviews. This review will ensure payee compliance through a face-to-face meeting with the payee and examination of a sample of beneficiary records. The review includes an assessment of the payee's record keeping, and SSA will interview a sample of beneficiaries in order to assess whether their needs are being met. Expenses may be corroborated with providers of the services. In addition, we will contact vendors to ensure that bills are being paid. We believe that an added benefit of this initiative will be that the lines of communication between SSA and the payee will be improved. Over the last year, approximately 300 of these reviews have already been conducted as part of a pilot process, and a regular ongoing schedule will begin this summer.

2. Annual Verification of Bonding or Licensing.

Currently, in order to collect a fee from a beneficiary's check, non-governmental fee-for-service organizational payees must be either licensed or bonded as long as they serve as payee. This is a statutory requirement. Beginning June of this year, SSA will require all non-governmental fee-for-service organizations to annually show that they continue to meet those requirements.

3. A 6-Month Review for All Newly Appointed Fee-for-Service Payees.

SSA will visit fee-for-service payees 6 months after their initial appointment as payee to ensure that they fully understand their duties and responsibilities, and are on the right track with respect to record keeping and reporting. We will focus on their accounting procedures so that, they will be able to account for beneficiaries' funds as well as comply with our requests for review. This initiative is now in place and applies to all new fee-for-service payees appointed on or after January 1, 2000.

4. Random Reviews of Volume and Fee-for-Service Payees.

Each year SSA will conduct a random sample of 30 percent of volume payees (serving 100 or more beneficiaries) and fee-for-service payees. We will review a sample of beneficiary records for compliance with our policies and procedures. We are developing guidelines and instructions needed to implement this initiative. The instructions provide our reviewers with information that includes: how to conduct the interview, the interviewing forms, how to review the record keeping (bank statements, cancelled checks, bills, contracts, etc.), and how to document our database with the findings from the review. This initiative is scheduled for implementation in Fiscal Year 2001.

In addition, SSA continues to monitor for "trigger" events. That is, we conduct reviews of payees in response to certain "trigger" events, such as third-party reports of misuse and complaints from vendors of failure to receive payment. This review has an emphasis on addressing the complaints.

Finally, we are looking at tightening up the investigation of potential payees. This is consistent with OIG's suggestion that we put more emphasis on the selection of representative payees.

I believe that these measures will help to ensure that organizational representative payees appointed by SSA will carry out their duties and responsibilities in accordance with the policies and procedures that are designed to protect our beneficiaries. This improved organizational payee monitoring process will:

- Provide the oversight necessary to ensure that payees fulfill their duties to our beneficiaries;
- Deter potential misuse by regular site visits coupled with random reviews;
- Provide an opportunity for ongoing education by SSA for these payees about their duties and responsibilities;
- Improve lines of communication between the payee and SSA; and
- Ensure that the payee continues to be qualified under the law to charge a fee for its services.

Further, Social Security attorneys are working in conjunction with several U.S. Attorneys' offices to assist in the prosecution of Social Security program fraud, including representative payee misuse cases.

Legislation

We recognize that administrative actions alone are not sufficient to address all of the problems we identified as a result of our analysis of the Aurora misuse case. We believe that some of these problems can only be resolved through legislation. Therefore, in February, we sent to Congress a legislative proposal for consideration that would provide additional safeguards for beneficiaries with representative payees.

Currently, when *any* payee has been determined to have misused an individual's benefits, SSA can reissue the benefits only in cases where there has been negligent failure on our part to investigate or monitor the payee. In virtually all other cases, the individual loses his or her funds unless SSA or the beneficiary can obtain restitution of the misused benefits from the payee. Additionally, SSA can seek restitution only through civil processes if the representative payee refuses to return the misused funds.

To facilitate restitution of misused funds to beneficiaries, our legislative proposal would require SSA to reissue benefit payments (including any respective fees for fee-for-service payees) in all cases when an organizational payee is found to have misused a beneficiary's funds, without either a finding of negligence on SSA's part or restitution from the organizational payee. Requiring re-issuance of such misused benefit payments, including any fees that were deducted from the beneficiary's benefit, would provide additional protection to the most vulnerable of beneficiaries.

This new authority would enable us to promptly restore benefits that have been misused by an organizational representative payee, thereby avoiding the hardship that can be caused by such a loss. SSA would, through all available avenues of legal recourse, continue to seek restitution of the misused funds from the former representative payee. We would do so for two reasons. First, for the deterrent effect and, second, to offset the additional costs incurred by the Social Security trust funds or the general fund in restoring misused benefits to the beneficiary.

In addition to this change, the legislative proposal would include other provisions designed to increase the safeguards for beneficiaries with representative payees. Specifically, it would:

- Require non-governmental fee-for-service organizational payees to be bonded *and* licensed, provided that licensing is available under State or local law. (The requirement under current law is bonding *or* licensing.) This proposed requirement would add further safeguards to a beneficiary's funds. State licensing provides some oversight by the state into the organization's business practices, and bonding provides some assurance that a surety company has investigated the organization and approved it for the level of risk associated with the bond. The proceeds from redeemed bonds would reduce the costs to the program when re-issuing benefits in cases of representative payee misuse.
- Provide that when an organization has been found to have misused an individual's benefits, the organization shall not qualify for the fee from that individual's benefits for months the payee misused the funds. Requiring payees to return the fees charged for periods of misuse is reasonable because the payee was clearly not properly performing the service for which the fee was paid. Permitting the organization to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's current and future needs.
- Provide that misused benefits (including any respective representative payee fees) would be treated as an overpayment to the representative payee and, therefore, subject to current SSA overpayment recovery authority. Although SSA has been given expanded authority in the recovery of overpayments (such as tax refund offset, referral to contract collection agencies, notifying credit bureaus, and administrative offset of future federal benefit/payments), these tools cannot be used to recoup benefits misused by a representative payee. Providing that benefits misused by any representative payee would be an overpayment to the payee would provide SSA with additional means for recouping the misused payments. This proposal would also permit re-issuance of the recovered amounts to the beneficiary (unless already re-issued by SSA). This change would improve the protection of all beneficiaries with payees, not just those with organizational payees.

Also, in September 1999, we sent a legislative proposal to Congress that, in addition to other provisions, would extend civil monetary penalty provisions to representative payees that misuse benefits. As it pertains to representative payees, this legislative proposal would allow SSA to impose administrative penalties and assessments against representative payees who make false statements to obtain or retain benefits. This would improve our ability to ensure that individuals who

commit this type of fraud against SSA are penalized, even if such individuals are not prosecuted criminally. We urge Congress to give these proposals their prompt attention.

