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H.R. 743, THE "SOCIAL SECURITY PROTECTION ACT OF 2003"

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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CONTENTS

H.R. 743, THE "SOCIAL SECURITY PROTECTION ACT OF 2003"

THURSDAY, FEBRUARY 27, 2003

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:07 a.m., in room B–318, Rayburn House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee), presiding.

[The advisory and revised advisory announcing the hearing follow:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE
February 20, 2003
SS–1

CONTACT: (202) 225–9263

Shaw Announces Hearing on H.R. 743, the "Social Security Protection Act of 2003"

Congressman E. Clay Shaw, Jr. (R–FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on H.R. 743, the "Social Security Protection Act of 2003." **The hearing will take place on Thursday, February 27, 2003, in room B–318 Rayburn House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

Despite the Social Security Administration's (SSA's) best efforts to accurately pay and protect an estimated $500 billion in benefits this fiscal year to be paid to over 50 million Social Security and Supplemental Security Income (SSI) beneficiaries, certain Social Security and SSI program activities continue to be subject to fraud and abuse.

Representative payees manage benefits for nearly 8 million Social Security and SSI beneficiaries who cannot manage their own affairs. While most representative payees are honest and conscientious, some abuse the trust placed in them. The SSA Office of Inspector General has reported that in a 2-year period, SSA identified over 2,400 representative payees who misused approximately $12 million in benefits entrusted to their management. The Inspector General has also found 121 cases of SSI beneficiaries who acted as representative payees and managed over $1.4 million in benefits, even though their own benefits were suspended or terminated because they were fugitive felons or parole or probation violators.

Furthermore, Social Security benefits are paid to beneficiaries who are also fugitive felons and probation or parole violators. In August 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) prohibited payment of SSI benefit payments to such persons. The Congressional Budget Office estimates that extending this prohibition to Social Security beneficiaries would save $698 million in Social Security and Medicare costs over the next 10 years.

In addition to these program vulnerabilities, SSA has a complex disability application process that many claimants find difficult to navigate without the help of a claimant representative. Unfortunately, some claimants have difficulty obtaining legal representation. To encourage attorneys to assist claimants, SSA will pay an attorney's fees directly out of past-due Social Security benefits.

However, this service is not available for SSI claimants, potentially limiting their access to representation. Also, the Subcommittee has heard testimony that SSA's charges for processing attorney fee withholding substantially reduce an attorney's net revenue, and thereby discourage attorneys from representing claimants.

On February 12, 2003, Chairman Shaw introduced H.R. 743, the "Social Security Protection Act of 2003," to address these and other serious program vulnerabilities. The bill includes provisions to:

- Give the SSA enhanced tools to protect individuals from benefit misuse by representative payees and to hold representative payees responsible for their actions,
- Deny Social Security benefits to fugitive felons and parole violators,
- Expand the SSA's ability to punish and deter perpetrators of fraud through new civil monetary penalties,
- Prevent persons from misrepresenting themselves as they provide Social Security-related services,
- Protect Social Security employees from harm while conducting their duties;
- Help individuals with disabilities gain access to representation; and,
- Clarify and improve the Ticket to Work program and other provisions that enable individuals with disabilities to seek work opportunities.

In announcing the hearing, Chairman Shaw stated: "The Social Security Protection Act gives the SSA the enhanced tools it needs to fight activities that drain program resources and undermine the financial security of beneficiaries. This hearing will shine a bright light on the need for this legislation and the importance of acting now, before massive numbers of Baby Boomers start to qualify for benefits."

FOCUS OF THE HEARING:

The Subcommittee will hear testimony from witnesses explaining the need for quick action and the extent to which the bill will give the SSA the tools it needs to prevent misuse of benefits by representative payees, prevent program fraud and abuse, help individuals with disabilities gain access to representation, and aid individuals with disabilities to return to work. The Subcommittee will also hear testimony about the impact of the legislation's provisions on beneficiaries, workers, and others.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to *hearingclerks.waysandmeans@mail.house.gov,* along with a fax copy to (202) 225–2610, by the close of business, Thursday, March 13, 2003. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Social Security in room B–316 Rayburn House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to *hearingclerks.waysandmeans@mail.house.gov,* along with a fax copy to (202) 225–2610, in Word Perfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

NOTICE—CHANGE IN TIME

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE
February 26, 2003
SS 1–REV

CONTACT: (202) 225–9263

Change in Time for Hearing on H.R. 743, the "Social Security Protection Act of 2003"

Congressman E. Clay Shaw, Jr., (R–FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced the Subcommittee hearing on H.R. 743, the "Social Security Protection Act of 2003," previously scheduled for Thursday, February 27, 2003, at 10:00 a.m., in room B–318 Rayburn House Office Building, **will now be held instead at 9:00 a.m.** The hearing will end no later than 11:00 a.m.

All other details for the hearing remain the same. (See Subcommittee Advisory No. SS–1, dated February 20, 2003)

Chairman SHAW. Good morning. Today, we consider the Social Security Protection Act of 2003 (H.R. 743), which is a bipartisan bill that was introduced earlier this month by myself and Mr. Matsui, along with other Subcommittee Members, and other Members of Congress. The Protection Act will give the Social Security Administration (SSA) the additional tools needed to fight activities that drain resources from Social Security and undermine the fiscal security of the beneficiaries. In past Subcommittee hearings, we received testimony about individuals or organizations called "representative payees," who are appointed by SSA to help nearly 8 million beneficiaries manage their benefits when these beneficiaries are not able to do so for themselves. While most representative payees are conscientious and honest, there are always a few who are not. Despite current precautions, some representative payees' misuse the benefits entrusted to their care. The Social Security Inspector General reported that during a 3-year period ending in the late-1990s, over 2,400 representative payees were identified for

misuse of about $12 million in benefits. This bill raises the standards for persons and organizations serving as representative payees, and imposes stricter regulations and monetary penalties for those who mismanage the benefits.

This bill also picks up where the 1996 legislation left off in ending benefit payments to those who have committed crimes. While parole and probation violators, along with others trying to flee the law, are denied Supplemental Security Income (SSI) benefits, they are still allowed to receive Social Security benefits. The Congressional Budget Office estimates that we will pay over $500 million out of the trust fund to those lawbreakers over the next 10 years. This is not right, and this legislation will deny them benefits. The Protection Act also provides tools to further safeguard Social Security programs. It will help shield Social Security employees from harm while conducting their duties, expand the Inspector General's ability to stop perpetrators of fraud through new civil monetary penalties, and it will prevent people from misrepresenting themselves as they provide the Social Security-related services. On top of this, the bill helps claimants legitimately seeking benefits by improving the attorney fee withholding process. This bill caps the current attorney fee assessment and extends fee withholding to SSI claims, enabling more individuals with disabilities to receive help navigating the complex benefit application process.

In addition to helping individuals obtain benefits, the bill enhances provisions of the Ticket-to-Work program. This will enable the SSA to better test ways to help individuals with disabilities return to work, and provide more individual access to support and services to help them do so. It also encourages more employers to hire individuals with disabilities by expanding eligibility for the work opportunity tax credit. Finally, the bill contains several provisions aimed at correcting inequities in the law regarding benefit coverage and receipt, as well as making technical corrections to the law. One example is the provision adding Kentucky to the list of States allowed to have what is called a "divided retirement system." This provision would allow certain police officers under a newly created local government in Kentucky to voluntarily choose Social Security coverage if they desire it, without changing the retirement benefits of other current employees who would rather pay into the public pension plan instead of Social Security.

Our witnesses will explain why these changes in the law are needed, how they would affect beneficiaries, and how they will help ensure taxpayers' hard-earned payroll tax dollars and the Social Security Trust funds are being spent accurately, wisely, and in the best interest of the beneficiaries. There is one provision in the bill that particularly embodies the tension between protecting the trust funds and providing adequate benefits. The provision implementing the U.S. General Accounting Office (GAO) recommendation to bolster what is called the "last-day rule" in applying the government pension offset provision. There is no evidence that this last-day rule was put into law simply to allow workers to bypass or avoid the government pension offset by switching jobs, as has been advertised by certain organizations. However, GAO determined that such public employees are using it to avoid a reduction of Social

Security spouse and survivor benefits that all other workers in both the public and the private sector experience.

While the government pension offset was intended to be an equalizer, not a penalizer, many public workers believe it to be unfair. The overall fairness of this offset must not be given short shrift, and will be examined in detail in a separate hearing by this Subcommittee in the near future. Today, in the interest of time, and to ensure adequate discussion of all the bill's provisions, it is important that our witnesses limit their comments to the merits of the last-day rule. Perhaps I should have limited the duration of this opening statement; this thing is endless. Protecting Social Security programs is a key responsibility of the SSA, and of Congress, and this bill is a culmination of bipartisan efforts, as well as the cooperation and support of the SSA and the Social Security Inspector General. This is why the 107th Congress' version of this bill, the Social Security Program Protection Act of 2002 (H.R. 4070), passed the House by overwhelming bipartisan vote of 425 to 0, and passed the Senate, as amended, under unanimous consent. I hope today's hearing will be the first step toward quickly enacting these changes that are so necessary to protect the most vulnerable beneficiaries, and prevent Social Security from wasting precious dollars through fraud and benefits misuse. Do we have an opening statement on the minority side?

Mr. BECERRA. Yes, Mr. Chairman.

Chairman SHAW. I yield to the gentleman from California.

Mr. BECERRA. Mr. Chairman, thank you very much. On behalf of my colleague from California, Mr. Matsui, the Ranking Member of the Subcommittee, and the other Members on the minority side of the Subcommittee, I want to welcome the witnesses who are here. It is good to see some of you again. Mr. Chairman, thank you very much for the work that has been done on this particular legislation, H.R. 743, the Social Security Protection Act of 2003. It is great when we are able to move forward in a bipartisan fashion, and try to address some of the very real concerns, so that people who qualify for benefits under the SSA's programs have a chance to see this happen. We are very pleased that we could move forward. We are looking forward to what the witnesses say. If the bill is able to move forward on a suspension basis to the floor immediately from here without having to work through Committee—we are very much looking forward to the opportunity to work out any particular changes to the bill that we might find productive as a result of the testimony we will take today. We are very much looking forward to working with the Chairman and all the Members of the Subcommittee to move this forward on a rapid basis—to try to make those changes, as necessary. With that said, Mr. Chairman, thank you very much.

Chairman SHAW. Thank you. On our first panel this morning, we have, from the SSA, the Honorable James G. Huse, who is the Inspector General; and Barbara Bovbjerg, who is the Director of Education, Workforce, and Income Security, at GAO; and she is accompanied by Mr. Dan Bertoni, the Deputy Director. Mr. Huse, you may proceed as you see fit—and the testimony of all the witnesses this morning will be placed in full in the record.

STATEMENT OF THE HONORABLE JAMES G. HUSE, JR., INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION

Mr. HUSE. Thank you, Mr. Chairman, and Members of the Subcommittee; good morning. I welcome the opportunity to testify today about the need for legislation to protect the integrity of the SSA's vital programs, and the representative payee program in particular. In the interest of time, let me ask that my full statement be entered into the record, and I will summarize briefly. There are currently about 5.4 million representative payees who manage benefits for about 7.6 million beneficiaries. As I have previously testified before this Subcommittee, not all representative payees properly manage the benefits entrusted to them. Some misuse these funds, and the effect on those beneficiaries is catastrophic. We have worked closely with your staff, and the result was a legislative proposal that provides greater oversight of representative payees, as well as additional civil and administrative penalties to allow my office to combat this problem. This bipartisan legislation came close to passage last session. I am pleased, Mr. Chairman, that you have reintroduced this important legislation in this session.

Legislation is needed to ensure the integrity of the representative payee process at several stages: first, in the selection of a representative payee; second, in the monitoring and oversight; third, in proper accounting when funds are misused; and, fourth, in measures designed to punish and deter such misuse. I believe this legislation makes important strides in each of these areas. For example, in October 2002, we issued a report that identified 121 individuals whose own SSI benefits were stopped by SSA because they were fugitive felons, or parole or probation violators. These individuals were also serving as representative payees for others. As you know, current SSA policy permits fugitive felons and parole or probation violators to serve as representative payees. We also stated in our report that we were working on an additional audit concerning the number of representative payees who were fugitive felons, regardless of whether they were receiving SSI payments. This audit is currently in draft with the SSA.

Once the selection of an appropriate representative payee has been completed, it is then incumbent upon SSA to adequately monitor that individual or organization to ensure that the benefits are being used, as intended, to aid the beneficiary. The bill, H.R. 743, improves the oversight function, and further provides much-needed penalties for deliberate misuse. We have found the Civil Monetary Penalty (CMP) program to be an effective tool against program fraud. In many instances, H.R. 743 addresses this concern and adds CMPs to particularly troubling areas. I also want to add that the extension of protection for Social Security employees conducting Social Security's business is an important piece of H.R. 743. This protection is the same as is afforded those employees in the Internal Revenue Service, and it is a critical need. I really believe that it is a very key part of this legislation. In sum, this legislation will give us some key tools to do a better job in many areas. Finally, I believe the extension of the fugitive felon provisions to those who receive Title II benefits is a key piece in the effort already made in the Welfare Reform Act 1996 (P.L. 104–193) to deny benefits to

those who are fleeing from justice. With that, I will answer any questions that you might have. Thank you.

[The prepared statement of Mr. Huse follows:]

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

INTRODUCTION

Good morning, Chairman Shaw, Ranking Member Matsui, and Members of the Subcommittee on Social Security. I welcome the opportunity to testify today about the need for legislation to protect the integrity of the Social Security Administration's (SSA) vital programs.

THE REPRESENTATIVE PAYEE PROGRAM

SSA provides Social Security and Supplemental Security Income (SSI) benefits to the most vulnerable members of our society—the young, the elderly, and the disabled. Congress granted SSA the authority to appoint representative payees to receive and manage these beneficiaries' payments. There are currently about 5.4 million representative payees who manage benefits for about 7.6 million beneficiaries.

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

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

As I have previously testified before this Subcommittee, not all representative payees properly manage benefits entrusted to them. I have previously recounted several instances in which a representative payee had misused funds intended for a beneficiary in their charge. The effect on the lives of the beneficiaries in those cases was catastrophic. At that hearing, both SSA and my office identified problems and proposed solutions. We worked closely with your staff, and the result was a legislative proposal that provides greater oversight of representative payees as well as additional civil and administrative penalties to allow my office to combat this problem. This bi-partisan legislation came close to passage last session and I am pleased, Mr. Chairman, that you have reintroduced this important legislation this session.

As we have pointed out in audit reports and prior testimony, legislation is needed to ensure the integrity of the representative payee process at several stages: selection of a representative payee, monitoring and oversight, proper accounting when funds are misused, and measures designed to punish and deter such misuse. I believe this legislation makes important strides in each of these areas.

At the outset, closer attention to the initial selection process can resolve many potential problems before they arise, so it is critical that SSA more thoroughly screens potential representative payees. In October 2002, we issued a report that identified 121 individuals whose *own* Supplemental Security Income (SSI) benefits were stopped by SSA because *they* were fugitive felons or parole or probation violators. These individuals were also serving as representative payees for others. As you know, current SSA policy permits fugitive felons and parole or probation violators to serve as representative payees. We also stated that we were working on an additional audit concerning the number of representative payees who were fugitive felons *regardless* of whether they were receiving Supplemental Security Income payments. This audit is currently in draft with the Agency.

Once an appropriate representative payee is selected, it is then incumbent upon SSA to adequately monitor that individual or organization to ensure that the benefits are being used as intended to aid the beneficiary.

In an audit report entitled "Nonresponder Representative Payee Alerts for Supplemental Security Income Recipients" (September 23, 1999) my office recommended that SSA develop procedures for employees to redirect benefit checks to field offices (and require representative payees to provide the accounting forms before releasing the checks) in instances where other attempts to obtain the required forms have

been unsuccessful. SSA agreed with this recommendation however, implementation is pending until the legislative changes contained in H.R. 743 are approved. Our most recent financial audits of representative payees continue to show that the receipt and retrieval of annual accounting reports remain a problem. Over the past 2 years, we have requested 474 representative payee reports, but SSA has been able to retrieve only 228, less than 50 percent.

Even with improved oversight, there will always be representative payees unable to resist the temptation to misuse beneficiary funds. When this does occur, two things should happen: the beneficiary's funds should be reissued by SSA and the representative payee who misused them should be liable to repay them. Unfortunately, under current law, SSA has authority to reissue benefits misused by a representative payee *only* if it finds that it has been negligent to investigate or monitor a representative payee and this results in the misuse of benefits. Not only does this withhold benefits from those who need (and deserve) them, but a finding of negligence can have a catastrophic effect on any ongoing criminal investigation of the representative payee. For example, in the Aurora Foundation case, had SSA made a determination of negligence, the United States Attorney indicated that his ability to prosecute would have been seriously impaired. This legislation eliminates the requirement that benefits can be reissued only upon a finding of SSA negligence, by requiring SSA to reissue benefits, even absent a finding of negligence. Further, this legislation makes the representative payee liable for the amount of benefits misused.

Once the beneficiary's needs have been addressed, attention then turns to punishing and deterring misconduct by representative payees. We have found the Civil Monetary Penalty (CMP) program to be an effective tool against program fraud, in other areas. Unfortunately, as we have reviewed potential cases for enforcement under the CMP program, we have found that the current CMP statutes do not adequately address some of the most egregious situations involving representative payees. To remedy this, we proposed two amendments to the CMP statutes, both of which are included in H.R. 743.

The first is amending Section 1129 of the Social Security Act to allow the imposition of CMPs for the willful conversion of a beneficiary's funds by a representative payee. For example, the benefits of a disabled child whose mother (as a minor herself) could not serve as her son's representative payee, were instead paid to the father. The father, who did not live with the child and the child's mother converted more than $10,000 of his child's benefits to his own use. The United States Attorney declined to prosecute the father criminally, and the case was referred to my office for consideration under the CMP statutes. Unfortunately, the current CMP statutes do not provide for penalties to be imposed for conversion of benefits by representative payees. H.R. 743 provides this authority.

These provisions provide much needed legislative relief to improve the integrity of SSA's Representative Payee Program.

ADDITIONAL CMP AUTHORITIES

In addition to the CMP authority concerning representative payees, H.R. 743 closes a loophole that has long existed. Under current law, there is no explicit authority to impose CMPs against individuals who fraudulently obtain benefits by *withholding* information from SSA, rather than by making an affirmative false statement. The ability to pursue those who, for example, continue to receive and use the benefits of a deceased relative, provides us with a new and important tool for fighting fraud.