Advisory Committee & Inspector General Recommendations Implemented

To address the evolving needs of the beneficiaries and the payees that assist them, SSA chartered an advisory committee (AdCom) -- a panel of external experts -- to review the representative payee program. In 1995 and 1996, the committee held hearings and conducted research into key representative payment issues. SSA also requested its Office of the Inspector General (OIG) to review and make recommendations to improve the representative payee program. SSA requested these reviews in order to better meet the needs of the changing demographics of our representative payee population.

Both the AdCom and OIG made several recommendations -- from how to select a representative payee to the kind of monitoring program needed. SSA evaluated the recommendations within the framework of our competing priorities and resource limitations. We have implemented several recommendations including:

- The development and distribution of a handbook for organizational payees. (OIG)
- Issuing instructions to field offices to screen payees more thoroughly. (OIG)
- Conducting onsite reviews of fee-for-service and volume payees. (AdCom/OIG)
- Developing and distributing a pamphlet for beneficiaries informing them of their rights and responsibilities. (OIG)
- Changing the focus of the current process from accounting to monitoring and compliance. (OIG)

In addition, we have the following initiatives in process:

- Develop an accounting form tailored to organizational payees. (AdCom/OIG)
- Expand our automated Representative Payment System. (OIG)
- Develop and distribute a handbook for individual payees. (AdCom)
- Instruct field offices to improve controls over retention of supporting documentation of non-responder alerts and accounting forms. (OIG)

Advisory Committee & Inspector General Recommendations Not Implemented

There were some recommendations that we have not adopted. For example, it was suggested that SSA require a high level of case management (such as social services) from organizations that collect a fee (fee-for-service payees). We do encourage organizations to provide extra services (e.g., negotiating the beneficiary's rental agreement with the landlord). However, we did not adopt this suggestion because we believe that requiring extra services would discourage the organization from providing the basic payee services that some individuals would not have otherwise. Another example is the recommendation that SSA only accept a challenge of a beneficiary's capability from those in a position to know. While we agree that a finding of incapability is a serious matter, and we are wary of spurious allegations, our policy is to respond to third party reports of beneficiary incapability by conducting an investigation, regardless of the nature of the source. Only then can we be assured that the beneficiary receives the full benefit of their funds.

Conclusion

In conclusion, let me convey our special concern for beneficiaries who need a representative payee because these are the most vulnerable of our beneficiaries. We will not tolerate misuse of benefits by representative payees and we will continue to strive for ways to strengthen our representative payee program. Recognizing this, we have looked outside of our agency (AdCom) and within (OIG) for improvements. We have implemented some of the recommendations and, as resources permit, we will implement others. We have recently set in motion plans to improve our monitoring and oversight process. In addition, we have met with representatives of organizations that support the interests of beneficiaries with payees and, at their request, we are working with them to develop a statutory definition of misuse. Finally, we believe with the help of Congress, we will be able to improve the package of protections for our beneficiaries with payees when funds have been misused.

The CHAIRMAN. Before Mr. Huse speaks, I should thank the Social Security Administration for their cooperation with our drafting of the legislation and their cooperation in preparation for this hearing as well.

Ms. DANIELS. You are certainly welcome.

The CHAIRMAN. General Huse.

**STATEMENT OF JAMES G. HUSE, JR., INSPECTOR GENERAL,
SOCIAL SECURITY ADMINISTRATION, WASHINGTON, DC**

Mr. HUSE. Good morning, Mr. Chairman, Senator Wyden.

Thank you for the opportunity to discuss Social Security's Representative Payee Program. This critical program is designed to protect the interests of some of the most vulnerable members of our society. However, recent events have demonstrated that this program is sometimes abused by those entrusted with this great responsibility.

Today, I would like to summarize my full statement for the record, but first, I need to emphasize that the vast majority of representative payee are honest, trustworthy people. However, recent events have exemplified that this program needs tighter controls to prevent abuses.

Since FY98, we have opened 1,352 representative payee investigations, obtained 313 convictions, and identified over \$7.5 million in losses. Several of our cases represent severe abuses where hundreds of individuals were victimized.

Today you heard from Theresa King, who was convicted after misusing more than \$31,000 of her client's funds. In my written statement, I have also highlighted our investigation of IVY's Social Services, Incorporated, whose owner misused about \$274,000 worth of beneficiaries' funds for personal purchases over a 15-month period while serving as a fee-for-service representative payee for 330 individuals.

Our Aurora Foundation Investigation is our most recognized investigation. Aurora was an organizational fee-for-service representative payee that served over 140 disabled individuals. The president of Aurora embezzled over \$300,000 over a 4-year period, of which almost half represented payments issued by Social Security. Even though Aurora had been a fee-for-service representative payee since 1995, no onsite review had been conducted. However, at the time of our investigation, Social Security notified Aurora of a pending site visit based on the numerous complaints against Aurora.

Currently, when Social Security determines an individual is incapable of managing his or her own benefits, it searches for a suitable representative payee. To determine suitability, Social Security interviews individuals and conducts a limited review of documents supplied by the potential payee.

Please keep in mind that it is not an investigation, but in essence serves as a means for Social Security to verify information already within its own system. Social Security generally does not verify the accuracy of the information unless there is a reason to question suitability; nor does the agency perform credit or security background checks.

We believe that the agency needs to strengthen its selection process. This presents Social Security with the best opportunity to prevent misuse. Social Security also needs to strengthen its representative payee monitoring program. We have recommended that Social Security implement additional safeguards to ensure that representative payees do not misuse benefits.

In our work, we identified problems with representative payees who did not respond to Social Security's annual request for an accounting of how benefits were used for individuals they represented. We are pleased that Social Security is proposing to conduct quick response checks when representative payees do not respond.

Onsite reviews are another part of the monitoring program. State institutions that participate in this program are reviewed every 3 years. Social Security may also conduct onsite reviews if a problem is brought to its attention. Unfortunately, these reviews are detective rather than preventive. We believe that Social Security should conduct periodic reviews of selected payees and focus more on monitoring and compliance issues.

Finally, in another review, we found that payments were often made to deceased representative payees. We estimated that since July 1998, about \$17 million in payments were issued to 2,091 deceased payees. We recommended that Social Security conduct routine computer matches to ensure that it promptly identifies payees who are deceased and quickly selects new payees.

Social Security has acknowledged the need to address representative payee oversight issues, and we have agreed to work together with the agency to provide our expertise.

Finally, I appreciate that this committee recognizes the need to expand the civil monetary penalty authority to include representative payees who misuse benefits. With the is additional authority, we can make sure that representative payees who abuse the system are punished, even when they are not criminally prosecuted.

Mr. Chairman, we look forward to working with the agency and this committee to improve this vital program and protect Social Security's vulnerable beneficiaries.

I will be happy to answer any questions that you might have at this time.

Thank you.

[The prepared statement of Mr. Huse follows:]

OFFICE OF THE INSPECTOR GENERAL

Organizational Representative Payee Program

**HEARING BEFORE THE
SENATE SPECIAL COMMITTEE ON AGING**

United States Senate

May 2, 2000



**JAMES G. HUSE, JR.
INSPECTOR GENERAL
SOCIAL SECURITY ADMINISTRATION**

**Representative Payee Testimony
Senate Special Committee on Aging – May 2, 2000**

Good morning, Mr. Chairman and members of the Special Committee. Thank you for the opportunity to discuss the Social Security Administration's Representative Payee (Rep Payee) Program. While the Agency's Rep Payee Program is designed to protect the most vulnerable members of our society, recent events have demonstrated that these laudable goals are sometimes abused. Today, I would like to focus on some practical solutions that would strengthen the Agency's Rep Payee Program. In particular, I would like to highlight several recent audit recommendations that offer solutions to prevent and detect rep payee abuses. Additionally, I would like to discuss several OIG investigations that have highlighted weaknesses in the Rep Payee Program. We are working closely with the Agency to rapidly address these vulnerabilities, and to implement sensible solutions.

The Rep Payee Program – A Brief Overview

SSA provides title II and title XVI benefits to the most vulnerable members of our society--the young, the elderly, and the disabled. Congress granted SSA the authority to appoint rep payees for those individuals that SSA determines to be incapable of managing their own benefit payments. Each representative payee has a legal responsibility to use SSA's benefit payments for the use and benefit of the beneficiary only. There are two major types of rep payees – individual rep payees and organizational rep payees. Individual rep payees are typically relatives of the beneficiary, who are entrusted to utilize such funds in the best interest of the beneficiary. Although individual rep payees are permitted to provide service to numerous beneficiaries, they are prohibited

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from charging fees for such services. Some organizational rep payees are large institutions that provide care and treatment for beneficiaries residing in such institutions (e.g., Department of Veterans Affairs hospitals, State psychiatric institutions, nursing homes, extended care facilities, and nonprofit institutions). Other types of organizational rep payees may include community groups, charitable organizations, and other nonprofit agencies. The Social Security Act permits authorized qualified organizational rep payees to collect a fee for providing rep payee services.

Rep Payee Program Vulnerabilities

While the vast majority of rep payees are honest, trustworthy people, several recent cases have exemplified that the application of key controls could have prevented major fraud cases.

No case better exemplifies this point than the Aurora Foundation case, which was the subject of a television news magazine segment in January 2000, entitled "When Nobody's Looking." Aurora Foundation, Inc. was a high-volume, organizational rep payee that served over 140 disabled individuals in West Virginia. Although Aurora had been a fee-for-service rep payee since 1995, SSA had not yet performed an on-site review. However, SSA notified Aurora by mail of a pending review based on complaints.

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Our investigation revealed that the head of the Aurora Foundation, Gregory Gamble, had embezzled over \$300,000 between April 1995 through May 1999. The majority of these diverted funds were SSA benefit payments. Mr. Gamble has since pleaded guilty to embezzlement of Social Security benefits, Veterans Affairs benefits, and private funds. Mr. Gamble is scheduled for sentencing on June 5, 2000.

During the course of our investigation, my office asked SSA to retrieve all of the financial accounting forms submitted by Aurora. SSA was only able to secure 12 of the accounting forms that were submitted by the Aurora Foundation during its final year of operation. The missing forms reflect a lack of program oversight on behalf of SSA. It still remains unclear as to whether the remaining accounting forms were submitted and subsequently misplaced, or never submitted in the first place by the Aurora Foundation. We continue to believe that SSA needs to conduct regular inspections and reviews of organizational rep payees, especially those rep payees who do not submit the required financial accounting forms.

From November 1996 to February 1997, a SSA Field Office (FO) received approximately 45 complaints of funds being mismanaged by Ivy's Social Services, Incorporated (Ivy's), a fee-for-service rep payee located in Phoenix, Arizona and Denver, Colorado. Upon receiving this information from the FO, my office promptly opened an investigation. Our investigation revealed that Ivy's was an organizational rep payee for 330 individuals from March 1996 to May 1997. During this short period of time, the

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head of Ivy's spent approximately \$274,000 of the beneficiaries' money to make personal purchases. In addition to paying off \$65,000 in personal credit card debt, the subject of the investigation also used the funds to furnish, and pay the rent for, three personal residences. In May 1999, the head of Ivy's was sentenced to 18 months imprisonment, and ordered to pay full restitution of \$274,000 to SSA.

Another similar example involved Theresa L. King, an organizational rep payee who served more than 200 beneficiaries in the State of Washington. Our investigation revealed that Ms. King misused more than \$31,000 in SSA benefits that were earmarked for her clients. However, the exact loss could not be determined due to commingling of funds and incomplete financial records. Many of the victims had mental disabilities, and could not communicate effectively when interviewed by our agents. Ultimately, Ms. King was convicted on charges involving SSA fraud, and was sentenced in May 1999 to 30 months imprisonment and restitution of over \$30,000. It is our belief that adequate monitoring would have detected financial discrepancies in the rep payee's accounting records.

Since Fiscal Year 1998, our office has opened 1,352 rep payee cases, which have led to 313 convictions and identification of fraud losses totaling over \$7,500,000. Fortunately, the vast majority of such investigations have involved individual rep payees, as opposed to large organizational rep payees such as the ones described above.

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Early Warning Signs

As noted above, there have been several warning signs that may have gone unheeded by the Agency. These warning signs can be detected at either the point of organizational rep payee selection or during post-selection monitoring.

Screening and Selection of Representative Payees

When SSA determines a beneficiary is incapable of managing his or her own benefit payments, SSA searches for a suitable rep payee. SSA regulations give preference to family members over friends, third parties, and organizational rep payees.