I know there has been some concern expressed as to the reach intended by this amendment. I can assure you that my office is aware that many of the individuals with whom we deal have physical and/or mental impairments, may be elderly, or are otherwise incapable of forming fraudulent intent. We do not pursue such individuals under existing authorities, and will not do so should this new authority be enacted. We will, however, enthusiastically pursue able-minded and able-bodied individuals who purposely conceal information from SSA in order to continue wrongfully receiving SSA benefits.

In addition to the amendments to Section 1129 of the Social Security Act (Act), described above, H.R. 743 also amends the other CMP provision of the Act, Section 1140. Section 1140 prohibits the misuse of SSA's program words, letters, symbols, or emblems, in advertisements or other communications, and H.R. 743 amends this statute in two ways:

First, Section 1140 would be amended to require entities to clearly state in their mailing or solicitation that the product or service that they propose to provide for a fee is one which is available directly from SSA free of charge;

Second, the list of prohibited terms in Section 1140 would be expanded to include many of the terms that seniors and others commonly associate with Federal benefits, and SSA programs and benefits in particular.

These amendments will further bolster our successful CMP program and enable us to better protect America's seniors and other vulnerable individuals.

FRAUDULENT CONCEALMENT OF WORK ACTIVITY

We believe that an individual who is receiving Social Security disability benefits should not get credit for a trial work period when the individual has fraudulently concealed the work from SSA. I will briefly touch on the problem caused by the existence of the trial work period as described to me in a letter from a United States Attorney. She wrote to advise me that if SSA did not change its trial work period policy for individuals being investigated and prosecuted for fraud, it could have a serious impact on whether her office took our future cases where SSA granted a trial work period. The United States Attorney noted that her office had several such cases pending at the time of her letter.

In the case that prompted her letter, the suspect received Social Security disability benefits. While receiving these benefits, he began working in the construction industry under an alias using another person's Social Security number (SSN) and failed to inform SSA that he was working. SSA allowed the suspect a trial work period in the construction industry effectively eliminating the overpayment.

In another recent case, SSA gave an individual, under investigation, credit for a trial work period even though he worked as a truck driver under one SSN while receiving benefits under a second SSN.

We have long sought a legislative amendment to eliminate this unintended windfall for those who are convicted in Federal court of fraudulently concealing work activity from the Commissioner, and H.R. 743 provides such relief.

INTERFERENCE WITH SSA FUNCTIONS AND PROTECTION OF SSA EMPLOYEES

Like its predecessor, H.R. 743 would also amend existing law to provide a criminal penalty for corrupt or forcible interference with the administration of the Social Security Act. It would impose a fine or imprisonment for interfering with SSA employees acting in their official capacities. It broadly defines an employee as including any SSA officer, employee or contractor, State Disability Determination Service employee, or any individual designated by the Commissioner. On a daily basis, SSA employees interact with members of the public who are undergoing times of great stress, such as after the death or disabling injury of a loved one. This exposes our employees to an increased risk of danger. Enactment of this provision would provide clear authority to our office to investigate any incidents that do occur.

JUDICIAL RESTITUTION AUTHORITY

Under Section 208 of the Social Security Act, a court may find an individual guilty of stealing Social Security benefits, but cannot, as part of that individual's criminal sentence, order the individual to repay the stolen benefits. Your proposed legislation would close this loophole.

EXPANSION OF FUGITIVE FELON AUTHORITIES

We have always believed that criminals fleeing from justice should not have the support of Federal benefits. Therefore, we support H.R. 743's expansion of the Title XVI fugitive felon provisions to the Title II programs.

CONCLUSION

Mr. Chairman, we have called for a number of the measures embodied in H.R. 743 for several years, and I am very pleased to see such strong legislation come out of the starting gate so early in the session.

I am honored to contribute to the ongoing discussion of how we may protect Social Security programs. H.R. 743 is a major step in closing several loopholes that currently exist and will provide greater oversight for representative payees. This along with the enhanced criminal and civil penalties will help to provide greater protection to some of our country's most vulnerable. I applaud your efforts and pledge my support to work with you in the future. Thank you.

Chairman SHAW. Thank you, Mr. Huse. Ms. Bovbjerg?

STATEMENT OF BARBARA D. BOVBJERG, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY DAN BERTONI, DEPUTY DIRECTOR

Ms. BOVBJERG. Thank you, Mr. Chairman, and Members of the Subcommittee. Thank you for inviting me here today. I am here to discuss the Social Security system's government pension offset exemption, a provision of the program that is addressed in H.R. 743, and in the President's 2004 budget. The government pension offset was enacted to equalize the treatment of workers covered by Social Security, and those with government pensions not covered by Social Security. The government pension offset prevents workers from receiving a full Social Security spousal benefit on top of a pension earned from government employment not covered by Social Security. However, the law provides an exemption from the government pension offset if the individual's last day of work is in a position covered by both a public pension system and Social Security. In these cases, the government pension offset will not apply, and the Social Security spousal benefits will not be reduced. Last year, Mr. Chairman, you asked us to assess the extent to which individuals retiring from jobs not covered by Social Security are using the so-called, last-day exemption. Today, you have asked that I summarize our findings from that report.

First, let me say that no one really knows the extent to which the government pension offset exemption is being used. There are no central data on the State and local government retirement plans that do not participate in the Social Security system and could seek to use the exemption. However, we identified two States—Texas and Georgia—in which the exemption is being used, and believe that this use could readily become more widespread. Let me speak to what we found in these two States. In Texas, almost 4,800 teachers worked in Social Security-covered positions for short periods to qualify for the exemption. They worked typically for just a single day in non-teaching positions, primarily clerical, maintenance, and food service. Most were paid about $6 an hour for these 1-day positions, meaning that Social Security payroll taxes for the day would be about $3. We saw this 1-day approach being touted on websites, in seminars, in newspapers, and believe it is becoming a routine part of individuals' retirement planning. One university we visited is scheduling these government pension offset work days through 2005.

In Georgia, we found much less activity. About 24 teachers not covered by Social Security—so we are talking about a relatively low number—went to work for approximately 1 year in another teaching position that is covered by Social Security. Officials there told us that the teachers' interest in obtaining last-day coverage helped the school system address teacher shortages in certain school districts that happen to offer coverage. In the course of our work, we found other States where such arrangements appear to be possible—that is, the pension systems do not participate in Social Security but include such coverage for some subsets of employees. In our view, it is just a matter of time before the approach used in

Texas becomes relatively widespread. Let me now turn to the potential impact on the Social Security trust funds. We came up with a very rough estimate, based on an average government pension offset amount and average retiree life expectancies—and just for the individuals we found in Texas and Georgia, so just a little over 4,800 people who have already qualified for the exemption—the cost would be about $450 million. That is $450 million of benefit payments by trust funds whose financial position is precarious—a situation about which I know I don't need to remind this Subcommittee.

That number assumes that no more individuals take action to invoke the exemption. If the Texas approach grows as expected, and if other States and localities begin to help their employees to qualify for the exemption, the numbers will be much, much larger. We were also asked to provide options for addressing this loophole, and our report identifies two. One option is a proportional approach, wherein people who spend a certain percentage of their career in a position covered by Social Security could be exempt from the government pension offset. This option has the advantage of being finely calibrated, but it could be administratively burdensome, and it would be difficult to get the data necessary to make the calculation. The simpler approach which is proposed in H.R. 743 is to change the last-day provision to a longer minimum time period. Although this may be less fine-tuned than the other approach, it would require only small changes at the administrative end. In conclusion, the government pension offset loophole I have described raises issues of fairness and equity in the Social Security program. The ability to earn benefits with contributions as little as $3, when others are contributing throughout their working lifetimes, undermines confidence in a program that Americans rely on. Although taking advantage of this loophole is legal, the institutionalized use of it is particularly troublesome, and we urge the Congress to take action. That concludes my statement, Mr. Chairman. Mr. Bertoni and I are here to answer any questions.

[The prepared statement of Ms. Bovbjerg follows:]

Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, U.S. General Accounting Office; accompanied by Dan Bertoni, Deputy Director

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss Social Security's Government Pension Offset (GPO) exemption. As you know, the GPO was enacted in 1977 to equalize the treatment of workers covered by Social Security and those with government pensions not covered by Social Security. In short, the GPO prevents workers from receiving a full Social Security spousal benefit on top of a pension earned from government employment not covered by Social Security.[1] However, the law provides an exemption from the GPO if an individual's last day of state/local government employment is in a position that is covered by both Social Security and their state/local pension system. In these cases, the GPO will not apply, and Social Security spousal benefits will not be reduced.

Last year, you asked us to (1) assess the extent to which individuals retiring from jobs not covered by Social Security may be transferring briefly to covered jobs in order to avoid the GPO, and (2) estimate the impact of such transfers on the Social Security Trust Fund. To complete our work, we first reviewed the GPO's legislative history and government reports documenting the purpose of the offset and the So-

[1] Currently the reduction in spousal benefits is two-thirds of the amount of their public pension.

cial Security Administration's (SSA) policies and procedures for administering it. We also performed limited work with associations, researchers, and retirement system officials in 28 states.[2] Finally, we performed audit work in Texas and Georgia, two of the states where we identified use of the last-day exemption. On August 15, 2002, we reported to you on the results of our work.[3] Today I will discuss the findings of our review.

In summary, because no central data exists on use of the GPO exemption by individuals in approximately 2,300 state and local government retirement plans nationwide, we could not definitively confirm that this practice is occurring in states other than Texas and Georgia. In those two states, 4,819 individuals had performed work in Social Security-covered positions for short periods to qualify for the GPO last-day exemption. In Texas, teachers typically worked a single day in nonteaching positions covered by Social Security, such as clerical or janitorial positions. In Georgia, teachers generally agreed to work for approximately 1 year in another teaching position in a school district covered by Social Security. Officials in both states indicated that use of the exemption would likely continue to grow as awareness increases and it becomes part of individuals' retirement planning. For the cases we identified, increased long-term benefit payments from the Social Security Trust Fund could be about $450[4] million over the long term and would likely rise further if use of the exemption grows in the states we visited and spreads to others. SSA officials acknowledged that use of the exemption might be possible in other state and local government retirement plans that include both those positions covered by Social Security and those not.

The GPO "loophole" raises fairness and equity concerns for those receiving a Social Security pension and are currently subject to the spousal benefit offset. In the states we visited, individuals with a relatively minimal investment of work time and Social Security contributions can gain access to potentially many years of full Social Security spousal benefits. The last-day exemption could also have a more significant impact if the practice grows and begins to be adopted by other states and localities. Considering the potential for abuse, our report presented options for revising the GPO exemption, such as changing the last-day provision to a longer minimum time period or using a proportional approach based on the number of working years spent in covered and noncovered employment for determining the extent to which the GPO applies.

Background

The Social Security Act requires that most workers be covered by Social Security benefits. Workers contribute to the program via wage deductions. State and local government workers were originally excluded from Social Security.

Starting in the 1950s, state and local governments had the option of selecting Social Security coverage for their employees or retaining their noncovered status. In 1983, state and local governments in the Social Security system were prohibited by law from opting out of it. Of the workers in the roughly 2,300 separate state and local retirement plans nationwide, about one-third are not covered by Social Security.

In addition to paying retirement and disability benefits to covered workers, Social Security also generally pays benefits to spouses of retired, disabled, or deceased workers. If both spouses worked in positions covered by Social Security, each may not receive both the benefits earned as a worker and the full spousal benefit; rather the worker receives the higher amount of the two. In contrast, until 1977, workers receiving pensions from government positions not covered by Social Security could receive their full pension benefit and their full Social Security spousal benefits as if they were nonworking spouses. At that time, legislation was enacted creating the GPO,[5] which prevented workers from receiving a full spousal benefit on top of a

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[2] States were selected either because they were authorized to operate retirement systems with both covered and noncovered positions or because their state and local government plans had a mix of covered and noncovered positions, thus offering the greatest potential for use of the last-day exemption.

[3] See U.S. General Accounting Office, Social Security Administration: Revision to the Government Pension Offset Exemption Should Be Considered, GAO–02–950 (Washington, D.C.: Aug. 15, 2002).

[4] This estimate was calculated by multiplying the number of last-day cases reported in Texas and Georgia (4,819) by SSA data on average annual offset amount ($4,800) and the average life expectancy upon receipt of spousal benefits (19.4 years).

[5] Public Law 95–216, Section 334 (1977).

pension earned from noncovered government employment.[6] However, the law provides an exemption from the GPO if an individual's last day of state/local employment is in a position that is covered by both Social Security and the state/local government's pension system.[7] In these cases, the GPO will not be applied to the Social Security spousal benefit.

Nationwide Extend of Transfers to Avoid the GPO Unknown, but Expected to Grow

While we could not definitively confirm the extent nationwide that individuals are transferring positions to avoid the GPO, we found that 4,819 individuals in Texas and Georgia had performed work in Social Security-covered positions for short periods to qualify for the GPO last-day exemption.[8] Use of the exemption may grow further as the practice becomes more rapidly institutionalized and the aging baby-boom generation begins to retire in larger numbers. SSA officials also acknowledged that use of the exemption might be possible in some of the approximately 2,300 state and local government retirement plans in other states where such plans contain Social Security-covered and noncovered positions.

Use of GPO Exemption in Texas is Growing

Officials in Texas reported that 4,795 individuals at 31 schools have used or plan to use last-day employment to take advantage of the GPO exemption. In 2002, one-fourth (or 3,521) of all Texas public education retirees took advantage of this exemption.

In most schools, teachers typically worked a single day in a nonteaching position covered by Social Security to use the exemption.

Nearly all positions were nonteaching jobs, including clerical, food service, or maintenance. Most of these employees were paid about $6 per hour. At this rate, the Social Security contributions deducted from their pay would total about $3 for the day. We estimate that the average annual spousal benefit resulting from these last-day transfers would be about $5,200.

School officials also reported that individuals are willing to travel to take these jobs—noting one teacher who traveled 800 miles to use the last-day provision. Some schools reported that they charge a processing fee, ranging from $100-$500, to hire these workers. These fees are a significant source of revenue—last year one school district collected over $283,000 in fees.

Our work shows that use of the exemption in Texas has increased since 1990, which was the earliest use reported to us.

In one school district, for example, officials reported that use of the exemption grew from one worker in 1996 to 1,050 in 2002. Another school district that began offering last-day employment in 2002 had received over 1,400 applications by June of that year from individuals seeking to use the exemption.

Use of the exemption is likely to grow further, according to trends in Texas teacher retirements and information from school officials.

There were about 14,000 teacher retirements in 2002, as opposed to 10,000 in 2000. At one university we visited, officials have scheduled workdays for imminent retirees, through 2005, to work in covered employment, an indication of the rapid institutionalization of this practice. The GPO exemption is also becoming part of teachers' regular retirement planning process as its availability and use is publicized by teaching associations and financial planners (via Web sites, newspapers, seminars, etc.) and by word-of-mouth. One association's Web site we identified lists the names and telephone numbers of school officials in counties covered by Social Security and how to contact those officials for such work. A financial planner's Web site we identified indicated that individuals who worked as little as 1 day under a Social Security-covered position to quality for the GPO exemption could earn $150,000 or more in benefits over their lifetime.

In Georgia, Workers Obtain GPO Exemption by Transferring Positions

In Georgia, officials in one district reported that 24 individuals have used or plan to use covered employment to take advantage of the GPO exemption. Officials told us that teachers generally agreed to work for approximately 1 year in another teaching position in a school district covered by Social Security to use the GPO ex-

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[6] Currently, the reduction in spousal benefits is two-thirds of the amount of their public pension.

[7] Exemption due to "The Last Day of Employment" Covered Under Social Security—State/Local or Military Service Pensions (SSA's Program Operations Manual System, GN 02608.102).

[8] Technically, individuals could have used this exemption since its passage in 1977. However, nearly all of the transfers we identified in Texas and Georgia occurred in the last several years.

emption. These officials told us that they expect use of the exemption to increase as awareness of it grows.

According to Georgia officials, their need to address a teacher shortage outweighs the risk to individual schools of teachers leaving after 1 year. Officials in fast-growing school systems reported they needed to hire teachers even if they only intended to teach for 1 year. However, some schools reported that they have had teachers leave shortly after being hired. For example, in one district, a teacher signed a 1-year contract to teach but left after 61 days, a time sufficient to avoid the spousal benefit reduction. In some of the applications for school employment we reviewed, individuals explicitly indicated their desire to work in a county covered by Social Security in order to obtain full Social Security spousal benefits.

Tansfers to Avoid the GPO May be Possible Nationwide

Use of the GPO exemption might be possible in other plans nationwide. SSA officials told us that some of the approximately 2,300 state and local government retirement plans—where such plans contain Social Security-covered and noncovered positions—may offer individuals the opportunity to use the GPO exemption. Officials representing state and local government retirement plans in other states across the country also told us that their plans allow covered and noncovered Social Security positions, making it possible for workers to avoid the GPO by transferring from one type of position to the other. For example:

- An official in a Midwestern state whose plan covers all state government employees, told us that it is possible for law enforcement personnel (noncovered) to take a covered job in the state insurance bureau (covered) just before retiring.
- In a southern state with a statewide retirement plan for school employees, teachers and other school professionals (noncovered) can potentially transfer to a job in the school cafeteria (covered) to avoid the GPO.
- A retirement system official from a north central state reported hearing of a few cases where teachers had taken advantage of the exemption by transferring to jobs in other school districts covered by Social Security.
- Finally, in a western state with a statewide retirement plan, workers could move from one government agency (noncovered) to a position in another agency (covered).

Cost of Transfers to the Social Security Trust Fund is Growing, but Options Exist to Address Potential Abuse

The transfers to avoid the GPO we identified in Texas and Georgia could increase long-term benefit payments from the Social Security Trust Fund by about $450 million.[9] We calculated this figure by multiplying the number of last-day cases reported in Texas and Georgia (4,819) by SSA data on the average annual offset amount ($4,800) and the average retirees life expectancy upon receipt of spousal benefits (19.4 years). We believe that these estimated payments would likely increase as use of the exemption grows.

Our prior report identified two options for addressing potential abuses of the GPO exemption. The first option, as proposed in H.R. 743, is to change the last-day provision to a longer minimum time period. This option would require only small changes to administer and would be less burdensome than other methods for SSA to administer. Also, this option has precedent. Legislation in 1987 required federal employees transferring between two federal retirement systems, the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS), to remain in FERS for 5 years before they were exempt from the GPO. We found that most of the jobs in Texas last for about 1 day, so extending the time period might eliminate many of the exemption users in Texas.