To determine suitability, SSA interviews prospective rep payees. This usually consists of a review of documents supplied by the prospective payee. It is not an investigation, but rather as a means to conduct an SSA records verification. Some of the documents that SSA reviews for individual applicants include:

- Drivers licenses;
- State Identification cards;
- Credit cards; or
- Bank books/check books

However, SSA generally does not verify the accuracy of the information presented, unless it has a reason to question the applicant's suitability. SSA does verify the accuracy of the payee's income by comparing the information on the rep payee application to SSA's records. SSA also verifies that the prospective rep payee has not been convicted of a felony against Social Security programs.

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For organizational payees, SSA verifies the Employer Identification Number (EIN) of the payee by comparing the EIN on the rep payee application to the EIN on SSA's records. SSA does not perform credit or security background checks on prospective individual or organizational payees. Based on existing regulations, SSA does not determine if the individual or organizational rep payee may have financial problems, credit problems, or if employees have been convicted of any other felony.

We believe that the selection process, specifically the suitability determination, should be strengthened. This presents SSA with the best opportunity to prevent improper benefit payments before issuance. In a March 1997 evaluation report entitled, *Monitoring Representative Payee Performance: Roll-Up Report*, we recommended that SSA conduct a more thorough screening of potential rep payees. Recently, SSA included a number of measures in its FY 2000 legislative proposal, which was introduced on April 27, 2000, by Senators Grassley and Breaux as the *Social Security Beneficiaries Protection Act*. This Act proposes to improve the selection process of rep payees. For example, it would require non-governmental fee-for-service organizational rep payees to be bonded and licensed by State and/or local agencies to assure that due diligence is performed.

Representative Payee Monitoring and Oversight Activities

SSA has some basic safeguards in place to ensure that rep payees do not misuse benefits. SSA requires an annual accounting report from all rep payees, for each beneficiary under

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their care. Additionally, SSA has the ability to conduct on-site reviews of organizational rep payees.

Annual Accountability Reports

An annual accounting report form, the "Representative Payee Report", is sent to every rep payee. The form elicits information concerning the dispensation of SSA funds that the organizational rep payee has received, on behalf of each beneficiary.

In our December 1996 report entitled, *Monitoring Representative Payee Performance: Nonresponding Payees*, we identified several problems with rep payees who did not respond to these annual accounting reports. We recommended that SSA determine (1) why rep payees do not complete and return these accounting reports; and (2) whether SSA staff are properly processing systems-generated alerts for rep payees who do not respond. In the intervening 3-year period, there were several organizational rep payee fraud cases, described above, in which such accounting forms could not be located. Thus, we are extremely pleased that SSA is proposing to conduct Quick Response checks when rep payees do not return these financial accounting reports.

On-site Reviews of Representative Payees

Another part of SSA's oversight and monitoring of rep payees is the on-site reviews. State institutions that participate in the on-site review program are reviewed once every 3

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years. In addition, SSA may conduct an on-site review if a problem with a payee is brought to its attention. On-site reviews are visits with the rep payee or the administrators of such organizations, and they consist of an examination of the relevant accounting records. Additionally, interviews with beneficiaries are conducted to determine if their needs are being met. Unfortunately, these reviews may not identify rep payee abuses until after the fraud has occurred. Further, many beneficiaries are incapable of communicating any problems due to their mental impairments – the basis of their need for a rep payee in the first place.

Again, in our March 1997 report, we made several recommendations to improve the efficiency and effectiveness of SSA's rep payee monitoring program. Included in the report were recommendations for SSA to conduct periodic reviews of selected payees and to change the focus of the current process from accounting to monitoring and compliance.

Finally, in our September 1999 report, *The Social Security Administration's Procedures to Identify Representative Payees Who Are Deceased*, we reported that benefit payments were sometimes made to deceased rep payees. In some cases, SSA could not be sure that the funds were ever used on behalf of the beneficiaries for which they were intended. We also reported that SSA does not ensure that new rep payees are selected when former rep payees have died. In July 1998, from a review of SSA's Death Master File, we estimated that 2,091 deceased rep payees received about \$17 million in Old-Age, Survivors and Disability Insurance and Supplemental Security Income payments. We recommended

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that SSA conduct routine computer matches to ensure that SSA promptly identifies rep payees who are deceased and selects new payees in a more timely manner. SSA agreed with our assessments and plans to implement our recommendations.

Working Together to Find Common Sense Solutions

As SSA has acknowledged the need to address rep payee oversight issues, we have agreed to work together with the Agency and to provide our expertise and assistance.

Specifically, over the next several months, we will assist SSA to:

- Identify and recommend appropriate improvements to the program;
- Provide assistance to SSA staff during on-site reviews of selected rep payees;
- Conduct periodic audits of the program, including Agency adherence to program policies and procedures; and
- Evaluate, on an ongoing basis, the need for revised policies and procedures.

We hope that this type of fraud, which so often victimizes the most vulnerable in our society, will be more quickly discovered and referred to us for investigation and prosecution.

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We appreciate that the Committee recognized the need to expand the civil monetary penalty program (CMP) to include all rep payees who convert or misuse benefits. We also believe that with additional CMP authority our Office can make sure that rep payees who abuse the system are punished, even when they are not criminally prosecuted. In other areas, the CMP program has proved to be enormously valuable both in preventing fraud from occurring, and in recovering monies stolen from SSA.

However, there are currently limitations to using CMPs in the Rep Payee Program. I would like to illustrate this point by telling you about a father who applied to be the rep payee for his disabled minor son. He received approximately \$10,713 in SSI disability payments for his son's benefit and care. In July 1998, the child's mother applied to be his rep payee. It quickly became apparent that the father never had custody of the child, and that he used the payments designated for his son for his personal use for almost 2 years. The father refused to repay the funds to SSA. Because the dollar loss fell below the prosecutive threshold, both the criminal and civil divisions of the U.S. Attorneys Office declined the case for prosecution. At that point, our Office of Investigations referred the case to our Office of Counsel for possible action under the CMP program. We could take no action in this case. The son was eligible for the payments, so under existing law, the funds were properly paid despite the fact the child most likely never benefited from them. The father's wrongful conversion of those benefits did not constitute a false statement made in order to obtain or retain the benefits—as I said, the

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benefits themselves were proper. In the absence of specific language, the father's theft of his disabled child's benefits goes unpunished.