The second option our report identified is to use a proportional approach to determine the extent to which the GPO applies. Under this option, employees who have spent a certain proportion of their working career in a position covered by Social Security could be exempt from the GPO. This option may represent a more calibrated approach to determining benefits for individuals who have made contributions to the Social Security system for an extended period of their working years. However, SSA has noted that using a proportional approach would take time to design and would be administratively burdensome to implement, given the lack of complete and reliable data on noncovered Social Security employment.

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[9] This estimate may over/under estimate costs due to the use of averages, the exclusion of inflation/cost-of-living/net present value adjustments, lost investment earnings by the Trust Funds, and other factors that may affect the receipt of spousal benefits.

Conclusions

The GPO "loophole" raises fairness and equity concerns for those receiving a Social Security pension and currently subject to an offset of their spousal Social Security benefits. The exemption allows a select group of individuals with a relatively small investment of work time and only minimal Social Security contributions to gain access to potentially many years of full Social Security spousal benefits. The practice of providing full spousal benefits to individuals who receive government pensions but who made only nominal contributions to the Social Security system also runs counter to the nation's efforts to address the solvency and sustainability of the Social Security program.

Based on the number of people reported to be using the loophole in Texas and Georgia this year, the exemption could cost the Trust Fund hundreds of millions of dollars. While this currently represents a relatively small percentage of the Social Security Trust Fund, costs could increase significantly if the practice grows and begins to be adopted by other states and localities.

Considering the potential for abuse of the last-day exemption and the likelihood for its increased use, we believe timely action is needed. Accordingly, our August 2002 report includes a Matter for Congressional consideration that the last-day GPO exemption be revised to provide for a longer minimum time period. This action would provide an immediate "fix" to address possible abuses of the GPO exemption identified in our review.

Mr. Chairman, this concludes my prepared statement, I will be happy to respond to any questions you or other members of the Subcommittee may have.

GAO Contributions and Acknowledgments

For information regarding this testimony, please contact Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, on (202) 512–7215. Individuals who made key contributions to this testimony include Daniel Bertoni, Patrick DiBattista, Patricia M. Bundy, Jamila L. Jones, Daniel A. Schwimer, Anthony J. Wysocki, and Jill D. Yost.

Related GAO Products

Social Security Administration: Revision to the Government Pension Offset Exemption Should Be Considered. GAO–02–950 Washington, D.C.: August 15, 2002.

Social Security Reform: Experience of the Alternate Plans in Texas. GAO/HEHS–99–31, Washington, D.C.: February 26, 1999.

Social Security: Implications of Extending Mandatory Coverage to State and Local Employees. GAO/HEHS–98–196 Washington, D.C.: August 18, 1998.

Social Security: Better Payment Controls for Benefit Reduction Provisions Could Save Millions. GAO/HEHS–98–76 Washington, D.C.: April 30, 1998.

Federal Workforce: Effects of Public Pension Offset on Social Security Benefits of Federal Retirees. GAO/GGD–88–73 Washington, D.C.: April 27, 1988.

Chairman SHAW. Thank you very much. Mr. Hayworth?

Mr. HAYWORTH. Mr. Chairman, I thank you. I would like to thank our witnesses this morning. Mr. Huse, to listen to what has transpired about payees misusing beneficiaries' funds is nothing short of catastrophic in terms of not only personal situations but also public policy. The Protection Act that we are discussing includes provisions to stop fugitive felons and probation and parole violators from becoming representative payees, and requiring SSA to increase its oversight of these payees. Could you give us some examples of benefit misuse in the past that might have been avoided if we had the provisions of this bill in place in law right now?

Mr. HUSE. Specific anecdotal examples I am not able to provide right now, Mr. Hayworth, because I simply do not have the memory. I see many cases day after day dealing with representative payee issues. There is not one of them that is easy to read, because the effect on the beneficiaries is devastating. Last year, in fiscal 2002, we opened 565 separate investigations of representative

payee abuse. Of the 565, 547 were individual representative payees, and 18 were organizational representative payees, but in all of these instances, there is always some other horrific crime that is involved. Sometimes it is abuse. Sometimes it is malnutrition or other aspects of abuse. In any case, in those 565 investigations, we arrested 98 people and obtained 109 Federal indictments. The fraud we cleared as a result of this was over $5.5 million. I think those numbers speak volumes about the fact that this is a really serious crime.

Mr. HAYWORTH. In the testimony you provided for us, it says that although there are criminal penalties associated with misuse of benefits by representative payees, the U.S. attorney has the option, and could decline to prosecute. Why would a U.S. attorney refuse to prosecute? I am interested in this because H.R. 743 creates a CMP to punish those unscrupulous individuals who misuse benefits. To what extent does a CMP make it easier to punish these wrongdoers?

Mr. HUSE. That is a great question. I think it is a misconception among all of us that our U.S. Department of Justice can prosecute every single criminal instance that comes to it. Obviously, like every other function in government, there is more work than there is capacity, and it is a capacity issue for U.S. attorneys. They are just as outraged as any of us are by these crimes, but they simply do not have the capacity to take all of the crimes we bring to them. So, this new tool would give us the opportunity at least to impose CMPs against these people who betray the trust of the people they care for, as well as the trust of the SSA in delivering this key service. So, I think that kind of gives you a sense of why CMPs help us.

Mr. HAYWORTH. I thank you, sir; and again, thanks to the panel. Thank you, Mr. Chairman.

Chairman SHAW. Thank you. Mr. Becerra?

Mr. BECERRA. Thank you, Mr. Chairman, and thank you to our two witnesses for their testimony. Mr. Huse, I have a quick question with regard to the issue of fugitive felons and the violators of probation and parole. When you testified before us last summer, you mentioned that there were any number of individuals, in the thousands, who have been fugitive felons or parole or probation violators who are receiving SSI. You have done some study into this. Can you give us your sense today of where we stand, and what effect will this particular legislation, H.R. 743, have with regard to the issue of fugitive felons and violators of parole and probation when we extend what is the existing application to SSI over to Social Security benefits as well? Can you explain the work that you have done, the work that is under way on your part, and the concerns that led you to do the audit?

Mr. HUSE. We have done several audits about the fugitive felon issue. Early on, when the legislation was first passed in the Welfare Reform Act 1996, we did work to try to identify the universe of how many people would be in the fugitive felon category. Of course, that legislation only dealt with those receiving Title XVI benefits. When we did that work, we saw that there was a far greater number of fugitive felons who were actually receiving Title II benefits. In fact, I believe a five times greater number would be

encompassed by adding the Title II coverage to the fugitive felon universe than who we deal with now under Title XVI. It is also a matter of equity. Some of the fugitive felons receiving Title II benefits are not covered by the prohibition right now. It is our experience that some of the more serious criminals are in the Title II area. This is what drives it now. Over time, as we have worked with this existing legislation, I know that there are a number of questions that have been raised. What is happening with our enforcement of this program? How does it work? Those questions are valuable. Some of the questions have been raised by advocacy groups and the media. This has prompted us to take a look at this issue, and we have an audit underway that will be some months in finishing, but will provide some of these answers.

Mr. BECERRA. Have you gotten any answers with regard to the issue of the high number of fugitive felons who are out there, and when you supply the information of addresses and names to the local authorities, even after the fact that that has been provided to the local authorities, the vast majority of those 77,000 felons that you have identified remain on the loose, without apprehension. I think the statistic that we have here is that 8,000 of those individuals whose names and addresses you provide to local authorities, have been arrested by local law enforcement, but that is only 8,000 of 77,000. Is there a reason why local law enforcement, after you have given names and addresses, is not apprehending individuals who are fugitive felons?

Mr. HUSE. I will offer a variation of the answer I gave Mr. Hayworth earlier. Like every other function of government, our local criminal justice system, as is the case with the Federal system, is overloaded. So, they really——

Mr. BECERRA. Does that have an implication for those individuals, maybe not fugitive felons—maybe we are talking more in terms of the probation or parole violators. I understand that the media has reported instances where individuals try to turn themselves in, but local law enforcement is no longer interested in pursuing the violator. As a result, those individuals who try to turn themselves in and do the right thing not only cannot do the right thing because local law enforcement does not want to proceed, but at the same time, they are losing benefits that they would otherwise be entitled to.

Mr. HUSE. The concept that you should not receive benefits if you are fleeing from justice is a valid one, and I think that that law and order imperative is very good——

Mr. BECERRA. I think we all agree with that.

Mr. HUSE. I believe that is underneath this legislation.

Mr. BECERRA. I think we all agree with that.

Mr. HUSE. Now is the first time over the course of our experience with this legislation that we have real data to review. We are going in to review this data and see exactly how this system is really working in terms of how it has been put together in the last 6 or 7 years. This will give us an opportunity to come back to Congress and say, this is exactly how the program is working. I think that in the end, you are going to see that the initial imperative that was behind the intention of Congress to keep fugitives from justice from receiving Social Security benefits is there. I would be

remiss if I tried to talk about that now, until this work is completed, because one of the things I have learned as an Inspector General is that I need workpapers, and that, I promise you, is underway. We expect this work to be done sometime in the autumn. When the work is completed, we will be able to come back and answer some of these questions in a better fashion.

Mr. BECERRA. We may have passed this bill before then.

Mr. HUSE. I don't think the changes in the bill, or extending the coverage of the fugitive felon legislation to Title II, is wrong. I think we need both in order to make sure that we are meeting the intentions of the bill in the first place, which is to remove from criminals the opportunity of receiving Social Security benefits to enhance their flight from justice. I think the fine-tuning will come when we bring back the facts as this law is administered, because this is a program that cascades through every level of government, and it is very complex.

Mr. BECERRA. We agree with you on that.

Mr. HUSE. Regarding your other concern about the equities to the beneficiaries, I believe Social Security does a really good job in taking the equities of each beneficiary into account, in the actual management of the program. I do not believe anyone has been damaged that way over time.

Chairman SHAW. Mr. Huse, let me ask you a question following up on Mr. Becerra's questioning, and also somewhat on Mr. Hayworth's. I can understand the problem of prosecutors being overworked, and they have to be selective as to what cases they are going to prosecute, and which ones they are going to walk away from. I understand that. I would like to know a little bit about the enormity of the information that you are giving to local law enforcement, and why they do not go out and get these guys when you give them their name and address. That is a little disturbing to me. I can understand what Mr. Becerra is talking about—that some of them are parole violators, or something that is rather minor, and perhaps they just cannot get their record cleaned up. Obviously, we do not want to hurt those folks. I would personally like to know in Palm Beach and Broward Counties, Florida, how many of these there are. What information can you give me—and I would like to go on my own and talk to local law enforcement to get a better idea of exactly why they have not pursued this. From that standpoint, perhaps other Members on the Committee would like to have that information, too, so they could take it home and talk to their folks. I think that would give us a good idea.

Mr. HUSE. I would be glad to do that, but I think it would be wrong for me to sit here and not say that on behalf of those law enforcement officials, both elected and appointed, I believe the serious criminals involved here do get apprehended. I am sure that——

Chairman SHAW. There are some that you would like to point out to us, and I think all of us would like to go to our local law enforcement and say, "Here is what I have; why don't you tell me your side of the story?"

Mr. HUSE. As you know, Mr. Chairman, you can talk about law enforcement simplistically, but as it really works through the various levels of government, it is often driven by budget restraints and ability to expedite and so on.

Chairman SHAW. Well, let them tell us that.

Mr. HUSE. There are many aspects, but I will be glad to provide that.

[The information follows:]

Social Security Administration
Baltimore, Maryland 21235
March 9, 2004

Chairman E. Clay Shaw, Jr.
Subcommittee on Social Security
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Shaw,

Here is the information on completed Certification Reports (OI–5C) returned by law enforcement in Broward and Palm Beach Counties since the inception of the electronic matching program (March 2000):

Broward County—461 responses to 576 referrals (80%)
Palm Beach County—40 responses to 56 referrals (71%)

Please keep in mind that the national average for responses from state reporters is 49%. As you can see, the percentages from Broward and Palm Beach Counties are well above that. Our RAC in Ft. Lauderdale, Dan Lynch, has related that we enjoy an excellent relationship with law enforcement officials in both counties.

Sincerely,

Patrick P. O'Carroll
Acting Inspector General

Chairman SHAW. Yes. Well, I think they can tell us that, and that will make us do a better job. Mr. Brady?

Mr. BRADY. Thank you, Mr. Chairman. First, I would like your permission, on behalf of Congressman Sam Johnson and I, to submit the written testimony of the Texas State Teachers Association, Texas Classroom Teachers Association, and the Texas Federation of Teachers into the record.

Chairman SHAW. That will be done as part of the next panel without objection.

[The information follows:]

Statement of Jack Kelly, Texas State Teachers Association, Austin, Texas

Representative Shaw, Members, I am Jack Kelly with the Texas State Teachers Association and I appreciate the opportunity to talk with you about HR 743, the Social Security Protection Act of 2003.

HR 743 is an important bill and TSTA concurs with many of the provisions in the bill. It is imperative that Congress provides safeguards for Social Security annuitants and the programs they depend on.

I want to talk with you about one provision in the bill, Section 418, which amends the eligibility requirements for qualifying for spousal benefits. HR 743 is very similar to HR 4070 that the House passed unanimously (425–0) last session. The change contained in Section 418 was not in the version of the bill that the House considered and approved last year. It was not even mentioned by Rep. Shaw on February 12, 2003 when he introduced HR 743 and outlined the purposes and the key provisions of the bill. Section 418 would change the requirement that was adopted by Congress and has been in place for about twenty years. The current law allows a person who, on his or her last day of employment, paid into both the state retirement system and Social Security to be eligible for spousal benefits. The change recommended in Section 418 will be detrimental to the Texas education profession and Texas educators. TSTA believes that this body has not had a chance to adequately discuss it. TSTA does not want to impair or even slow down the passage of changes contained in HR 743 that would stop abuse and fraud in the Social Security system. However,

there are thirty other bills that have already been filed in this session of Congress that deal with proposed changes in Social Security, including some that would adjust benefits and eligibility for benefits. TSTA would encourage this Subcommittee to delete Section 418 from this bill and include consideration of this proposed change at the same time the Subcommittee is considering some of the other bills that address changes in Social Security benefits.

If Section 418 passes it will negatively impact the ability of school districts to attract and retain quality teachers. There is already a critical teacher shortage in Texas. As some of you may know Texas has a rapidly growing, diverse student population. We increase by about 70,000 students in average daily attendance every year—that is like adding a new school district the size of Austin or Ft. Worth each year. In addition to just more students and more diverse students, both ethnically and economically, Texas is trying to raise promotion and graduation requirements to better serve the students in our state. This week our third grade students are taking the new Texas Assessment of Knowledge and Skills test that they must pass in order to be promoted to the fourth grade. Our high school students will soon have to take the recommended or advanced high school curriculum in order to get a diploma. That means more math, more science and more foreign language credits. That also means we need more teachers in those fields. In addition to the changes Texas has imposed upon itself, we, like the other states, are trying to meet the new standards Congress has imposed in the No Child Left Behind (NCLB) legislation. A couple of those provisions require that, immediately for new hires and by 2006 for existing staff, all our support personnel must pass a test or have the equivalent of 2 years of college and that all our teachers must meet the new definition of "highly qualified."

A recent study by our State Board for Educator Certification showed that out of the 280,000 Texas teachers in 2001–02, nearly 43,000 were certified but teaching more than 50% of the day out of their field of certification (not allowed under NCLB) and another nearly 15,000 were teaching on emergency permits or some form of certification waiver (not allowed under NCLB). In addition to the fact that about 20% of the current staff does not meet the new standards, Texas has the additional problem that about half of all newly certified teachers quit within their first 5 years of teaching. We literally have hundreds of thousands of students every day who are being taught, at least part of the day, by uncertified or under-certified people. I wanted you to have an appreciation for the size of the problem Texas is addressing and why the change proposed in Section 418 makes the goal of attracting/retaining highly qualified educators even more challenging.

In Texas we have implemented, even before the Federal NCLB recommendations, a Career to Classroom initiative. Texas sought to attract qualified people who wanted to make mid-life career changes and bring them into public education. One of the major hurdles to the success of that effort has been the impact on the person's Social Security benefits. A person, who was working in private industry and building up a retirement through that company and a Social Security benefit, did not want to take a lower paying job and lose access to most of their Social Security benefits. Since 1000 of the 1050 school districts in Texas do not participate in Social Security, the person wanting to go into education would see their own Social Security benefits reduced because of the windfall elimination provisions. At present, they can still qualify for at least 50% of their spouse's benefits. Similarly, the potential reduction in Social Security benefits will make it more difficult for school districts attempting to recruit teachers from other states to come to Texas.

Finally, immediate passage of this provision would work an unfair financial hardship on the current school employees who having been planning their retirement based on the current law that has been in place for about twenty years. School employees are a dedicated group of people. They have generally worked with low pay and few benefits out of love for the students they served. It is almost unconscionable to think Congress would pass a law that tells these educators in ninety days you will lose access to about one-fourth (for many teachers) or one-half (for many support personnel) of the retirement benefits you had been planning on. That is a major change in a prospective retiree's budget. Please allow these educators to retire in dignity.

TSTA would urge Congress not to make this change. However, if you are going to enact language like Section 418 in this bill or as part of some future discussion of Social Security benefits, school employees deserve adequate time to adjust to a financial decision that is going to affect the quality of the rest of their lives.

Much as Congress did when it enacted the current government pension offset provision, you ought to pick a date in the future and provide that the current law will cover anyone who is eligible to retire at that point, whether they actually retire or not. This will protect our career educators who do not have time to replace the So-

cial Security benefits they had been factoring into their retirement plans. It will give our younger educators advance notice that the current Social Security benefits will not be available to them and give them time to adjust to the change and plan their retirement and savings accordingly.

Again, I thank you for the opportunity to share TSTA's concerns about this bill and I look forward to working with your staff as HR 743 moves through the legislative process.

Statement of Texas Classroom Teachers Association, Austin, Texas

Thank you for this opportunity to provide comments on H.R. 743. We appreciate this committee's efforts to protect the integrity of the Social Security system while ensuring maximum benefits for those it was designed to help.

The Texas Classroom Teachers Association (TCTA) was established 75 years ago and has grown to more than 46,000 members across the state. TCTA membership is limited to teachers and related non-administrative personnel who are directly involved with student instruction or support, and TCTA is not affiliated with a national organization.

Our members are particularly interested and concerned about Section 418 of this legislation, which would revise the existing "last-day" exemption to require that an employee have worked at least 60 months for the relevant government entity participating in Social Security. As you know, many Texas teachers have utilized this legal exemption in order to qualify for Social Security benefits earned by their spouses who have participated in Social Security. The extensive use of the exemption in our state is an indication of the fundamental problem with the structure of the system. These Texas educators are now painfully aware of the fact that, had they chosen not to work outside the home at all, rather than devoting their lives to public service, there would be no question about their eligibility for spousal benefits. Many teachers have only recently realized that the government benefits which have been a major part of their retirement planning will not be available to them after all. Those entering school employment near the end of their working years may not have the opportunity to meet the 60-month requirement if this provision were changed.

We appreciate Chairman Shaw's acknowledgement of this concept and encourage support for the legislative proposals by Chairman Shaw and others to eliminate or reduce the impact of the Government Pension Offset (as well as the Windfall Elimination Provision). We are very concerned that elimination of the last-day exemption to the offset without a corresponding change to or elimination of the offset itself will exacerbate the critical teacher shortage and cripple recruitment efforts in Texas and other states.

We encourage members of the committee to carefully reflect on this issue, and reject consideration of this section of the bill until such time that the underlying issues can receive a comprehensive examination.

Statement of Eric Hartman, Texas Federation of Teachers, Austin, Texas

When strict adherence to a legal rule allows an injustice to be avoided, that is not a problem—it is the solution to a problem.

Unfortunately, Section 418 of H.R. 743, the bill before you today, would change Social Security law to make the injustice of the Government Pension Offset effectively unavoidable for the 43,000 members of the Texas Federation of Teachers, on whose behalf this testimony is submitted.

We respectfully request that the Subcommittee remove Section 418 from this bill and reserve judgment on the issue until it can be addressed as part of a broader question: namely, the question of whether the offset itself should be continued or abolished. We urge the subcommittee chair to schedule such a comprehensive hearing on issues and legislation relating both to the Government Pension Offset and the kindred Windfall Elimination Provision as early as possible. We would note that H.R. 594, a bill filed earlier this month to repeal both provisions by Rep. Howard McKeon of California, already has drawn the cosponsorship of 109 House members.

The Government Pension Offset affects the vast majority of Texas school employees, who are eligible for state Teacher Retirement System annuities after retiring from school districts that do not participate in Social Security. The effect of the off-

set is to deprive them of all or part of the spouse's or surviving spouse's Social Security benefits to which they would otherwise be entitled thanks to their spouse's fully earned Social Security coverage.

Under the "last-day" provision of the law that would be changed by Section 418, the effect of the offset can be avoided by going to work briefly before retirement in another school district that does contribute to Social Security and does withhold Social Security taxes from the employee's paycheck. By strictly following the letter of this law, a teacher or other school employee in Texas thus can avoid the offset, and by the reckoning of the General Accounting Office thousands have done so.

The question before you is whether this perfectly legal method of avoiding the offset should be foreclosed by a new requirement that the employee must work at least 60 months for a school district covered by Social Security before the offset can be avoided.

We believe that this change would compound the injury done to Texas school employees by the offset itself, to their great detriment and yet without significant beneficial impact on the finances of the Social Security program.

The staff of the Congressional Budget Office, in testimony before this subcommittee 2 years ago (Statement of Paul R. Cullinan, Chief, Human Resources Cost Estimates Unit, June 27, 2000), described the Government Pension Offset as "a blunt instrument." Our members, including many low-income retirees who have been and will be hurt by the offset, would certainly agree.

Chairman Shaw, in filing another bill (H.R. 75) that would reduce the Government Pension Offset by 50 percent, also has acknowledged tacitly that there is something seriously wrong with the Government Pension Offset. (In passing it is worth noting that the CBO, in the same testimony cited above, estimated "the long-term impact" of a 50-percent reduction in the Government Pension Offset, in terms of costs to the Social Security program, "would be insignificant.")

There is indeed something seriously wrong with the Government Pension Offset. This offset has its harshest impact on those who can least afford the loss: lower income women. It also discriminates against individuals who have chosen to serve their communities in public employment; had they not worked at all, they would not be affected by the offset. By targeting the pensions of teachers and other school employees, the offset discourages qualified individuals from serving in our public schools precisely at the time when our Nation faces a severe shortage of teachers.

Consider the far from unusual case of a woman who worked in the home while her own children were in school but then returned to the workforce in middle age as a Texas teacher. A dozen years of employment as a teacher in a typical Texas school district could entitle that teacher to a Texas Teacher Retirement System annuity of perhaps $900 a month. Though her spouse fully qualified for Social Security benefits in covered employment, the Government Pension Offset could eliminate her entire benefit as a spouse or surviving spouse under Social Security. The offset would have the same devastating effect on a classroom paraprofessional who devoted 25 years of service to Texas schoolchildren while never receiving even $20,000 a year in pay. These are individuals whose retiree health-insurance premiums and other out-of-pocket health-care costs alone can easily eat up more than half of their state retirement annuity.

The marginal savings to the Social Security program that you would reap by tightening the screws on the Government Pension Offset cannot justify the large and harsh impact this measure would have on thousands of Texas school employees. Again, we urge you to delete Section 418 from H.R. 743 and to consider this issue in the wider context of a full review of the merits of the Government Pension Offset itself.

If that means the discussion should widen also to consider the future of the exemption from Social Security for employers such as Texas school districts, then so be it. Meanwhile, our school employees face a situation not of their own making that can leave them in severe financial straits when they retire. They are justified in avoiding the injury of the Government Pension Offset by strictly adhering to the letter of the law. Before rendering unavoidable the injury to school employees caused by this "blunt instrument," Congress should consider the outright repeal of the Government Pension Offset.

Mr. BRADY. Great. I am sorry they could not be here today; they got caught by the rare occurrence of Texas snow, so they are back home. I want to thank them for the timely submission of their testimony. It was helpful to read it in advance and digest it. I have

a couple of thoughts. The government pension offset and last-day of employment loophole are emotional issues for me and my constituents. Those are Texas teachers. They are in the Texas retirement system, which is the fifth-largest retirement system in the Nation not covered by Social Security—but it is a very good system. These teachers work very hard and are not paid a lot. Their challenges in the classroom are much different than when you and I were growing up. There is a great deal of conflicting information circulating about the government pension offset and how it affects our educators. We have an opportunity to clear up much of the confusion surrounding the issues today, and in the end, we have a responsibility to ensure that all wage-earners, either inside or outside Social Security, are treated fairly.

So, a couple of thoughts. Ms. Bovbjerg, thank you for being here—and thanks for your report. My teachers are being told that they are being unfairly singled out by the government pension offset—that the government pension offset discriminates against them versus other families, and many of them are being told that Congress will not change it because Members of Congress are not part of Social Security anyway. Those are the issues that come up regularly both in townhall meetings, at the dry cleaners—I went to the swimming pool this summer and was immediately visited about this issue. Help clarify, Ms. Bovbjerg, some of the issues. In the testimony, for example—here is a good way to get to the heart of the matter—in the testimony from Eric Hartman of the Texas Federation of Teachers, he testifies that, "There is indeed something seriously wrong with the government pension offset. By targeting the pensions at teachers and other school employees, the offset discourages qualified individuals from serving in our public schools precisely at a time when our Nation faces a severe shortage of teachers."

Here is the example that he gives, "Consider the far-from-unusual case of a woman who has worked in the home while her own children were in school and then returned to the workforce in middle age as a Texas teacher. A dozen years of employment as a teacher in a typical Texas school district could entitle that teacher to a retirement annuity of perhaps $900 a month. Though her spouse fully qualified for Social Security benefits in covered employment, the government pension offset could eliminate her entire benefit as a spouse or surviving spouse under Social Security." He testifies that this is different treatment than other families get. Can you address that? In this case, I think I know the answer, but I want you to explain it. Is this teacher in the retirement system of Texas treated differently, better, or worse than other families?

Ms. BOVBJERG. As you know, it depends on what families you are looking at, and I think the confusion with the government pension offset is that many people compare the benefits that they would get after being offset with the benefits of a household with a nonworking spouse. In fact, government pension offset was created to equalize the treatment of households with two working members, so that in fact this teacher would be treated much the same as a spouse working in a position covered in Social Security. When you consider this, think about government pension offset as equalizing working spouses. There have been people who have

pointed out that there are inequities between the treatment in Social Security of nonworking spouses and working spouses, and that is really the heart of the concern about government pension offset. I would say that whatever you do in the conflict between the working and the nonworking spouses, if anything, you would want to treat both the covered working spouses and the noncovered working spouses the same.

Mr. BRADY. In this case, isn't the point that for this Texas teacher, when her spouse passes away, she would have the choice of either the spousal benefits from Social Security or her own pension, whichever is higher; is that correct?

Ms. BOVBJERG. Yes. Actually, I tried to figure this out a little bit before I came, and I made myself some notes on spousal benefits. Actually, I thought that if you have two spouses who are getting roughly the same size benefit, if they are both covered by Social Security and one dies, that remaining spouse just gets their benefit—that's it. If in the same situation the wife is under the Texas teachers system, after the husband died, the wife's benefit would go up, because only two-thirds of the spousal benefit is offset. So, even with the government pension offset, an uncovered spouse would do a little better than someone under Social Security.

Mr. BRADY. That is the point I think I was trying to get to—that under the government pension offset, it appears when you study most of the cases, that Texas teachers are reduced by two-thirds of their pension offset; other teachers or other families are reduced dollar-for-dollar. Is that correct?

Ms. BOVBJERG. Yes, that is right.

Mr. BRADY. So, they are either treated the same or even a little better, depending on the circumstances.

Ms. BOVBJERG. Yes.

Mr. BRADY. There has been an explosion—your report indicated the use of the loophole or the exemption, because their teachers do not feel like it is a loophole. They feel like they are recovering benefits that are due to them; that is what they are being told, and emotionally, they feel that way. You indicated that this has become more widespread in the past 2 years. A person could put in as little as $3 in contributions and receive up to $150,000 in the typical lifespan from the report that I read. Usage has grown so much. To what do you attribute the explosive growth in the use of this last-day exemption?

Ms. BOVBJERG. Dan, do you want to talk about that? Dan was in the field.

Mr. BERTONI. Sure. There is no question that there has been rapid growth. Although we are aware of at least one case dating back as far as 1990, nearly all of the 1-day transfers occurred in and around 2002. It is not clear who or what is the primary information force or the drivers of these transfers, but it is clear that the teaching community relies on the various associations there that represent them for their information, especially in regard to retirement planning. I had the opportunity to actually go into the various websites, various avenues, and it was clear that these associations are making known the availability of this loophole, as well as how you would go about taking part in it. Based on the fact that this information is out there, it is being advertised, not only in the

groups and associations that represent teachers, but the financial planning community is starting to find out about this. There are potentially solicitations out there to help people work the 1 day to reap $150,000 in benefits, according to one website claim. So, it is probably fair to say that much of the growth is coming through this web activity, as well as, ultimately, word-of-mouth. The concern is that it could move into other States and areas.

Chairman SHAW. The gentleman's time has expired. I have been lenient to both sides with regard to the time clock, but I am going to ask Members if you can hold it to 5 minutes so we can move it along. As this is your first hearing on this Subcommittee, Ms. Tubbs Jones, I am going to be lenient with you.

Ms. TUBBS JONES. You are kind, Mr. Chairman, and I appreciate it. Thank you, Mr. Chairman. I am going to use a couple of my minutes to refer to a job that I had. I am a former Cuyahoga County prosecutor, elected for 8 years, and I was a judge for 10 years. When we use the term "fugitive felon" in these hearings, conceptually it sounds really good, like we are upholding justice and so forth. The reality is that the National Crime Information Center (NCIC), Animal and Plant Health Inspection Service (APHIS), and all those data systems, hold criminal justice information—bad information in, bad information out. You have a ton of people who go in and end up saying, "I am Stephanie Tubbs Jones," and when the record is cleared up, they are Stephanie Tubbs Smith—but Stephanie Tubbs Jones's record never gets cleared up. I am not saying that with regard to generally the more serious offenders. Usually the records are not kept clear on the minor offenses, and the reality is that the sheriffs and law enforcement people in all these communities—and I want you to tell all of them that I stood up on their behalf in this hearing—really are overloaded with all kinds of work that they do. To be able to clear the system will take massive amounts of dollars.

What I really think we ought to conceptually think about—and I know a lot of you say that people are not going to come forward—is whether we might issue a statement to someone receiving disability that it has come to our information that you have XYZ record, or that you are a probation violator, and you will not be able to continue to get benefits if you do not clear this up. A lot of people may take affirmative steps to do that because they are minor violations. From the bench when I was in the arraignment room, when someone failed to show up in Ohio and other communities—let us say, for example, that you get arrested—they release you, and then your information goes to a grand jury. The grand jury charges you, and then your indictment is sent to your last known address. Many of the people who are engaged in minor drug felonies, their last known address would never be the address they give. They have moved on somewhere else, and they never got notice of the fact that they had even been charged on an offense—just as an example. I am thinking that perhaps that might be a way to issue—and I do not know if you do that or not, Mr. Huse, now. Do you do that and say to them, the reason you are going to lose your payment is because you have this record, or——

Mr. HUSE. It is a two-part process. My office looks at the verification of the actual warrant itself. So, the numbers that we

give you are warrants that we have verified to exist, and exist for a valid reason. So, we take the error out of the front end of the process. On the back end of the process——

Ms. TUBBS JONES. You verify it by—I am sorry, I missed that.

Mr. HUSE. We verify it by working right back to the initiating jurisdiction, and that happens before we ever pass the information on to the SSA for suspension activity.

Ms. TUBBS JONES. Okay.

Mr. HUSE. In Title XVI, that suspension occurs only after notice is given to the beneficiary, so they have an opportunity to clear up the outstanding warrants. This is what happens with a lot of the outstanding warrants. That is why there is a difference between the front-end number and the back-end action, but that kind of judgment goes in there. I think that when our work comes back, you will be able to see this better as to what offenses are the felonies that I think the legislation intends to focus on, and what are, what I would call for lack of a better term, "coincidental" felonies, something that started out perhaps as a misdemeanor, but because of failure to appear or what-have-you——

Ms. TUBBS JONES. The failure to appear is also the basis of a warrant on any minor offense.

Mr. HUSE. Right.

Ms. TUBBS JONES. What about on the probation violation piece as well—do you go through that same step of trying to clear that up?

Mr. HUSE. We verify every one of these on the front end, before we pass them on to the SSA to deal with the suspension. It is a very, very involved and complex process. We are talking thousands and thousands of warrants.

Ms. TUBBS JONES. I remember one time we were in a meeting in Cuyahoga County—it was the judges, the prosecutors, and everyone—and someone said the number of failures to appear or probation violators, and everyone said, "Oh, no, we are going to be in total trouble," because all these people are out there—fugitive felons. The reality is that the numbers far exceed the harm that may well come to people in a jurisdiction. I have another question which I think I actually lost as I was listening to what you were saying. Oh, I know what it was—with regard to people who are representing recipients, I think the other thing that we need to take a look at after we have clarified whether the beneficiary is, "an appropriate beneficiary." You are going to come across some families in some jurisdictions where the only person who is going to care about that person may well be a fugitive—or, not a fugitive, but could have a felony record or could be a probation violator. Again, I think that, it sounds great in the world that we want to make sure the recipients are taken care of, but the reality may well be that it could be a mother from some neighborhood who has a son, and that is the only child she has left, the only person who cares for her, and if we can go through and clear that out as well, I think it would be a useful process. It could be any race or any religion where that occurs.

Mr. HUSE. I agree with you that there are different circumstances, but I think the review needs to take place, and——

Ms. TUBBS JONES. Oh, I wholly support that review.

Mr. HUSE. Some discretionary judgments made, and that is what our point is. We do not disagree that sometimes the care giver may not be somebody who passes every test in life.

Ms. TUBBS JONES. Well, I am just trying to make sure that I am weighing in and giving you a piece of what I think you ought to consider. I am just one person, but I would ask you to take that into consideration. I think I am out of time, but you can finish your answer.

Mr. HUSE. My response would be that the Commissioner is very aware of this program, and she has a number of changes that she may be making to this program that are in conception or in regulation-rewriting stages. We all know that this needs to be adjusted.

Ms. TUBBS JONES. Mr. Chairman, just one more thing. I would also suggest, sir, that perhaps what you might want to do is to contact, maybe, the National District Attorneys' Association or the National Sheriffs' Association, weigh in on this subject, and perhaps collectively they may have some ideas of when and how you could work together to resolve some of those issues.

Mr. HUSE. We will do that.

Ms. TUBBS JONES. Okay. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Lewis?

Mr. LEWIS OF KENTUCKY. Thank you, Mr. Chairman. Mr. Huse, the bill H.R. 743 will have legislation that will provide protection for Social Security employees where there may be attempts to influence the Administration on Social Security—to help them, to provide penalties to keep people from trying to do them harm, or try to change their ability to do their job. How pervasive really is that, and can you give us some examples of some of the problems there?

Mr. HUSE. I would be glad to. There is not a week that goes by when we do not receive a report from a Social Security field office that a Social Security service representative or claims representative has been threatened with their lives, or that the whole office has been threatened to be bombed by a member of the public that Social Security services on a daily basis. Understanding Social Security's programs—some of their service is directed to those who are mentally ill, and sometimes threats come from that sphere. Additionally, as we administer some of these programs for some of the fugitive felons, there are threats made. Covering SSA's employees with at least the benefit of some investigative and prosecutorial result from these threats is a good thing. That same coverage is extended, for example, to the employees of the Internal Revenue Service. Sometimes good government means saying no, and that raises someone's ire. These things can happen. I think the criminal justice system does a good job of sorting out who is a real threat and who is not, but I think the coverage is very important—for the morale, if nothing else, of Social Security's employees as they undertake these challenges.

Mr. LEWIS OF KENTUCKY. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Johnson?

Mr. JOHNSON. Thank you. Ms. Bovbjerg, last August, you all made two policy recommendations, and one is in this bill—to in-

crease from 1 day to 5 years the amount of time that a teacher would have to work under Social Security coverage. The other is to address the amount of time the person works in two separate systems. Such a proportional approach would take time to design, I think. Do you have any suggestions for us on trying to make the system more proportional?