Finally, I would like to take the opportunity to provide a few comments on the *Social Security Beneficiaries Protection Act* as it relates to the Representative Payee Program. In February 2000, SSA submitted for consideration a draft bill to provide additional safeguards for Social Security beneficiaries and Supplemental Security Income recipients with rep payees. I applaud the SSA's efforts in this area; however, legislative remedies should not be limited to either the individual or organizational rep payee program, but should encompass both. I also feel that unless PREVENTION and front-end remedies are installed to prevent the misuse of these funds, we are still one step behind. We have already begun to work with SSA to build a process that will screen out unworthy individuals and organizations that wish to be re payees. Additionally, a rigorous oversight program will be put in place.

Mr. Chairman, we look forward to working together with the Agency and this Committee to improve this process. We need to make sure that from the time of selection, up until the time benefits are disbursed, the organizations that provide this service are honest and capable.

Thank you for holding this hearing. At this time I will be happy to answer any questions that you may have.

The CHAIRMAN. I want to also thank you for the cooperation and help that you gave our committee in preparing for this hearing and for the valuable work you do as Inspector General not only in your agency, but in most agencies, we find it very helpful to have some independence to see that the bureaucracy is doing what Congress intended.

I recognize that we are focusing today on organizational payees as opposed to individual payees. However, in your testimony, you state that, and I quote: "The vast majority of representative payees are honest, trustworthy people." And we all want to believe that since they represent so many vulnerable people.

How do we know that individuals and organizations serving as payees are serving the best interests of their beneficiaries, and can that be determined from existing data?

Mr. HUSE. I think we need to strengthen our internal controls so that we have a system of checks and balances, as we have discussed through testimony here this morning, that get to that point where we know how not only organizational representative payees are performing, but also the many individual representative payees who serve multiple beneficiaries. That is an area of concern for us also, Mr. Chairman.

The CHAIRMAN. Ms. Daniels, the committee recognizes also, as I indicated to General Huse, the valuable role that our representative payees serve, and of course, that takes with it a tremendous responsibility to manage other people's benefits. Because of this responsibility, the Social Security Administration should ensure that those serving our most vulnerable citizens are trustworthy and responsible. However, I am concerned over a recent Inspector General's criminal investigative report that indicates that the Social Security Administration needs to more thoroughly review payee backgrounds. I am very concerned that the Social Security Administration is not doing enough background research on payees.

What type of credit or security background check does the Social Security Administration perform on representative payees?

Ms. DANIELS. At the present time, we gather the information about a prospective payee in accordance with what we are authorized in the legislation to do. We verify that the person is who they say they are and that they have not defrauded the Social Security Administration previously.

So I think I have to agree with you, Senator Grassley, that we could do more. And we have sent to our field offices notification that they need to look more carefully at the background documentation. But there are occasional criminal enterprises that will lie or falsify documents to us, and that is the reason why it is very important for us to cooperate strenuously and vigorously with law enforcement agencies when these kinds of things occur.

The CHAIRMAN. General Huse, you gave a surprising description of the Social Security Administration's screening and selection process. It seems very easy to be named so, and I agree with you that screening is best—that is pretty much common sense. What prevents the Government from doing a better job at this important task?

Mr. HUSE. My response to that, I actually would probably give back to Dr. Daniels, because we know from where we sit at Social

Security that all of these issues come down to the expenditure of resources. They make the decisions based on the law as it is written now where to apply those.

I know that from an accounting standpoint, you cannot really call this a strong program, and our audit work has indicated that and reported that. How those are implemented, though, does come down to a policy decision, so I would defer to the agency to answer your question.

The CHAIRMAN. If you want to fill in on that, Ms. Daniels, you are welcome to.

Ms. DANIELS. I think it is true that in a certain sense, we are balancing three priorities at the same time—the careful administration of the representative payee program itself; the resources we have to do that; and the desperate need we have for payees.

For many, many people, and more and more as people are no longer institutionalized and live in the community, there are no payees available. So we have to balance burdening a payee or a potential payee and not being able to find one because of the considerable burden, or going in the other direction of being too lax and allowing anybody to be a payee who should not be.

So it is a very difficult balancing act. Payee work is very difficult, and you cannot get rich being a payee. So we are really mostly relying on volunteers, so we have to make it easy enough for ordinary citizens to be payees, and at the same time careful enough not to allow criminal enterprises to develop.

So I have to admit we are making a balancing act here with our resources as well.

The CHAIRMAN. What do you do if you cannot find one when one is necessary?

Ms. DANIELS. We keep looking; we really do. We just keep looking and asking the individuals who might know the person—we end up with an organizational payee as a last resort. We look for family members. We ask, do you have a cousin; are your children available to serve. So we keep digging into their background to try to find a family member, a friend, or a member of their church. We ask an organizational payee as a last resort.

The CHAIRMAN. General Huse, the Social Security Administration checks to make sure that a payee does not have a felony committed against the Social Security Administration. Does that imply that other felonies if they know about them are OK?

Mr. HUSE. That is correct. We know from the data that Social Security supplies that a number of representative payees are prior convicted felons. That sounds very provocative, I realize that, but in the communities that they serve, some of these people are the only representative payees that are available.

It is an issue as to whether their previous criminal experience should be examined to see if it bears on fiduciary crimes, but that is not done now. We have made recommendations that it be included, but that is again another issue for the agency.

The CHAIRMAN. Mr. Massanari wants to add something, and then I will go to Senator Breaux.

Mr. MASSANARI. Just a comment in terms of the screening that is currently done for prospective payees. There is an application form that a prospective payee is asked to complete. There is typi-

cally a face-to-face interview with someone in our field office, and one of the specific questions is: Have you been convicted of a felony in the past?

And certainly, the applicant can be deceitful on that score. But back in the early nineties, based upon direction from the Congress, we actually undertook a pilot to do criminal background checks for representative payees and found that it simply was not cost-effective based on the administrative burden on the potential payee, as well as, the administrative burden on the agency.

So it was tried, and after analysis, it was determined not to be cost-beneficial.

The CHAIRMAN. Thank you.

Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman, and I thank the members of the panel for their presentations.

Ms. Daniels, thank you for being with us. Tell me how an Ace Payee and a Theresa King slip through the system.

Ms. DANIELS. They lied.

Senator BREAUX. She did not have to lie very much.

Ms. DANIELS. Well, she did lie when she answered a question whether she had been convicted of a felony.