Ms. BOVBJERG. Well, in fact, in that report, we had recommended extending the time, which is the approach embodied in H.R. 743. We looked at the proportionate approach because that is similar to what is done in the windfall elimination provision, which is another provision in law that applies to non-covered employment—but this approach is difficult to administer. Social Security would have to get data from States and from individuals as to how much they worked here, and how much they worked there. It would definitely be more finely-tuned than just saying 5 years or whatever period of time, but it would be very difficult to administer.

Mr. JOHNSON. As you know, Texas teachers are not the only people around who have opted out of the system early on. Do you see problems with other segments of society that we have not addressed?

Ms. BOVBJERG. Most State and local systems cannot back out of Social Security now.

Mr. JOHNSON. I understand.

Ms. BOVBJERG. There are about 5 million State and local employees who are not covered. They are scattered across the United States. Seven States are the big ones—of which Texas is one. Texas and Georgia are certainly not the only places that could invoke the 1-day exemption. It is difficult to predict exactly where this could occur, because you need to have a system with noncovered employment that has a few positions that are covered in it. So, in the case of Texas, teachers can work for another school district or can work in another kind of job in their own district or can work in a university—and that works out. There are some States where the vast, vast, vast majority of the State employees are in noncovered employment. They would have a hard time finding a position to shift to for 1 day. There are other States where it seems as if this could work, and the word is getting out. So, we do think that it would not only grow in Texas, but it would spread to other States.

Mr. JOHNSON. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. I want to yield my 5 minutes to Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman. Just to follow up on Mr. Johnson's questioning, our teachers feel like they are being singled out through the government pension offset, but the government pension offset really applies to a much broader group of individuals; isn't that correct?

Ms. BOVBJERG. Yes. It applies to the 5 million people that I just mentioned. I had actually made a note to get back to you, because you had asked about Federal employees and Members of Congress. In fact, anyone who is covered under the old plan, the Civil Service Retirement System, is subject to this offset, and there is no exemption for Federal employees. After 5 years of employment in Federal Employee Retirement System (FERS), the offset would not apply.

Mr. BRADY. Congress never intended to target teachers, or to make education more difficult, in your——

Ms. BOVBJERG. No, and certainly teachers are not the only people to which the offset applies, nor are they the only ones who would be able to invoke this exemption.

Mr. BRADY. The follow-up question to Mr. Johnson's is that there are 5 million people, I read in your report, in about 2,300 different retirement systems, who could take advantage of this. If that exemption were used more broadly, what could be the financial impact on Social Security in future years?

Ms. BOVBJERG. We had a really rough estimate in there—$450 million just for the people in Texas and Georgia. I do not know that all 5 million State and local employees who are not covered would be able to invoke the exemption, but if they did, you would multiply our numbers by 1,000, so you would be talking about $450 billion.

Mr. BRADY. These exemptions spread very quickly in our State. If this exemption were kept in place, do you anticipate more growth in the use of it?

Ms. BOVBJERG. Absolutely. In fact, we were a little bit concerned in contacting 28 States that we talked to to see if they were doing it—trying to figure out where this is happening. We were talking to people who were saying, "You can do that?" Clearly, they were interested, and we were trying not to talk about it too much once we found out they were not doing it.

Mr. BRADY. A lot of my teachers are now planning on using the exemption and have used it, and as a result of this legislation, they ask not only why are you changing it, but why to 5 years. My understanding is that there is a precedent for the recommendation of a 5-year length of employment. Can you explain that?

Ms. BOVBJERG. When we created FERS for Federal employees and Members of Congress—this is a system covered by Social Security, and the old system was not. We offered people a choice as to whether they wanted to switch from the old system to the new. If they switched, the offset still applied, but once they had been in FERS for 5 years, it seemed a sufficient time to assure that they had contributed to Social Security for a meaningful period. We picked 5 years in our report because of that linkage.

Mr. BRADY. In your final recommendation—Mr. Chairman, I will be very brief—in the final part of your report, you mention that there are some options for addressing government pension offset legislation that Chairman Shaw and others have introduced. Also, the other solution on this would be proportionality, weighing how much time was in noncovered, in this case, Texas teachers system—which, by the way, is really well-run and pays strong benefits. If anyone is thinking that they should become part of Social Security, my argument would be that Social Security probably needs to be more like the teacher retirement system, frankly. They are just concerned again about the cost overall. The proportionality is just tough to figure—is that the answer?

Ms. BOVBJERG. It is difficult to get the information and to calculate it. I think it is also a little more difficult for participants to understand. People can understand 5 years; proportionality, they

have to think a little more about how that would affect their benefits. It is also easier for Social Security to explain to people.

Mr. BRADY. Thank you. Thank you, Mr. Chairman, for your understanding.

Chairman SHAW. Thank you, and I thank the panel for being with us this morning, as usual. We will be moving this legislation very quickly. On our next panel, we have Nancy Coleman, who is Director of the Commission on Law and Aging at the American Bar Association (ABA); Marty Ford, Co-Chair of the Social Security Task Force of the Consortium for Citizens with Disabilities (CCD); Art Kaufman, President of the National Association of Disability Representatives (NADR), from Massachusetts; and Richard Morris, President of the National Organization of Social Security Claimants' Representatives (NOSSCR) in New York. Mr. Jack Kelly was supposed to be on this panel, but as Mr. Brady pointed out, due to unusual weather in Texas, he was unable to be with us. Without objection, his entire testimony will be made a part of this record. Again, your entire testimony will be made a part of the record, and you may proceed as you see fit. Ms. Coleman?

STATEMENT OF NANCY M. COLEMAN, DIRECTOR, COMMISSION ON LAW AND AGING, AMERICAN BAR ASSOCIATION

Ms. COLEMAN. Thank you. I am really very pleased to be here today. I am Nancy Coleman, and I am here today on behalf of the ABA. I appear before you today in my capacity as Director of the ABA's Commission on Law and Aging. In addition, several years ago, I chaired the SSA's Federal Advisory Committee, which looked at the representative payee program. That Committee, which was formed in July 1995, presented its findings in November 1996. The 25 recommendations that were made by that group have a great deal of relevance to what we find in H.R. 743, the bill that we are here considering today. I am pleased that the ABA was asked to testify and to take a look at this particular legislation. For the most part, we are commenting only on those provisions for which the ABA has policy, and those that relate to Sections 101, 102, et cetera. They have to do with what organizational payees are working with and how they should be reimbursed. We believe that there should be a great deal of oversight, and that there should be mandatory bonding. I am going to come to this in just a second, but we believe that the provision in H.R. 743 that talks about mandatory bonding and licensing, if necessary, through the State, is something that really needs to be looked at again.

The reason is that the provision calls for licensing of agencies, and what is unclear to me is how that licensing relates to the financial and fiscal responsibility of the representative payee. An agency might be licensed to be a social service agency, it might be licensed to be a nursing home. How does that relate to the bonding question or the fiscal security of the payee's money? In addition, we believe strongly that public agencies, which are not now included in either the bonding or the licensing requirement—that is, a State department of social services or a public welfare agency—ought to at least be required to assure that the money that is made, which they are collecting and spending on behalf of beneficiaries, is available only to the beneficiary, and if misuse occurs that they are will-

ing and able to make whole the beneficiary again. We are very much in favor of the periodic onsite review, especially the random onsite review for all beneficiaries, not just the large payee beneficiaries. I want to spend a couple of minutes looking at what I think is a new critical issue.

Two days ago, the U.S. Supreme Court issued a decision in a representative payee case. It is not very often that the U.S. Supreme Court looks at representative payee cases, but in the representative payee case of *Keffler v. Washington State,* decided in a 9-to-0 decision, the Supreme Court asked that—the question that arose was whether or not the State foster care agency could act as the representative payee and use the money that they collected as the representative payee to pay for the foster care services. The State Supreme Court of Washington had stated that the agency already had the funds through State funds, and with some matching funds, to pay those services; why should they be using beneficiaries' money to pay what they would otherwise pay? Why not save those funds, either to conserve funds for kids who were getting out of foster care, or to pay for services that were not otherwise covered? The U.S. Supreme Court disagreed with that position. I think there are some implications here for this legislation that is now going through, that you are looking at, and I would like a couple more days to re-look at that and perhaps provide some commentary as to what you might do with that in terms of its implications. I will stop there and wait for the rest of my panelists, but the position that the ABA took, both on the Keffler case, as well as on the rest, is in the material that I submitted.

[The prepared statement of Ms. Coleman follows:]

Statement of Nancy M. Coleman, Director, Commission on Law and Aging, American Bar Association

Mr. Chairman and members of the Subcommittee:

My name is Nancy Coleman and I am here today on behalf of the American Bar Association, the world's largest voluntary professional organization with more than 400,000 members. I appear before you today in my capacity as the Director of the ABA's Commission on Law and Aging. In addition, I chaired The Social Security Administration's Federal Advisory Committee, which looked at the Representative Payment program. The Committee was formed in July 1995 and presented its findings to the Social Security Administration in November 1996. The 25 recommendations have a great deal of relevance to H.R. 743, the "Social Security Program Protection Act of 2003" that is being considered here today. However, I do not speak to you today in that capacity but speak only as a representative of the ABA. The ABA has developed policy in many of the areas that the Social Security Program Protection Act covers that I will discuss below.

I. Protection of Beneficiaries

In February 2002, the ABA adopted policy that is very directly related to the performance of Representative Payees. In part the policy provides as follows:

> RESOLVED, that the American Bar Association urges the Administration to support and Congress to enact legislation that would strengthen the safeguards and protections of individuals receiving benefits under the Old Age, Survivors and Disability Insurance programs and the Supplemental Security Income program of the Social Security Act (Beneficiaries) which, because of such Beneficiary's disabilities and incapacities, are being received and managed by organizations designated by the Social Security Administration (SSA) as "representative payees." Such protections should include:
>
> (A) Replacement by SSA of any benefits misappropriated or misused by an organizational representative payee if not otherwise reimbursed;

(B) Mandatory initial and continued bonding of organizational representative payees in all states where they provide services;
(C) Forfeiture by representative payees of any fees normally allowed by SSA for any months in which an organizational payee has misused all or part of a Beneficiary's benefits; and
(D) Authority for SSA to impose a civil monetary penalty against organizations which misuse, convert, or misappropriate payments for Beneficiaries received while acting in a representative payee capacity.

Not many years after enactment of the Social Security Program in 1936, Congress passed legislation granting the Social Security Administration (SSA) the power to appoint "representative payees" (RPs) to receive and disburse benefits for Social Security beneficiaries who were too frail, too young or too incapacitated to manage their own finances [currently laid out in 42 U.S.C. § 405(j) for old age, survivor and disability benefits and § 1383(a) for SSI benefit recipients]. That initiative took place in 1939, then covering retired workers, their spouses, their widows and children of deceased workers.

Today, the Representative Payment System is potentially available to all of the more than 50 million individuals receiving some form of Social Security benefit (including disabled workers and means-tested Supplemental Security Income beneficiaries whose benefit eligibility was established by legislative amendment several years after initiation of the RP system).

There are now more than 6.6 million persons whose benefits are actually under representative payee management, a group comprised of roughly 60% of children and 40% of adults. This equates to an approximate (and surprising) caseload of 1 out of 8 Social Security Act benefit recipients in the United States. Moreover, that proportion promises to rise in the near future as the number of our aged (and frail aged) citizens with "baby boomer" roots attain Social Security retirement benefit ages and the as incidence of SSI disabled child beneficiaries continues to expand.

In overall volume, the hybrid and mammoth "special guardianship" program represented by the federal RP system now exceeds by a factor of more than 10 the combined number of all court guardianships/conservatorships active in the 50 states (estimated at roughly 600,000). Fortunately, more than 80% of today's RPs are parents, spouses, other relatives, friends of long standing, and court appointed guardians of the adult and child beneficiaries who they serve and, thus, can be generally counted on for loving and responsible benefit management. However, no program this large could avoid instances of fiduciary fraud and abuse. Such incidents have indeed occurred and these have been particularly troublesome in the area of multi-client "organizational payees."

Organizational payees are typically non-profit agencies and organizations which serve as RPs for individuals without access to family members or close acquaintances who might be able to step in to meet their needs for responsible benefit management. Such organizations have a definite need to fill and most are responsible state institutions and community agencies with long histories of competent service. However, these entities, by their nature and the vacuum that they fill, frequently wind up in charge of the monthly Social Security income of 15 or 50 or 100 or 200 or more SSA beneficiaries with large accumulations of funds to administer on a regular basis and enormous power over the economic well being of the incapacitated individuals they have been authorized to serve.

The American Bar Association supports many of the legislative reforms introduced in the "Social Security Program Protection Act of 2003." These include:

- § 101. Restitution by SSA of benefits misused by organizational payees (without any negligent causation test on SSA's part) if not otherwise reimbursed. These elements include:
  - A definition of misuse of benefits as defined in the proposed legislation.
  - Applying this provision to payees who provide services to 15 or more beneficiaries.
- § 102. Oversight of RPs Including:
  - Mandatory bonding of RPs (RPs are not licensed)
  - Periodic Onsite Review of organizational payees and large volume payees as well as Random Onsite Review of all types of payees
  - Organizational payees would be required to provide an annual certification of their bond as well as have and provide to Social Security and an independent audit
  - An annual report to Congress about the results of the on site reviews.

There is one exclusion that needs to be addressed and that is a bonding or assurance from public agencies or governmental entities that are payees. While the public agencies are subject to the onsite review, as they have been under the current legislative structure for institutions, they are not subject to the bonding requirement. In recent years there have been numerous times, as pointed out by the Inspector General through his investigations, that public agencies may have misused benefits.

The Social Security Administration on its own, either based on the recommendations of the Advisory Committee (1996) or because of the years of recommendations made by the Inspector General, has implemented a much improved method of monitoring payees through onsite reviews and greater scrutiny of new organizational payees. § 102 simply puts into legislation that which the Commissioner has already initiated supporting its importance.

- § 104 Fee forfeitures by RPs otherwise entitled to fees for misuse and misappropriation of benefits.
- Authority for imposition of civil monetary penalties against organizational payees who misuse funds.
- § 106 Authority to Redirect Delivery of Benefit payments when an Accounting is not filed. This provision is a method of enforcement that uses the annual accounting to encourage payees to file timely reports or be subject to loosing the authority to continue as the payee.

The ABA believes that there should be a forfeiture of any fees normally allowed by the Social Security Administration for any months in which an organizational payee has misused all or part of a beneficiary's benefits.

§ 111 Civil Monetary Penalties.

The ABA's policy states that there should be the authority to impose a civil monetary penalty against organizations which misuse, convert, or misappropriate payments for beneficiaries received while acting in representative payee capacities.

The foregoing enforcement and monitoring tools are stated as desirable legislative objectives without detailed explication so that the Congress can achieve the levels of specificity it deems appropriate for each initiative and can invest SSA with authority to prescribe standards and rules needed for optimal performance.

II. Attorney Fees (Section 301)

The ABA is pleased that H.R. 743 will raise the fee agreement cap in Social Security Old Age, Survivors and Disability Insurance (OASDI) cases. The ABA supports repeal of the provisions in P.L. 106–170 that impose an assessment on attorneys' fees in Social Security OASDI cases. The attorney's fee in these cases is already highly regulated and capped. The additional assessment of a "user fee" discourages attorneys from representing claimants in these matters. Many such claimants are in poor health, and have little education and few resources. Without representation, they will not be able to navigate the appeals process successfully, and will not receive the benefits to which they are entitled.

H.R. 743 would cap the "user fee" assessment on withheld attorneys' fees at $75.00 or 6.3% (whichever is less). We believe this legislation is a step in the right direction. Thus, we would support enactment of these provisions contained in H.R. 743.

III. Conclusion

The American Bar Association is pleased to have been asked to testify before the House Ways and Means Subcommittee on Social Security on this very important piece of legislation. We support the provisions in H.R. 743, §§ 101, 102, 104, 106, 111, and 301. Thank you for the consideration of our views. If we can provide any additional information please do not hesitate to contact us.

Chairman SHAW. Ms. Coleman, without objection, I will leave the record open if you care to submit something further with regard to that case. For the people who are standing in the back, you can fill in these front seats now; the witnesses are all at the table. Ms. Ford?

STATEMENT OF MARTY FORD, CO-CHAIR, SOCIAL SECURITY TASK FORCE, AND WORK INCENTIVES IMPLEMENTATION TASK FORCE, CONSORTIUM FOR CITIZENS WITH DISABILITIES

Ms. FORD. Thank you, Chairman Shaw, and Members of the Subcommittee. Thank you for this opportunity to testify. The CCD Task Forces on Social Security and Work Incentives Implementation appreciate your leadership and commitment in last year's passage of H.R. 4070. We applaud your commitment to move H.R. 743 quickly in this Congress. The bill, H.R. 743, is very important for people with disabilities. It should be enacted as soon as possible. People with disabilities need the protections of the representative payee provisions. Those attempting to work need the statutory changes in the Ticket-to-Work program in order to better utilize work incentives. They need the provision requiring SSA to implement a centralized computer file and to issue written receipts whenever beneficiaries report earnings or a change in work status. Claimants with disabilities in the SSI program need the option of using the attorneys' fees payment system to ensure that representation is available to those who need it. These important provisions have enjoyed significant bipartisan support, and we believe that H.R. 743 should move quickly so that these important protections become available to beneficiaries as soon as possible. I would like to highlight a few areas from my written testimony. First, on earnings reports, we have testified in the past about concerns that the chronic problem of overpayments to beneficiaries in both programs is a major barrier to beneficiaries' ability to take advantage of the work incentive programs.

The Section 202 requirement that SSA provide a receipt whenever a beneficiary reports a change in earnings or work status is an important provision, and the requirement would remain in place until SSA implements a centralized computer file recording the date of the report. Together, these requirements could go a long way in helping to resolve problems with earnings reports. The Section 201 CMPs would not go into effect until the centralized computer file is implemented. We believe also that the effective date of Section 208 should be tied to this provision. In our view, it is impossible for SSA or the Office of Inspector General to begin to judge whether there is any fraudulent intent on the part of the beneficiary if SSA has no accurate method of determining whether a beneficiary has properly reported. Regarding fugitive felons, we urge the Subcommittee to consider some additional changes in Section 203 which address the fugitive felons and people in violation of parole or probation. While important for ensuring the integrity of the disability programs, we are concerned that the current law provisions for the SSI program and the proposed provisions for Title II are overly broad and probably more inclusive in their reach than originally intended. We have included some examples of situations where provisions in SSI have operated in a particularly harsh manner, and I would like to also submit for the record some further examples that have come to my attention in a Los Angeles Times article on similar situations, if that is possible.