Senator BREAUX. It says here—and maybe she is lying again, I guess is what you are saying—"I was not asked to produce any type of insurance bond, to prove any formal education, or required to give fingerprints or even asked about a criminal history. I was not even personally interviewed; all this was done by telephone." She did not have to answer a lot of questions.

Ms. DANIELS. Well, she did answer whether or not she had been convicted of a felony, however, she indicated that she had not been convicted of a felony.

Senator BREAUX. So she was lying this morning when she said that she was not asked about that?

Ms. DANIELS. Well, she was not required to answer that question because she was filing as an organization, not as an individual. But she did answer that question.

Senator BREAUX. So she was lying this morning.

Ms. DANIELS. I suppose she may have forgotten that she answered that question on some of her payee applications.

Senator BREAUX. Why didn't they tell her to come down to the office and talk about whether she qualified to be a representative payee?

Ms. DANIELS. Senator Breaux, I cannot look into the minds of the people at the time they approved her. I do not really know what their motivations were. I am pretty sure they were desperate to find some payees in that community.

But let me say this. It could be that they already knew her, and that they had worked with her in order to get bills paid or issues resolved.

Senator BREAUX. Sure—she was working for Ace Payee, who is now getting ready to go to prison himself.

Ms. DANIELS. That is right.

Senator BREAUX. They should have had whistles and bells going off when they asked "Where do you work?" and she said, "I work for Ace Payee." Whoops.

Ms. DANIELS. I agree. I think it was a terrible thing that happened that this woman ended up being a payee and that she did not perform her duties as they were indicated.

Senator BREAUX. Well, I think there were two people not performing their duties. Theresa King was not, and the Social Security person who called her up and approved her was not. So it is not just all Theresa King. I mean, it was an easy situation for her to abuse the process, and she was not asked the right questions and not even personally interviews. Now that is the past, and as bad as it is, I am worried about the future and how we correct it.

It would seem to me that the situation would be greatly resolved if we just required that anybody who is handling someone else's money for the Government be licensed and bonded. It takes the responsibility off of you having to go out there and do all these interviews, which you probably do not have the time to do. If they walk in with a license by a reputable operation and a bond that protects the payee, protects the beneficiary, and protects that Government so we will get our money back if the person runs off with the money, wouldn't that go a long way toward solving this problem?

Ms. DANIELS. Yes it would.

Senator BREAUX. Then, let us do it. What does it take to do that?

Ms. DANIELS. It takes—

Senator BREAUX. Does it take an act of Congress? Do not tell me. Do not tell me you have to wait for Congress and "20/20" to do all this before we can resolve this problem.

Ms. DANIELS. It would not hurt.

Mr. MASSANARI. That is a provision, of course, in the proposed legislation—

Senator BREAUX. Do you need an act of Congress to say that somebody who is going to handle the Government's money has to be bonded?

Mr. MASSANARI. The current statute provides that a fee-for-service payee has to be either bonded or licensed in the State that they are serving.

Senator BREAUX. So you do not need an act of Congress?

Mr. MASSANARI. Well, we need an act of Congress, because what we are proposing and what your legislation proposes is that you need both licensing and bonding.

Senator BREAUX. Wait a minute. Are you telling me you cannot require that a payee be bonded today?

Mr. MASSANARI. We can require that a fee-for-service organization be bonded or licensed, but not bonded and licensed.

The CHAIRMAN. Our bill corrects that.

Ms. DANIELS. Yes. Your bill corrects that.

Senator BREAUX. No wonder people have somewhat of a distrust of Government when they have to figure that out.

So you can require them to be bonded right now, or you can require them to be licensed right now, but you cannot require them to do both?

Mr. MASSANARI. We cannot require them to do both, although many are both licensed and bonded.

Senator BREAUX. Theresa was not.

Mr. MASSANARI. Well, in that case, she should have been one or the other; you are quite correct.

Senator BREAUX. I think, Mr. Chairman, that we have really outlined the problem, and we can talk about the past and whose fault it was, and I think there is a lot of fault to go around. But the purpose of the hearing is not to do that; the purpose of the hearing is to figure out how to clear this up and go forward from here.

I honestly think it would make a lot of sense just to require that people who handle the Government's money on behalf of somebody else be bonded and licensed to do so. I guarantee you an insurance company that is going to bond this person is going to ask a million questions, and they are going to make sure they do not have a felony conviction for something else and that they have adequate financial security to handle somebody else's money, because they are not going to want to get stuck on the hook for that kind of money.

If you have a bond from a reputable bonding firm, I think you can rely on that with a great deal of accuracy that this is a person you ought to sign off on. It takes away from you having to do all of this. You do not have to go out and do all these checks on these people—but somebody ought to be doing it.

Thank you all very much.

The CHAIRMAN. Thank you, Senator Breaux.

Senator Wyden.

Senator Wyden. Thank you, Mr. Chairman.

I think that you and Senator Breaux are performing a great service, Mr. Chairman, going after this problem. We have seen this for years, and it really goes back to the days when I was director of the Gray Panthers and saw this at home in Oregon.

I take a little bit of an exception to what I have been hearing at the table, because I do not think this is just a question of resources nor do I think it is just a question of these legal gymnastics about bonding and licensing. I think this is a question of Social Security priorities. If the agency makes it clear on a sustained basis that it is going to come down on these ripoffs with hobnail boots, I think this problem can be remedied, and this swamp will get drained.

So I am very hopeful that we will pass the Grassley-Breaux legislation, but frankly, even more important than the statute is for the Social Security Administration to send a message that you are drawing a line in the sand, and you are just not going to tolerate these ripoffs.

The only real substantive question I have for you, Ms. Daniels, is this. Is the agency so anxious to find payees at this point that you all are not screening carefully enough? Is that part of the problem?

Ms. DANIELS. We are very concerned to get good payees for our beneficiaries. That is our primary goal—and primarily to get family or friends, people who know the individual's needs. That is always our highest priority.

But there is a small number, as I think you saw from the charts, of individuals for whom we can find no legitimate family, friends, or close associates to serve as the payee. So we use fee-for-service and organizational payees as a payee of last resort.

When we are down to that level of looking for payees, we are working very hard to find someone who is licensed or bonded that we can work with. In some communities, it is easier than others—

I have to tell you the truth—but for some of our inner city beneficiaries, it is very hard. Some of them are even homeless, and it is very hard to find someone who would be willing to not only pay their bills monthly and take care of that money, but in some cases deal with folks who may not be very easy to deal with.

So this is a problem. Now, we are not so anxious to find a payee that we would use a criminal or someone who is irresponsible. I think it is very important to know that when we notice anything going wrong, we go in for an audit, and we bring in the Inspector General, and we cooperate with law enforcement to shut down those operations. In fact, it was because we said we were going to come in and audit Aurora that Mr. Gamble turned himself in.

So I think that our controls need to be beefed up, and as I said in my testimony, we are implementing many more random reviews and many more onsite reviews to be sure we can catch as much as we can.

On the other hand, defeating criminal enterprise is a very difficult business, and we have to balance that with actually serving the beneficiary and trying to find someone to serve as payees.

Senator Wyden. I just hope the Senate Committee on Aging is not going to be back here in 5 years dealing with exactly the same kinds of issues. From my experience—I ran the legal aid program for seniors in Oregon for a number of years before I was elected to Congress—we knew about these problems, and the National Senior Citizens Law Center has been after this for years, yet it has gone on and on and on.

The Grassley-Breaux bill is important, but what is even more important in my view is that you make it clear that business as usual is over with respect to this and that you are going to go after these ripoffs, as I said, with hobnail boots.

Mr. Chairman, I thank you. I think your legislation is important, and we ought to get it enacted.

The CHAIRMAN. Thank you for your historical perspective working with the Gray Panthers and understanding that this has been a problem before it was brought to our attention by the Inspector General.

I have about four questions left, but before I ask those, Ms. Daniels, you were speculating that perhaps Theresa King was quickly approved because maybe they had a hard time finding payees. In that particular case, Dale Parsons' Ace Payee Services handled the clients that Theresa King took with her when she was approved, so in that particular case, the Social Security Administration was not desperate for a payee.

Now I will ask you a question unrelated to that statement. The Representative Payment Advisory Committee and the Inspector General have been making recommendations for improvement of this program since at least 1996. Why has it taken so long to address these problems that affect so many of our elderly and vulnerable citizens?

Ms. DANIELS. Senator Grassley, shortly after we received their recommendations, we began to implement many of the recommendations. Some of them have been implemented, and some of them are in the process of being implemented. So I think we

learned a great deal from the advisory committee and from the OIG's report.

I can give you a quick list of the ones that we did implement if you would like.

The CHAIRMAN. All right.

Ms. DANIELS. Would you like me to do it verbally or in writing?

The CHAIRMAN. Verbally, please.

Ms. DANIELS. OK. We developed and distributed a pamphlet informing beneficiaries of their rights and responsibilities. We issued instructions to our field offices to screen payees more thoroughly. We developed and distributed a handbook for organizational payees. We conducted onsite reviews for fee-for-service and other volume payees. And we developed a new accounting form tailored to the organizational payee.

We have several of the other recommendations in process, including much-needed improvements in our automated representative payee system where we can get data and keep data and make it available for use in managing the program.

We are pursuing the legislative proposals that we sent to your committee and that you introduced, and we are developing a handbook for individual representative payees. In addition to that, we are monitoring all volume payees and all fee-for-service payees on a triennial basis and doing spot checks and random visits so that we can keep a high set of alertness on the part of these payees whose activities we will be monitoring.

So I think we have implemented a great many of the recommendations that the Advisory Committee and the Inspector General put forward, and we really appreciate the fine work they did to help us rethink how we run the payee program.

The CHAIRMAN. Thank you.

General Huse, I am very concerned that your testimony stated that \$17 million in payments went to deceased representative payees in just 1998 alone. As Ms. King testified earlier, some payees pocket the money that is sent to deceased beneficiaries until they have to report their deaths. What is the Social Security Administration doing to prevent and recover the loss of these funds?

Mr. HUSE. I know that for us, this is an indication of an area that needs some focus, and here, as in other things, the benefit of some of our computer matching capability is in order. They are working on that to improve that death file information not only on the receiving end but on the way we process it and then get it out to our field so these payments can be corrected.

That is a work in progress, and I think that everyone is well aware that we need to improve that area.

The CHAIRMAN. Let me go back to Dr. Daniels. You noted that State institutional payees are not required to file annual accounting forms. Why are beneficiaries who reside in institutions an exception?

Ms. DANIELS. Because we do onsite reviews of those particular payees. When an individual is in an institution, we do onsite, not paper, audits of their payee situation.

The CHAIRMAN. My last question will be to you, General Huse. With regard to monitoring and oversight of payees, what kind of review of the annual accounting report does the Social Security Ad-

ministration conduct, and is the information on the report corroborated by other evidence, or does the Social Security Administration accept the information at face value?

Mr. HUSE. We do not have a particular audit report focused on that particular activity other than generally recommending that this become a more robust process. We would be willing to look into that in the future in an audit. We do know anecdotally that in some instances, those reports are—well, the process varies from region to region depending on workloads. Again, although this is not an excuse, the resources issue comes in here. This is not a workload that has a performance measure in Social Security. I have learned that if you have a performance measure that tends to elevate the interest in seeing that these things are done, and because we have so many other performance measures focused on customer service, perhaps there are decisions made, daily decisions, to defer some of these reviews or analysis of this accounting form.

That is more or less a very general response, but I would be pleased to initiate some audit work.

The CHAIRMAN. I will not tell you to do that right now, but I will consult with my staff and get back to you if that is necessary.

Mr. HUSE. We know this is a crucial process, and I think in the general awareness since we have done these reviews, we know this is a key area where we can get early warning on trouble—and I say “we” meaning the IG and the agency.

The CHAIRMAN. Thank you.

I am going to close the meeting now. As I mentioned earlier, I will leave the record open for 3 weeks, and I would like to receive any additional questions from my colleagues by Friday. I will allow a response from the Social Security Administration and any other submissions an additional 2 weeks before we close the record.

I thank all the witnesses, but particularly you two, as I have already thanked the first panel. And thank you, Larry, for participating as well.

We have heard how organizational payees can misuse benefits entrusted to their care. We have also heard how such misuse directly affects beneficiaries. And of course, we are glad to hear that the Social Security Administration and the Social Security Administration Office of the Inspector General will work to prevent the misuse of funds in the future. With increased monitoring by the Social Security Administration, it seems to me that organizational representative payees will be more accountable for the benefits that they manage and will be less likely to misuse those benefits.