[The information follows:]

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September 6, 2002 Friday Home Edition

SECTION: California Metro; Part 2; Page 1; Metro Desk
LENGTH: 1666 words
HEADLINE: Criticism of U.S. Felon Program Grows; Benefits: Thousands of blind, disabled and aging Californians have lost Social Security payments after they were tracked down for long-ago crimes.
BYLINE: STEVE BERRY, TIMES STAFF WRITER
BODY: A Federal program designed to catch fugitives and deny them welfare benefits has snared thousands of blind, disabled and aging Californians. The program is coming under growing criticism from California lawyers representing the indigent.

The fugitive-felon program has funded a massive computer dragnet that has saved $130 million and led to the arrest of thousands of fugitives, law enforcement officials said.

Most of those caught are the aged, blind and disabled who are accused of violating probation and parole or other nonviolent crimes, many of which are decades old.

The program has suspended Supplemental Security Income (SSI) benefits to nearly 7,500 blind, disabled and aged Californians since 1996, according to figures from the Social Security Administration.

The SSI recipients also have been ordered to reimburse the agency for some payments.

The program compares computer databases of aid recipients with fugitives. When Social Security turned the names and addresses of those aged and disabled recipients over to California law enforcement agencies, authorities apprehended 2,831 of them, according to Social Security statistics. The statistics showed that very few of them were murderers, rapists, robbers, kidnappers or other violent offenders.

About 90% of those arrested in California have been violators of probation, parole or some nonviolent crimes.

Nationwide, 4,721 have been arrested and 45,000 recipients have had their benefits suspended.

Since midsummer, public defenders, court officials, legal aid lawyers and law enforcement officers in California have been contacted by people threatened with loss of benefits.

Social Security officials said they will restore assistance if recipients provide proof that warrants have been cleared, said Mariana Gitomer, spokesman for the Social Security Administration in California.

"A lot of taxpayers would be indignant to know that public funds are being used as fuel to escape law enforcement," said Dick Lynch, director of Social Security's Strategic Enforcement Division at the agency's Office of Inspector General in Baltimore.

"Who can argue against the benefit of taking murderers, kidnappers and armed robbers off the street?" he said.

Critics complain that the program has not focused on such crimes.

"They make this sound like a law enforcement jihad, when they actually are getting old, toothless people who are easy to find and not fleeing from anyone," said Bruce Schweiger, a Los Angeles County deputy public defender, who alone has answered more than 100 calls in the last three or 4 weeks.

"They are using a fire hose to extinguish a birthday candle," he said.

San Francisco lawyer Jane Gelfand, whose Positive Resource Center represents people with HIV, said, "These are people who are severely disabled with limited assets and income and frequently cut off from family, friends or other social support."

One of her clients, Mark Pruitt, thought that he had completed probation for a drunken-driving conviction in Florida.

Pruitt, 41, said he never heard anything further about the incident until he got a notice from Social Security officials last year saying that his SSI benefits would be suspended. He said the SSI check provided one-third of his monthly income and helped pay for some of the drugs he needs to combat full-blown AIDS. He has diabetes and high blood pressure. Two hip replacement surgeries, a degenerative shoulder condition and deteriorating joints have left him unable to hold down jobs requiring much physical exertion, Pruitt said.

In San Diego County, Chief Deputy Public Defender Bob Stall said most of the cases "are quite old, 15 years or older, and involve nonviolent offenses, drugs, bad-check cases."

One great-grandmother in Los Angeles lost her benefits because she never completed probation on a 1973 drug possession conviction. Dora Price, 65, spent six months in County Jail that year and then violated probation early the next year, court records show.

Price said she moved to Shreveport, La., to escape the daily, unrelenting pressure from her drug-using friends to resume her narcotics use.

There, she beat her drug habit and got "a good-paying" job making telephones for AT&T. She returned to Los Angeles in the mid-eighties and has a clean record.

Her notice came June 17, suspending her $175 monthly SSI check. She was left with $600 a month for rent, utilities and groceries.

Price got good news this week. A Los Angeles County Superior Court judge, at the request of her public defender, voided the arrest warrant.

Although the law is called the fugitive-felon law, former SSI recipient Yolanda Randall, 50, never fled after she broke probation 27 years ago over a gambling-related charge in Los Angeles. Randall, 50, continued living in her home for 2 years after the judge entered a bench warrant for her arrest in 1975. Court records show that Randall's violation was failure to pay a $150 fine.

Randall is disabled by obesity and arthritis, and has drawn SSI since 1995, her sister, Nora Ashford, said. She was drawing $750 a month when she got her notice on June 25. It also ordered her to repay $18,652 in benefits she had already received.

"I took her to three stations trying to get her into custody so we could clear up the warrant," Ashford said. Nobody would take her. One officer referred her to the public defender's office.

Lynch said such violators have no one to blame but themselves.

"You are supposed to pay for your crimes," he said. "If you have someone in their eighties with a warrant from their forties, couldn't you argue they've had ample opportunity to turn themselves in?"

One who tried that is Susan Irene Reid, who fled Los Angeles after pleading guilty to kicking a police officer in the leg in January 1988. Reid, who was a 24-year-old psychiatric patient, said she agreed to take medication for her illness and to remain on probation for a year. But she ran away from the probation office on her first visit.

"I couldn't admit to my psychiatric problems, and I didn't want to take medication," she said.

Over the next 11 years, Reid was taken into custody three times— first in Texas, where she turned herself in and spent 9 days in jail, and twice in Minnesota—on the outstanding warrant. Each time Los Angeles authorities declined to extradite her.

SSI helped pay her $400 monthly medication bill and qualified her for assistance for psychiatric care to control her manic depression, Reid said. But when the computers ground out her name July 31 for that 1988 warrant, the agency suspended the SSI.

Last week a judge dismissed the warrant, in part because authorities chose not to seek extradition. Her payments will resume when she provides a copy of the court records to Social Security. Meanwhile, she said, she still has to battle Social Security's claim that she owes back payments, which she estimates could be at least $5,000.

The fugitive-felon program grew out of a provision of the Welfare Reform Act of 1996, which also prohibited fugitives from obtaining food stamps. Though the U.S. Department of Agriculture moved quickly to implement the law, the Social Security Administration did not.

In 2000, Social Security gained access to FBI computer data on outstanding warrants. Early last year, the agency signed its first contracts with states to compare the names of SSI recipients to lists of fugitives provided by police. In return, Social Security would provide law enforcement with the addresses to which it mailed benefits.

In California, the program got started earlier than in most states, Social Security officials said. The state's Department of Social Services started providing Social Security with addresses of SSI recipients it had matched with the Department of Justice's outstanding warrant files by 1998, Napolski said. In Los Angeles, authorities said they seldom bother with probation violators or others accused of nonviolent offenses that would not carry state prison time.

If such violators ever appear in court, it usually is because the outstanding warrant surfaced in a later police encounter, such as a routine traffic stop.

Only the more serious violators—those accused of murder, rape or other crimes that would put them in a state prison—prompt law enforcement to go to the expense of a search and extradition effort, prosecutors and law enforcement officials said.

"If it's a probation violation, it usually means the individual has not been sentenced to state prison," said John Paul Bernardi, director of the Los Angeles County district attorney's Support Operations Bureau.

"When it comes to felonies, you still have to analyze how serious the offense is, how dangerous they are, its deterrence role, and then you have to decide whether it's a wise allocation of resources."

If a trial will be required, the case may not be provable if witnesses are no longer available or evidence is missing, he said.

LAPD Capt. James Miller, area commander of the 77th Street Station, said that even serious larceny cases do not always warrant extradition.

He cited a mid-eighties case in which prosecutors decided not to extradite a man who had fled to the East Coast to escape charges of grand larceny and receiving stolen property.

When asked about circumstances similar to Randall's gambling-related probation violation, Miller said, "Somebody who has gone for 25 years without being picked up, she's obviously changed her life, which is the whole purpose of probation."

Schweiger, the Los Angeles deputy public defender, doesn't advocate abandoning the fugitive-felon program. It just needs to be amended, he said.

"The problem is that you have these two huge bureaucracies that . . . don't take the human costs into account," he said.

"They are doing nothing but matching names and addresses with checks without giving thought to the actual consequences," he said.

The Commissioner should have the authority to pay benefits where good cause is shown for such payment. Often, the triggering offense is decades old and of no further interest to the jurisdiction where it was committed. More important, for people with mental impairments, the beneficiary may not even be aware of the violation, may not have understood the terms of parole or probation, or may have other misunderstandings about his or her legal status. The examples that have come to my attention since the summer on the SSI program make it clear that people, even when they do learn from Social Security of the violations, have great difficulty managing to clear it up, especially if they are far away and actually have no money left to travel. The Commissioner should have the authority to pay benefits in these situations. In addition, the "good cause" exception should be extended to those in violation of parole or probation requirements, and we believe that the "good cause" exception should apply to the SSI program as well. Regarding attorneys' fees, we support the inclusion of provisions to establish a mechanism in SSI for payment of attorneys' fees. However, we are concerned that the sunset provision could add unnecessary complexity and uncertainty to the program. In addition, we understand the interest in extending the attorneys' fees payment system to non-attorneys who are successful in representing claimants. There are numerous issues here, and they deserve full research and discussion before a workable solution is devised. The issues should not be allowed to impede the progress of the rest of H.R. 743, including the extension of the fee payment system to SSI. We support the provision providing for a GAO study of the issue with a report due to Congress in 1 year. Thank you for this opportunity to testify. We look forward to working with the Subcommittee for passage of this legislation.

[The prepared statement of Ms. Ford follows:]

Statement of Marty Ford, Co-Chair, Social Security Task Force, and Work Incentives Implementation Task Force, Consortium for Citizens with Disabilities

Chairman Shaw, Representative Matsui, and Members of the Subcommittee, thank you for this opportunity to testify regarding the Social Security Protection Act, H.R. 743.

I am Director of Legal Advocacy for The Arc and UCP Public Policy Collaboration. I am testifying here today in my role as co-chair of the Social Security Task Force and the Work Incentives Implementation Task Force of the Consortium for Citizens with Disabilities. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security and Work Incentives Implementation Task Forces focus on disability policy issues in the Title XVI Supplemental Security Income program and the Title II disability programs.

CCD welcomes the opportunity to testify here today and appreciates your holding a hearing regarding H.R. 743, the Social Security Protection Act of 2003. We appreciate the hard work and the perseverance of this Committee in addressing this important legislation over the course of two Congresses and again in this 108th Congress.

Your leadership and commitment last year resulted in the passage of the Social Security Program Protection Act of 2002, H.R. 4070, in the House by a vote of 425 to 0. Clearly, the issues addressed in the Social Security Protection Act are important to people with disabilities who must depend on the Title II and Title XVI disability programs. Furthermore, the Committee's proposed solutions are bipartisan. We support your past efforts and encourage your work again this year in pushing for passage of H.R. 743.

H.R. 743 is a very important bill for people with disabilities. We believe that it should be enacted as soon as possible. People with disabilities need the protections of the representative payee provisions. People with disabilities who are attempting to work need the statutory changes to the Ticket to Work program in order to better utilize the intended work incentive provisions enacted in 1999. In addition, beneficiaries with disabilities need the provision requiring the Social Security Administration to issue written receipts whenever beneficiaries report earnings or a change in work status. These important provisions have not been controversial—in fact, they have enjoyed significant bipartisan support—and have simply fallen prey to the legislative process over the last two Congresses. We appreciate your interest in moving H.R. 743 quickly so that these important protections can become available to beneficiaries as soon as possible.

The remainder of this testimony will discuss many of the important provisions included in H.R. 743. In some cases, we will make recommendations for additional changes or further refinements to enhance the usefulness of H.R. 743 from the perspective of beneficiaries with disabilities. We stand ready to work with the Committee and your staff on these recommendations in order to ensure speedy enactment of the Social Security Protection Act of 2003.

Representative Payee Improvements

Approximately 6 million Social Security and Supplemental Security Income beneficiaries have representative payees, often family members or friends, who receive the benefits on behalf of the beneficiaries and have a responsibility to manage the benefits on behalf of these beneficiaries.

H.R. 743 includes important provisions strengthening SSA's ability to address abuses by representative payees. The provisions would:

- require non-governmental fee-for-services organizational representative payees to be bonded *and* licensed under state or local law;
- provide that when an organization has been found to have misused an individual's benefits, the organization would not qualify for the fee;
- allow SSA to re-issue benefits to beneficiaries whose funds had been misused;
- allow SSA to treat misused benefits as "overpayments" to the representative payee, thereby triggering SSA's authority to recover the money through tax refund offsets, referral to collection agencies, notifying credit bureaus, and offset of any future federal benefits/payments; and
- require monitoring of representative payees, including monitoring of organizations over a certain size and government agencies serving as representative payees.

We support these provisions, including establishing the definition of "misuse" in the statute, rather than leaving it solely to administration policy. We believe that such provisions should be enacted. In addition, we believe that SSA should address the accountability of state or federal agencies who serve as representative payees and also ensure that governmental agencies or institutions are not selected as representative payees where family or friends are available, willing, and capable to serve as payee. This could be achieved through SSA's monitoring efforts to implement the requirements specified in Section 102(b) addressing "periodic onsite review".

Earnings Reports

As we have testified in the past, the chronic problem of overpayments to beneficiaries in both Title II and Title XVI is a major barrier to beneficiaries' ability to take advantage of the work incentives programs, including the incentives of the Ticket to Work and Work Incentives Improvement Act (TWWIIA). If not addressed, beneficiaries will continue to be fearful of working.

As the system now operates, chronic overpayments to beneficiaries result from significant delays in, and sometimes complete failure of, SSA personnel recording earnings reports for working beneficiaries. As we have noted before, we believe that part of the problem may be that SSA workers do not get any credit for this work in their work evaluations. In addition, there is not a well-defined process for beneficiaries to use in reporting earnings. Beneficiaries often tell us that they are very conscientious in reporting their earnings, but the overpayments still occur over significant periods of time. When that happens, beneficiaries are not equipped to know whether the benefit amount they are receiving is correct or whether SSA has made an error or failed to record earnings. Over time, overpayments build and it is not unusual for beneficiaries to be told to pay back tens of thousands of dollars. Beneficiaries are so fearful of overpayments, and the inadequate notices from SSA that go with them, that the Ticket program and other work incentives could fail.

We have urged SSA to establish a reliable, efficient, beneficiary-friendly method of collecting and recording, in a timely manner, information regarding a worker's earnings. In addition, SSA must adjust benefits in a timely manner. CCD has further recommended that Congress require SSA to forgive overpayments if the beneficiary is not notified within a reasonable period of time.

We appreciate the inclusion in the Social Security Protection Act of 2003, H.R. 743, of the Section 202 requirement that SSA provide a receipt to the beneficiary whenever a change in earnings or work status is reported. This requirement would remain in place until SSA develops and implements a centralized computer file recording the date on which a disabled beneficiary reports a change in earnings or work status. These requirements could go a long way in helping to resolve some of the problems with earnings reports. The effective date for the Section 201 civil monetary penalties could not go into effect until the centralized computer file described in Section 202 is implemented. We also believe that the effective date of Section 208 must be tied to this important Section 202 provision regarding the central computer file. In our view, it is impossible for SSA or the Office of Inspector General to begin to judge whether there is any fraudulent intent on the part of a beneficiary if SSA has no accurate method of determining whether a beneficiary has properly reported earnings or changes in work status.

In addition, we understand that SSA is embarking on an initiative to study the effects of electronic earnings reports for the Supplemental Security Income program. We are pleased to see this development and look forward to reports on its effectiveness and possible applicability to the Title II disability programs. In the meantime, the requirement for written receipts and a central computer file are important protections for beneficiaries.

Attorneys' Fees in SSI

We have testified in support of the Subcommittee's efforts to amend the statute to allow SSI claimants to voluntarily enter into agreements with attorneys allowing SSA to withhold and provide direct payment of attorneys' fees from their past due SSI benefits. This provision, Section 302 of H.R. 743, is similar to the current provision in Title II allowing such payment of attorneys' fees. We continue to support such a provision because it will help ensure that claimants have adequate representation to appeal their cases. The reasons behind the withholding and direct payment of attorneys' fees in Title II cases apply with equal force to SSI cases. The SSA disability determination process is very complex and beyond the capacity, training, or experience of many claimants to negotiate without knowledgeable assistance. Furthermore, ensuring that attorneys will be paid a fee for successful work on a claimant's behalf helps to ensure that a knowledgeable, experienced pool of attorneys are

available to represent claimants. The limit on fees and the involvement of SSA in establishing the fees helps to ensure that the fees are reasonable.

While we appreciate and support your inclusion of provisions to establish a mechanism in SSI for payment of attorneys fees, we are concerned about the inclusion of the three-year sunset provision (Section 302(b)(2)). To our knowledge, there are no outstanding significant policy concerns regarding the attorneys fees provisions in the SSI program. Such a provision was included in H.R. 4070, which passed the House with overwhelming support. We are concerned that a sunset provision could add unnecessary confusion, complexity, and uncertainty to the program without adding any benefit.

We are aware of the interest by some to extend the attorneys' fees payment provisions to non-attorneys who are successful in representing claimants. We have some concerns about this proposal. We believe that Social Security claimants benefit from the legal training and testing required of attorneys or members of the bar. Furthermore, state bar associations screen potential members and provide on-going monitoring. Attorneys found in violation of state bar codes of ethics and conduct face a loss of their professional license to practice law. Claimants who have been harmed by their attorneys' actions or failures have recourse through the state bar complaint procedures.

While recognizing that many non-attorneys successfully represent the interests of claimants in the SSA hearings and appeals processes, there is no established system of training, certification, monitoring, and enforcement available to protect beneficiaries from unscrupulous non-attorneys. There are numerous issues involved here that deserve full research and discussion before a workable solution is devised. While the issue has merit and should be addressed, it should not be allowed to impede the progress of the rest of H.R. 743. Therefore, we support the provision in Section 302(c) providing for a GAO study of the issue, with a report due to Congress in one year.

We support the provisions in Section 301 setting a cap on the assessment owed to SSA by attorneys who have used the attorneys' fees payment system.

Work Incentives and Demonstrations

As you know, the CCD Task Forces supported the Ticket to Work and Work Incentives Improvement Act on behalf of people with disabilities who wanted to work but were prevented from doing so by the barriers that existed in the Title II and SSI programs and Medicare and Medicaid. We believe that the purpose of the bill was to ensure that people with severe disabilities would not permanently lose needed supports if they attempted to work and to expand their opportunities to make those attempts.