I want to stress that the committee understands that this is a small problem within the scope of benefits that the Social Security Administration disburses, but we obviously have to focus on the fact that this small problem for the Social Security Administration has a really huge impact on the beneficiaries, the disabled, and our senior citizens who are unable to receive their proper benefits, as articulated by one of our first witnesses today, Ms. Betty Byrd.

Yet, as the population of aging baby boomers increases, it is essential that we address and correct this problem and do it now, because it may seem like 2010 is a long way off, but in the life of Congress, it is just around the corner. Consequently, we need to make sure that as 77 million baby boomers go into retirement, we

do not have this problem because it could compound itself many times over. We also would otherwise risk revisiting this problem on a much larger scale. We cannot have our elderly and our disabled sleeping in cars and living without food and shelter because a sanctioned payee has stolen these meager funds, as we saw in the replay of the "20/20" program.

The committee will continue to oversee the successful implementation of the Social Security Administration's expanded monitoring program for organizational payees. When payees are responsible for serving many beneficiaries at a time, the Social Security Administration should ensure that those payees have adequate staff and equipment to properly account for the benefits being issued. These problems have to be addressed.

I have already referred to Senator Breaux' and my legislation S. 2477 the "Social Security Beneficiaries Protection Act". This bill has the primary purpose of immediately making beneficiaries whole when the Social Security Administration finds misuse of benefits by payees. This bill also provides for additional accountability by payees to the Social Security Administration. I hope the Social Security Administration will tell the leadership of the Congress how important this legislation is and that it is actually needed, and you see the need for it.

Senator Breaux and I believe this is a very good bill, and I have already asked Members to cosponsor it and hope others will agree to do that.

Thank you all very much. The meeting is adjourned.

[Whereupon, at 11:40 a.m., the committee was adjourned.]

APPENDIX

SOCIAL SECURITY RESPONSES TO SENATOR GRASSLEY'S QUESTIONS

Question. What is SSA's position on conducting background checks of individual payees who serve more than ten beneficiaries who are not related to the payee?

Answer. For all individual (not organizational) payee-applicants, we currently ask the applicant whether or not they have been convicted of a felony. We maintain a computer database that automatically checks the history of a payee applicant for misuse/fraud. The system will not permit the selection of a person convicted of a violation of Social Security or SSI program fraud (under section 208 or section 1632 of the Social Security Act) or a person who was previously a payee and was found to have misused benefits. We also verify an individual applicant's identity and Social Security number, and the applicant's source of income. And we conduct a face-to-face interview to ascertain the applicant's qualifications and to judge the applicant's ability to carry out the responsibilities of a payee. In addition, we plan to perform triennial reviews of all individual payees serving 20 or more beneficiaries.

We share the Committee's concern in ensuring that we appoint well qualified, reliable payees. The Commissioner has appointed a Task Force to consider ways to further improve the representative payee program. As part of that group's effort, it will examine the issue of conducting background checks of individual payees who serve ten or more unrelated beneficiaries as a part of our review of the representative payee program now underway.

Question. What are SSA's bonding requirements of community-based nonprofit social service agencies?

Answer. SSA does not require community-based nonprofit social service agencies to be bonded unless they are filing to become a fee-for-service representative payee (and are not licensed by the State). The requirement for bonding only affects organizations that wish to collect a fee for serving as a payee. If an organization files to become a fee-for-service payee, of the requirements is to be bonded or licensed in the State which it serves. If the organization is bonded, the bonding agreement must be an insurance contract guaranteeing payment to the organization or a third party on behalf of the organization in the event of unforeseen financial loss by the action or inaction of an employee. When there is misuse of benefits by an employee, the organization typically makes the beneficiary whole and the bond funds go to the organization to replace its loss.

Chairman Shaw also inquired during the hearing about extending bonding requirements to charitable organizations and non-family members that are not fee-for-service payees. One of the issues that the recently appointed task force is considering is the extension of bonding to other organizational payees and to payees who serve a significant number of beneficiaries. We need additional information about bonding requirements and the effect that required bonding would have on volunteer nonprofit organizations that serve SSA beneficiaries. We need to evaluate the extent to which imposing mandatory bonding on these organizations would burden them with additional cost and how it would affect our ability to recruit payees.

Question. What is the timetable for improvements to be made to the Representative Payee System (RPS)?

Answer. The new task force on representative payment is also working to identify and plan for the implementation of critical changes needed to the RPS to better safeguard our beneficiaries and eliminate potential fraud and abuse by those serving as representative payees. One of the main objectives of this task force will be to develop an implementation plan of the needed changes including a timeline for completion of this work. The task force will need to consider the resource requirements needed to implement these changes against those needed for other Agency priorities. Because this task force is just beginning this assignment, we are unable to provide you with an anticipated completion date at this time. We will keep you informed once these dates have been determined.

Question. What will be the effective date, and the costs associated with the date, if S. 2477, the "Social Security Beneficiaries Protection Act," was amended so that SSA could reissue benefits to those beneficiaries who were served by organizational representative payees who were found to misuse their benefits, since SSA OIG began its investigation in this area in 1998?

Answer. As you know, the provision of S. 2477 that requires SSA to reissue benefits misused by organizational representative payees would be effective for misuse determinations made after the date of enactment. If the effective date were changed to be effective with respect to misuse determinations made in 1998 and later, the cost for each of the Title II and Title XVI programs is estimated to remain negligible—less than \$2.5 million over the period 2001–2005.

Alternatively, this provision could be made effective with respect to misuse determinations made since enactment of the Omnibus Reconciliation Act of 1990 (P.L. 101–508, enacted November 5, 1990). That legislation made a number of significant changes to the representative payee program, including allowing certain organizations to collect a fee from the beneficiary for their representative payee services. This effective date would allow SSA to reissue benefits in misuse cases involving organizational representative payees even if the misuse determinations have already been made since enactment of P.L. 101–508. Included among such cases would be beneficiaries whose benefits were misused by Dale Parsons of Ace Payee Services, who was Theresa King's prior employer (as mentioned during the hearing), as well as some of the beneficiaries whose benefits were misused by Ivy Services—a misuse case mentioned in Inspector General Huse's testimony. Misuse determinations were made in each of these cases in 1997.

SSA's Office of the Chief Actuary advises that whether the effective date for S. 2477 remains unchanged or is made effective retroactive to November, 1990, the bill is still estimated to have a negligible effect on outlays from the OASDI trust funds or from general revenues (SSI).