It is clear that there are some technical problems that need resolution through statutory change in order to ensure that the Ticket program works as originally intended. There are similar changes needed in the Commissioner's authority to conduct demonstration programs related to work efforts. We support the inclusion of Sections 401 through 405 in H. R. 743 which will make those important adjustments.

At the same time, we ask the Subcommittee include a further technical correction to TTWWIIA that would permit veterans vocational rehabilitation programs authorized under Title 38 of the US Code (Veterans Benefits) to serve as employment networks. This change would respond to unsuccessful efforts made last year by one such Title 38 program to qualify as an EN in order to serve disabled veterans on SSDI.

Good Cause Exception

We urge the Subcommittee to consider some additional changes in Section 203, which addresses the denial of benefits to fugitive felons, persons fleeing prosecution, and persons in violation of parole or probation. While these are important considerations for ensuring the integrity of the Social Security disability program, we are concerned that the current law provisions for the SSI program, and the proposed provisions for the Title II program, are overly broad and are likely more inclusive in their reach than originally intended. The current law SSI provisions and the Section 203 provisions of H.R. 743 need some additional refinement in light of recent experience in implementation in SSI. Included as Appendix A are three examples of actual cases that have come to our attention from recent implementation of the SSI provisions. In addition, we are aware of the situations portrayed in the September 6, 2002 article in the Los Angeles Times, by reporter Steve Berry.

We strongly believe that it is important for the Commissioner to have authority to pay benefits where good cause is shown for such payment. The good cause excep-

tion in the bill, Section 203(a)(4), currently applies only to those considered fleeing felons and not those in violation of parole or probation requirements.

We believe that the good cause exception should also apply to parole or probation violations, especially where the original offense was a misdemeanor and does not rise to the level of offense delineated under the fugitive felon section. Further, we believe that the good cause exceptions should apply to the SSI program as well as to the Title II disability programs.

Often, the triggering offense is decades old and of no further interest to the jurisdiction where it was committed. More importantly, we are concerned that, for people with mental impairments, including cognitive limitations, the beneficiary may not be aware of the violation, may not have understood the terms of parole or probation, or may have other misunderstandings about his/her legal status. Where the Commissioner finds that the individual is only in technical violation of a judicial order, where the original jurisdiction has no continuing interest in the individual, or where the individual's mental impairment is a factor in the violation, the Commissioner should have the authority to pay benefits. We urge the Subcommittee to support such a "good cause" exception for both the Title II and SSI programs.

Thank you for this opportunity to testify on H.R. 743, the Social Security Protection Act of 2003. We believe that none of the issues that have recently been raised about this legislation—including withholding of fees for non-attorney claimant representatives and the pension offset for certain public employees—should delay swift passage of HR 743. Action on legislation to restore integrity to the representative payee system is long overdue. We look forward to working with the Subcommittee for passage of this important legislation.

ON BEHALF OF:

American Association on Mental Retardation
American Congress of Community Supports and Employment Services
American Council of the Blind
American Network of Community Options and Resources
Brain Injury Association of America
Inter-National Association of Business, Industry and Rehabilitation
International Association of Psychosocial Rehabilitation Services
National Alliance for the Mentally Ill
National Association of Developmental Disabilities Councils
National Association of Protection and Advocacy Systems
National Organization of Social Security Claimants' Representatives
NISH
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
United Cerebral Palsy
World Institute on Disability

Appendix A

Case 1

In 1988, a severely psychotic, mentally ill woman from Rhode Island was wandering the streets, walked to Massachusetts, and found a house to sleep in. She was arrested and charged with night-time breaking and entering (B&E). She was arraigned and given a return date. However, on the date of arraignment, she was admitted to a psychiatric facility and records document that she was "delusional and psychotic." She was hospitalized for several months. She was discharged shortly before the court date but had no memory of the incident and arraignment and left the community. A warrant was issued. A few days after the court date, she was again involuntarily committed due to her ongoing mental illness.

She continues treatment for her mental illness and was unaware of the outstanding warrant until she received the SSA notice terminating her SSI benefits. When she and her social worker went to the SSA district office about the notice, she was told that she could not appeal until she cleared up her warrant. Charges have been dismissed and benefits reinstated; however, she has an overpayment which remains unresolved.

Case 2

The individual was on probation in Massachusetts. She told her probation officer (PO) that she was moving to Rhode Island. The PO tried to transfer supervision to Rhode Island, but did not have the proper government address. As a result, a default warrant issued. Her PO submitted a letter that confirmed the above facts and, in addition, stated that he believed that the individual did not intentionally avoid probation in Massachusetts.

Case 3

In July 2000, a Minnesota resident attempted suicide in Ohio by jumping off a railroad bridge. The police were called and train traffic was stopped while they talked him down. The police took the individual to a mental health facility. Several days later, they issued a warrant for his arrest for interruption of public services, which is a felony in Ohio. However, they never served the warrant, even though they had his address. Several weeks later, he moved to Minnesota where he was in and out of mental hospitals, had a few more suicide attempts, but finally his condition was stabilized. He then started living in a group home, takes his medications and receives ongoing mental health treatment.

In February 2002, he received a notice from SSA terminating his SSI benefits because of the outstanding warrant from Ohio. Both his therapist and attorney contacted the authorities in Ohio but failed to get the charges dismissed. The individual maintained that he was unable to go to Ohio to resolve the warrant because he had no money and the trip would be harmful to his mental health.

Chairman SHAW. Thank you, Ms. Ford. Mr. Kaufman?

STATEMENT OF ARTHUR KAUFMAN, OWNER AND CHIEF EXECUTIVE OFFICER, INSURING ASSISTANCE, INC., HILLSBOROUGH, NEW HAMPSHIRE, AND PRESIDENT, NATIONAL ASSOCIATION OF DISABILITY REPRESENTATIVES, FRAMINGHAM, MASSACHUSETTS

Mr. KAUFMAN. Thank you. Good morning, Chairman Shaw and Members of the Subcommittee. My name is Arthur Kaufman, and I am President of NADR. I am also a full-time practicing representative for claimants seeking disability benefits from Social Security, a vocational consultant, and function as an employment network for the Ticket-to-Work program. The NADR is a not-for-profit organization in its second operational year. Our job is to serve the needs of our members in the areas of professional education and enhancement of representational skills, and our attempt is to provide highly ethical and principled representation. We are now in the process of developing a set of standards to augment those presently codified by the Administration. Many of our members have had long and diverse careers which have prepared them to be competent representatives. These include but are not limited to former SSA employees, nurses, physical therapists, social workers, and even attorneys. Clearly, none of us is an amateur in this field, and we provide quality representation to impaired people trying to obtain disability benefits. Our members and executive board would like to congratulate the Chairman and Ranking Member for a bill that effectively addresses the abuse of vulnerable Social Security beneficiaries by strengthening the protections for recipients who are dependent upon representative payees to manage their financial affairs, the common-sense changes allowing the Inspector General to fight systemic fraud and abuse, the Ticket-to-Work program

moving persons with disabilities to meaningful employment, and the protection of dwindling Social Security resources.

The one key area that we believe would enhance this legislation is simply to establish parity for both attorneys and non-attorneys who represent persons seeking Social Security Disability Insurance (SSDI) and SSI benefits in the area of fee withholding. This would increase the field of qualified representatives, thus providing greater service to persons with impairments. Presently, only non-attorneys are eligible to have their fees withheld by SSA. Non-attorneys, although explicitly recognized in the Tax Code as equals in all other aspects of representation, are not allowed to utilize this service. The bill, H.R. 743 continues this disparity within SSDI and extends it to SSI benefits as well, while entirely ignoring non-attorney representatives. After reviewing the record from the 2001 hearing, I have concluded that the overwhelming theme from this Committee is that you want more qualified representatives. We strongly concur. We propose that parity in fee withholding would assist in accomplishing this goal. Confident representatives are presently kept out of the marketplace because they cannot compete with attorneys who receive an unfair business advantage over non-attorneys due to this present lack of parity. You have been sensitized via prior written testimony that the lack of the equivalent to bar oversight for non-attorneys may result in unqualified, poorly prepared, or even unscrupulous representation.

It is asserted for this reason that fee withholding for non-attorney representatives should be deferred until a study is completed. We believe that this argument is without merit. Federal regulations of the SSA clearly outline not only the affirmative responsibilities of all representatives but also provide for severe penalties to anyone who does not abide by those rules. The Administration may and does prohibit anyone from practicing in this arena on a Federal level if it deems such is appropriate. This applies equally to attorneys and non-attorneys. Clearly, this is one area where our colleagues who also practice law feel parity is acceptable. Representatives must have their fees approved by the Administration. Current law requires the SSA oversight of all fees, and it allows all claimants to attest any fees approved. The issue of parity is not new. During the last 15 years, I, and many fellow NOSSCR members, have frequently expressed concerns about the disparate treatment in fee withholding under the statute. I have previously expressed my dissatisfaction with the utilization of the word "attorney" in regard to fee withholding, and I have asked NOSSCR to assist in crafting legislation that would simply change the term to "appointed representative." With your permission, I would like to submit my letter detailing my concern to NOSSCR for the record.

[The information follows:]

Insuring Assistance, Inc.
Hillsborough, New Hampshire 03244
November 26, 2001

Nancy Shor
Executive Director NOSSCR
6 Prospect Street
Midland Park, NJ 07432–1691

Dear Nancy:

I have been a NOSSCR member for nearly 15 years.

I want express my extreme disappointment in my status within NOSSCR as a non-attorney representative and NOSSCR's apparent stand regarding such relative to HR 3332. This bill is obviously supported and probably even developed by NOSSCR yet it essentially discriminates against non-attorney representatives.

I agree with the intent of this legislation but am displeased that the fee withholding provisions are only applicable to representatives who are attorneys. Many competent representatives throughout the nation, like myself, have been providing this service for years yet are unable to partake of this provision which is limited strictly to attorney representatives while novice attorneys fresh out of law school can engage the Administration to act as their collection agency. This exclusion essentially demotes highly qualified non-attorney representatives to a second class status.

As an example of the impact this has had specifically upon me, I would briefly like to provide you with the following. I have provided Social Security Representation services to a Long Term Disability Insurance Carrier for about 11 years. They were recently purchased by a much larger conglomerate. They have now given a directive to their Social Security specialists that they cannot refer cases to representatives unless a fee can be withheld and paid directly to that person. A law student fresh out of law school, who has no knowledge nor history of this extremely complex administrative process beyond "book learning" can get their fees withheld and paid by the Social Security Administration while I cannot. While fairness should not be an issue, it becomes one when I cannot achieve parity due to legislative doctrine.

I do not know whether the writers of this bill understood that non-attorneys could even be representatives but certainly NOSSCR understands such.

I ask that you, as executive director of NOSSCR, please advocate my position. If NOSSCR is truly "committed to providing the highest quality representation and advocacy on behalf of persons who are seeking Social Security and Supplemental Security Income" as the statement of purpose professes, then I ask you to commit your position on the board to that purpose.

It is NOSSCR with an R for Representatives not NOSSCA with an A for Attorneys.

I have written to David Green who is my representative to the board and will be forwarding a similar letter containing much of the above to all board members. Please have NOSSCR press for a change in HR 3332 from the word **"attorney"** to the term **"appointed representative"** and as the leader of the organization that I have supported with my dues for 15 years I ask that you individually do the same to your representative.

If you have any questions please feel free to contact me.

Sincerely,

Arthur Kaufman, M.Ed.

Mr. Chairman, if the goal of this Committee is to provide increased numbers of qualified representatives in an expeditious manner, then we submit that providing a level playingfield for all professional representatives. Parity will help achieve this goal. I strongly encourage you to amend H.R. 743 to initiate fee withholding parity for professional non-attorney representatives under SSDI as well as any changes that may be made to SSI. On behalf of the NADR, I thank you for inviting me to comment on this important legislation. We look forward to working with you toward enacting this legislation in a manner that will increase access to quality representation for our citizens with significant impairments. Thank you.

[The prepared statement of Mr. Kaufman follows:]

Statement of Arthur Kaufman, Owner and Chief Executive Officer, Insuring Assistance, Inc., Hillsborough, New Hampshire, and President, National Association of Disability Representatives, Framingham, Massachusetts

Good morning, Chairman Shaw, Congressman Matsui and members of the Subcommittee. My name is Arthur Kaufman. I am honored to appear before you today

to talk about H.R. 743, the Social Security Protection Act of 2003, and in particular the issue of representative fee withholding.

The National Association of Disability Representatives, Inc. (NADR) is a relatively new not-for-profit organization in its second operational year. Our job is to serve our existing membership's needs in the area of professional education, political action, and in maintaining and enhancing the skills of the membership. In our attempts to provide highly ethical and principled representation, we are now in the process of developing a Code of Standards for NADR members as well as what is tentatively called the NADR Satisfaction Guarantee for our members to give to their clients. I would like to submit for the record a draft of NADR's "Methodology to Achieve Stated Goals and Objectives," which makes reference to these efforts.

NADR has recently applied for membership within CCD and such is pending. We have been notified by the membership committee chair that we have been recommended for membership will be serving as a member on their Social Security task force.

Many of NADR's members who now perform professional disability representation were previously employed or contracted in various positions within the Social Security Administration. These positions have included claims representatives, examiners, supervisors, executive assistants, field office managers, paralegals, and agency analysts. We also have masters level nurses, social workers, physical therapists, lawyers, and vocational rehabilitation professionals, and others coming from a multitude of professional or educational backgrounds bringing various skills to claimant representation. None of us is an amateur in this field and we provide quality representation to impaired people trying to obtain Social Security Disability Benefits as well as Supplemental Security Income benefits. We are delighted that you have sought our views on this important legislation.

Our members and executive board would like to congratulate the Chairman and ranking member for a bill that effectively addresses the abuse of vulnerable Social Security beneficiaries by strengthening protections for recipients who are dependent upon representative payees to manage their financial affairs, the common sense changes allowing the Inspector General to fight systemic fraud and abuse, the Ticket-to-Work program moving persons with disabilities to meaningful employment, and the protection of dwindling Social Security resources. It is evident that striving toward individual actualization for our beneficiaries with disabilities while safeguarding our diminishing fiscal resources are clearly key considerations of this Subcommittee, as well as our organization, and I commend you for these efforts.

I am not only appearing before you as the president of NADR, but also as a person who has been successfully representing persons with impairments before the SSA since 1986. My background is Vocational Rehabilitation, and in the past year I became an employment network under the Ticket-to-Work Program. I have also served as a vocational expert for the SSA for about 2 years.

The one key area that NADR believes would enhance this legislation; is to simply establish parity for both attorneys and non-attorneys who represent persons seeking SSDI and SSI benefits.

Presently only attorneys are eligible to have their fees withheld by SSA. Non-attorneys, although explicitly recognized as equals in all other aspects of representation, are not allowed to utilize this service. H.R. 743 continues this disparity within SSDI and further proposes to extends it to SSI benefits, while entirely ignoring non-attorney representatives.

Non-attorney representatives have historically represented claimants applying for SSI benefits even though our fees were not withheld nor guaranteed by the Administration. Many of our members client base is with such individuals.

After reviewing the written testimony and subsequent submissions from the May 17, 2001 hearing, I concluded that ***the overwhelming theme from this Subcommittee is that you want more qualified representatives to assist claimants in the cumbersome application and appeals process of SSDI and SSI. We strongly concur.*** We propose that parity in fee withholding would assist in accomplishing this goal. Competent representatives are presently kept out of the marketplace because they cannot compete with attorneys who receive an unfair business advantage over non-attorneys due to this present lack of parity.

The disparity of fee withholding is elucidated by these small examples:

For more than 10 years I had been referred clients by an LTD insurance carrier to help their clients get SSDI. That carrier was purchased about a year ago by another LTD insurer. Upon completion of the purchase, I was notified that my services were no longer going to be utilized as the new carrier is only referring cases to persons or companies who can have their fee withheld and paid by SSA. After 10 years, I no longer get referrals from this company.

Another disparity arises when an attorney fresh out of law school having never seen a Social Security application nor spoken to an Administrative Law Judge, represents his or her first client and wins. The SSA will guarantee that he or she is paid. I, on the other hand, with more than 17 years experience, cannot utilize this service, even though my skills and experience far outweigh this attorney's. From my time as a vocational expert at SSA, I was oftentimes appalled by the lack of knowledge many attorneys exhibited when appearing before the ALJ in my Local Office of Hearings and Appeals (at that time there were no non-attorney representatives actively practicing in that office).

Mr. Chairman, I would respectfully submit that simply the existence of a law degree does not ensure competence in a complex area such as this. Many representatives from our organization can enumerate examples of cases which we have taken after an attorney was unsuccessful in his or her representation. With your permission, I would like to submit for the record letters that were written to our members by claimants describing how pleased they were with their non-attorney representatives.

You have been sensitized via the written testimony as well as the oral presentations made by the colleagues of mine on this panel that the lack of an equivalent of Bar oversight for non-attorneys may result in unqualified, poorly prepared, or even unscrupulous representation. It is for this reason they claim that fee withholding for non-attorney representatives should be deferred until the study at Sec. 302 (c) of H.R. 743 is completed, and that such withholding not commence under Title II. We believe that this argument is without merit. The regulations of the Social Security Administration clearly outline not only the affirmative responsibilities of all representatives but also provide for severe penalties for representatives who do not abide by the rules for representatives outlined by the Social Security Administration (20 C.F.R. Pt. 404, Subpt. R for Title II, 20 C.F.R. Pt. 416, Subpt. O for SSI, and 62 F.R. 41,404–41,418, August 4, 1998, Final regulations that establish Standards of Conduct for Claimant Representatives.)

It is imperative to note that the attorney Bar does not act pro-actively to determine nor monitor whether attorneys are practicing good law. Rather it relies upon complaints being made by a dissatisfied party or member of the court. It is then, and only then, that an inquiry would commence. The Social Security Administration system presently has the rules and regulations in place to perform the same duties as each State's individual bar. If a dissatisfied claimant or a member of the Administration feels that the representative, whether they are an attorney or not, has not performed to standards which are expected, they have the right to complain directly to the Social Security Administration and that complaint will be evaluated. These rules however are uniform and apply equally throughout the nation. Unfortunately the same case cannot be made regarding each individual State's Bar. Furthermore, since an attorney does not need to be admitted to a State Bar to practice before the Social Security Administration, many attorneys provide representation in more than one State. The uniformity of rules on a federal level provides a far superior system for maintaining quality representatives than individually nuanced State rules.

The Administration may, and does prohibit anyone from practicing in this arena on a federal level if it deems such is appropriate. This applies equally to attorneys and non-attorneys alike. Clearly, this is one area where our colleagues who also practice law feel parity is acceptable.

The idea that attorneys have more at stake so they will be better practitioners is invalid. Clearly even disbarred attorneys still have skills that can be transferred to gainful employment in another field of endeavor. The same is true for non-attorney representatives. However, most of us are single practitioners or "mom and pop shops" where husbands and wives provide a service of Social Security representation. We do not provide representation for Worker's Compensation, Personal Injury, ERISA, or do wills, divorces, or any other area of law. We are highly trained specialists who focus our knowledge and understanding to the single area of Social Security representation typically on a full-time basis. Because this is our primary focus, we are astutely familiar with the rules, regulations and laws surrounding SSDI and SSI. This is not necessarily the case with most attorneys.

Since we "have all our eggs in one basket" our incentive to excel in our career and avoid any negative publicity not to mention condemnation from the Social Security Administration is paramount. Should we be unqualified, or provide poor or unscrupulous representation then the marketplace would soon drive us out of a job and, in all likelihood, our career. Such cannot be said about the attorney.

Currently, any representative, whether they are an attorney or not, must have their fee agreement or petition approved by the Administration. The oversight and protection by the Social Security Administration does not stop there however. Even after a fee has been approved, claimants are given the additional security to dispute

the amount of and entitlement to a fee by a representative. This notification is provided directly to the claimant in the Notice of Award by the Administration on any claim where there has been professional representation involved.

The withholding of fees has never been the central focus of NADR's legislative agenda, but it is rather to obtain parity in the representation of persons with impairments before SSA. Our membership has divergent opinions about the utilization of fee withholding, but has significant interest in achieving an equal status with representatives who also practice law.

We sympathize with the members of the Committee who have been told that this issue had not surfaced until late in the 107th Congress, but this is simply is not the case. Having been a member of the National Organization of Social Security Claimants' Representatives (NOSSCR) for more than 15 years, many of the non-attorney colleagues had frequently expressed concerns about the disparate treatment we have received from that organization. My concerns crescendoed when H.R. 3332 was introduced early in the 107th Congress. I personally contacted the Executive Director as well as all Circuit Representatives of NOSSCR and clearly expressed my dissatisfaction with the utilization of the word "attorney" in regards to fee withholding. I explicitly asked them to assist in crafting legislation that would change the term to "appointed representative." I was told that such could not be addressed at that time, but could be in future legislation. I would like to submit the letters detailing my concerns to NOSSCR to the Committee with my testimony.

The disregard of non-attorney representatives' concerns within NOSSCR led me to run for the presidency of NADR, and bring these concerns before Members of Congress, and in particular, this Committee. Being aware of these facts, it is my belief that the members of the Committee would not knowingly want to do damage to my profession.

On behalf of NADR, I strongly encourage you to amend H.R. 743 to allow professional non-attorney representatives to receive equitable treatment from SSA in ***all*** areas by initiating fee with-holding parity under SSDI, as well as in any changes which may be made to SSI. We believe that all qualified representatives should receive the identical benefits that attorneys derive from the Social Security Administration in ***all*** areas because ***all*** professional representatives, whether or not they are attorneys, are subject to the same regulations and codes of conduct when representing claimants before the Administration.

I am confident that the members of this Subcommittee are fair-minded, and will therefore want to take the necessary steps to provide parity in the way all representatives are treated by the SSA. If the goal of this Committee is to provide increased numbers of quality representatives in an expeditious manner, then we submit that providing a level playing field for all professional representatives—***parity***—will help achieve this goal.

On behalf of the National Association of Disability Representatives, Inc. I thank you for inviting me to comment on this important legislation. We look forward to working with you toward enacting this legislation in a manner that will increase access to quality representation for our citizens with significant impairments. Thank you.

Chairman SHAW. Thank you. Mr. Morris?

STATEMENT OF RICHARD P. MORRIS, PRESIDENT, NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES, MIDLAND PARK, NEW JERSEY

Mr. MORRIS. Thank you, Mr. Chairman. Mr. Chairman, Members of the Social Security Subcommittee, I thank you for inviting me this morning to testify at this hearing on the Social Security Protection Act of 2003. I am Richard Morris. I am the President of the NOSSCR. The NOSSCR was founded over 20 years ago as a professional association of over 3,400 attorneys and other advocates who represent individuals seeking Social Security disability or SSI benefits. As you know, the SSA's disability determination system is a complex, multi-level, and often time-consuming process. Appealing the denial of an application for disability benefits is a daunting task for anyone without the necessary legal experience,

but for individuals who are in poor health or disabled, the procedural hurdles that must be cleared in order to obtain disability benefits can often seem insurmountable. We are appreciative of your commitment to this legislation, which is of great importance to these claimants. Although we discuss several of the provisions we support in our written submission, including the added protections for beneficiaries who have representative payees and the reduction of the user fee, in my testimony this morning, I would like to focus on the sunset provision for Title XVI withholding as well as the GAO study.

Although we support the extension of the fee payment process to Title XVI, we are very dismayed by the addition of a sunset provision for this program. Enactment of an attorneys' fee payment system with an "end date" will undercut its very purpose, which is to enable SSI claimants seeking an attorney to hire one. I know that many of my attorney colleagues will conclude that the future for this provision is too uncertain. In the meantime, SSI claimants will continue to face difficulties in hiring an attorney and thus securing representation. The sunset provision shortchanges these claimants, and we strongly urge its deletion from the bill. We do support the provision that requires the Comptroller General to undertake a study regarding fee withholding for non-attorney representatives. The NOSSCR wants to ensure that claimants have equal protection regardless of their representatives, and we echo the advocacy community's concern with expanding the system to non-attorney representatives. Because of the importance of the outcome of Social Security disability appeals, we believe the issues of qualifications, competency, accountability, ethics, and training should be studied by GAO in the report mandated by this legislation. Our accountability concerns do not pertain to paralegals employed by legal service organizations or law firms. The claimants they represent are afforded the same protections, which I will discuss, as claimants represented by attorneys in those organizations or firms.

To be licensed to practice law, individuals in every State must pass the minimum of a 2-day bar exam and must prove they meet the character requirements necessary for the practice of law. In contrast, in order to represent individuals before the SSA, the only requirement is completion of the 1-page "Appointment of Representative" form, which requires only the representative's name, address, and telephone number. The SSA only relies on the representative's self-certification as to their good character and reputation. Others would suggest that the ethical requirements that govern the practice of law are similar to 2 pages of Social Security regulations entitled "Rules of Conduct and Standards of Responsibility for Representatives." The truth is that the actions of attorneys are much more heavily regulated and face greater scrutiny than the actions of non-attorney representatives. In every Social Security disability case, a comprehensive cannon of ethics regulates the conduct of attorneys and operates in addition to any Social Security rules of conduct. Unlike many voluntary association's conduct guidelines, State bar ethical cannons are not hollow documents. These cannons are comprehensive, and they are enforced. Failure to abide by them will result in fines, censure, or even disbarment.

Finally, if an unaffiliated, non-attorney representative behaves unethically, the client is limited to complaining to SSA. The client cannot bring a charge against a non-attorney representative before an ethics Committee because such a committee does not exist. The SSA has no obligation to investigate the misconduct of a non-attorney representative, unlike a State bar commission, and SSA is the only entity that can take action against those unaffiliated non-attorney representatives who would bilk or otherwise harm Social Security disability claimants. The Social Security disability process is designed to benefit claimants. Expanding the system to include withholding for non-attorneys will harm these claimants, and such an expansion is fraught with many problems including the lack of minimum levels of competence for non-attorney representatives, the lack of controls necessary to protect claimants, and the lack of standards regulating such individuals. When Congress enacted in 1965 the law allowing only attorneys to receive direct payment of their attorneys' fees, it did not do so to give attorneys a competitive advantage in this field. It did it to protect those most vulnerable members of society. In conclusion, the members of NOSSCR and those claimants we represent thank the Chair and all Members of this Subcommittee for your interest. I would be pleased to respond to any questions you might have. Thank you.

[The prepared statement of Mr. Morris follows:]

Statement of Richard P. Morris, President, National Organization of Social Security Claimants' Representatives, Midland Park, New Jersey

Mr. Chairman, Congressman Matsui, and the Members of the Social Security Subcommittee, thank you for inviting me to testify at today's hearing on the Social Security Protection Act of 2003. I am Richard P. Morris, the president of the National Organization of Social Security Claimants' Representatives ("NOSSCR").

The issues that you are discussing today are of great importance to claimants, to beneficiaries, and to those legal advocates whom they choose to represent them. We support this legislation, including those provisions that provide protections for claimants who require representative payees, attorney fee payment system improvements, and amendments to the Ticket to Work Act. We do have some concerns regarding provisions relating to fugitive felons, which are addressed later in our testimony.

Founded in 1979, NOSSCR is a professional association of attorneys and other advocates who represent individuals seeking Social Security disability or Supplemental Security Income ("SSI") benefits. NOSSCR members represent these disabled individuals in legal proceedings before the Social Security Administration and in federal court. NOSSCR is a national organization with a current membership of 3,400 members from the private and public sectors and is committed to the highest quality legal representation for claimants.

An applicant for any type of Social Security benefit may choose to be represented at all stages of the process. However, I, and the other members of NOSSCR, typically represent individuals who are seeking disability benefits. As an attorney in a two-person law firm in New York, I have represented claimants for the past twenty-six years. While I represent claimants from the initial application through the Federal court appellate process, the majority of my cases are hearings before Social Security Administrative Law Judges and appeals to the Social Security Administration's Appeals Council.

Representation is a Valuable Asset for Claimants and for the Adjudication Process

As you know, the Social Security Administration's disability determination system is a complex, multi-level, and often time-consuming process. Appealing the denial of an application for disability benefits is a daunting task for anyone without the necessary legal experience, but for individuals who are in poor health or disabled, the procedural hurdles that must be cleared in order to obtain disability benefits can seem insurmountable. As a result, many of the hard working men and women

applying for Social Security disability insurance benefits or SSI benefits choose to retain an attorney to help them with their appeal.

It is not surprising that these individuals want to have legal representation, in light of the complexity of the disability determination process, the individual challenges each case contains, and the undeniable importance of the outcome. Exactly why a claim has been denied is frequently a mystery to the claimant who receives an initial denial notice. The men and women that come to my office often have been out of work for many months and are seeking the disability benefits for which they and their employers have paid FICA taxes. Many have no income other than the financial support they receive from their friends, family, or church or synagogue. Most have no health insurance and cannot pay for the medical treatments necessitated by their sudden disability. These men and women understand that their family's welfare may be dependent on receiving disability benefits and the accompanying Medicare or Medicaid health insurance coverage.

The ability to have an experienced professional provide legal assistance is certainly valuable for claimants. The Social Security Administration has found that almost 75 percent of Social Security disability claimants were represented by an attorney in 2000. Approximately 64 percent of disability claimants who were represented at the hearing level were awarded disability benefits, while only 40 percent of claimants without representation were determined to be eligible for such benefits.

We believe this discrepancy between approval rates is due, in large part, to the assistance of a knowledgeable representative who knows the sequential evaluation system set forth in the regulations and Social Security Rulings. The representative can marshal evidence from doctors and hospitals, school systems, vocational testing centers, previous employers, and others who can shed light on the claimant's entitlement to disability benefits.

Such trained legal professionals can also thoroughly interview vocational and medical witnesses during the hearing before the Administrative Law Judge. These are daunting tasks for *pro se* claimants, especially when we consider that they are in poor health and often have only limited education. Indeed, the Social Security Act requires the Social Security Administration to provide information on options for seeking legal representation, whenever the agency denies a claimant's application for benefits.

It is my experience that attorneys are also a valuable resource for the Social Security Administration by helping to streamline the disability determination process. Attorneys and other representatives routinely explain the disability determination process and procedures to their clients with more specificity than the Social Security Administration's information specialists. Additionally, they ensure a more efficient system by developing an accurate and complete medical and vocational record and presenting the supporting documentation and statements that the adjudicators require for a full and fair evaluation of the claim. Oftentimes, the evidence we obtain and the legal briefs we prepare on behalf of our clients contain the requisite evidence to support a finding of disability by an Administrative Law Judge without the necessity of a hearing, thereby saving time and expense for both the Social Security Administration and the claimant.

Clearly, legal representation is needed and desired by Social Security disability claimants and is beneficial to the disability determination system in general. We believe that the Social Security Protection Act of 2003 makes needed reforms to the user fee tax and increases the availability of representation for SSI claimants seeking disability benefits.

Rationalize the Amount of the User Fee

In an effort to ensure the availability of representation for claimants who desired it, Congress, in 1965, enacted a system for direct withholding of attorneys fees from a Social Security disability claimant's award. The legislation you are considering today corrects a serious and, we believe, unintended consequence of an amendment added by the Ticket to Work Act during the 106th Congress. Although this clearly was a landmark piece of legislation, the Act also established, for the first time, a user fee tax to be charged to attorneys whenever the Social Security Administration pays an attorney's fee. The statute set the user fee as 6.3% of the amount of the attorney fee. This assessment is unfair because the amount of the charge bears no relationship to the cost of providing the service.

When an attorney is successful in proving that a claimant is eligible for benefits, the Social Security Administration computes the amount it owes to that claimant. Under the attorney fee agreement provision of the Social Security Act, an attorney may receive 25 percent of the claimant's past-due benefits or $5,300, whichever amount is less. The Social Security Administration calculates the claimant's past-

due benefits, determines 25 percent of the amount, and then determines whether that amount exceeds $5,300. This is a routine calculation, which does not require a substantial amount of time or effort. Furthermore, although the agency has indicated it cannot calculate the actual cost of writing a check for an attorney's fee, we note that the Social Security Administration website, in encouraging beneficiaries to use direct deposit for their checks, states, "It costs 42 cents to process and mail each check, compared to 2 cents for direct deposit." (Source: *www.ssa.gov/deposit/DDFAQ898.htm*).

This 6.3 percent user fee, which may total as much as $334 for the simple administrative task of writing a check, is assessed regardless of how long it takes for the Social Security Administration to issue the fee check. As this Subcommittee has noted in past hearings, the pace of fee payments has slowed substantially in recent years. NOSSCR members report that the processing and payment of attorneys' fees from the Social Security Administration often takes as long as one year.

At least once a week, a member has advised me that he or she is taking a bank loan or using a line of credit for the first time in order to meet payroll, because the agency is not paying the fees in a timely manner. This has led many attorneys to reduce their staffs. Others have decided to leave this area of practice altogether, and many more are considering substantially reducing this line of casework in their offices. As a result, the most vulnerable claimants—those with serious physical or mental impairments, those with financial challenges, and those who do not or cannot understand the disability claims process—are often left to find their own way through the Social Security Administration's labyrinthine bureaucracy. This bill seeks to reverse this trend and to encourage attorneys to continue providing this much-needed public service by enacting rational and equitable modifications to the user fee tax. For this reason, we support the reduction of the user fee tax, as provided for in this legislation.

Improve Access to Legal Representation for Supplemental Security Income Claimants

As you know, SSI is designed to assist the most financially vulnerable members of our society. Those who apply for disability benefits from the SSI program must meet very low income and resource limits, in addition to meeting the standard for establishing disability. SSI claimants are often in dire financial and health straits; an award of benefits will provide a monthly subsistence check and access to health care through the Medicaid system in most states.

Many SSI claimants want and need representation for the same reasons that Social Security disability claimants do. Legal services programs across the country provide excellent representation for many SSI claimants. Unfortunately, many of these legal services programs are under-funded and unable to accept all of the SSI claimants who seek their assistance. SSI claimants often cannot retain a lawyer from the private sector, not because their cases lack merit, but only because the attorneys cannot take the risk of not being paid even if the claims are awarded. Some of the attorneys who used to take these cases on a *pro bono* basis or with a recognition of the uncertainty of payment can no longer afford to do so, in light of the impact of the user fee tax, discussed earlier.

We believe that this lack of availability of representation explains the statistics that show only 46 percent of SSI claimants were represented at the hearing level in 2000, compared to almost 75 percent of Social Security disability claimants. As noted above, represented claimants fare better than do unrepresented claimants in the disability determination process.

We also believe that extending the attorney fee direct payment system to SSI will bring the availability of counsel for SSI claimants to the same level as for Social Security disability claimants.

It is our position that establishing a fee payment process for SSI claims, as provided by this legislation, would address directly the underlying reason that many attorneys will no longer accept SSI cases: lack of assurance of receiving their fee if the outcome is successful. If assured of the payment of their fee in successful cases, many attorneys are ready, willing, and able to undertake representation for many SSI claimants. If this legislation is enacted, SSI claimants who want to have representation would find it generally available. Only if the claimants were awarded benefits would their attorneys receive attorneys' fees. In addition, the amount of those fees would be regulated by the existing processes established under the Social Security Act.

Sunset Provision

We are dismayed, however, by the addition of a sunset provision for this program. Enactment of an attorneys' fee payment system with an "end date" will undercut its very purpose: to enable more SSI claimants seeking a lawyer to hire one. Adding a sunset provision will be interpreted by many attorneys as a lack of commitment to the attorneys' fee payment process in SSI cases. Many attorneys will conclude that the future for this provision is too uncertain. They may well make a decision not to participate in representing SSI claimants because of concerns about investing additional resources and personnel in a practice which may disappear in just three years. In the meantime, many SSI claimants will continue to face difficulties in hiring a lawyer and thus securing representation. The sunset provision shortchanges them. We are not aware of any policy justification for this provision, and we urge its deletion from the bill.

Study On Fee-Withholding for Non-Attorney Representatives

We support the provisions of the Social Security Protection Act of 2003, which require the Comptroller General to undertake a study regarding fee withholding for non-attorney representatives representing claimants before the Social Security Administration. The legislation sets forth several areas of concern that should be taken into account when the General Accounting Office compares non-attorney and attorney representatives, including the effect on claimants and program administration of extending fee withholding to unaffiliated non-attorneys. Our accountability concerns do not pertain to paralegals employed by legal services organizations or law firms because the claimants they represent are afforded the same protections as clients represented by attorneys in those organizations or firms.

We would urge the Subcommittee to ensure that the following issues are addressed by the study, which should be completed and evaluated before any changes are made regarding fee-withholding for non-attorney representatives.

Qualifications

In order to become an attorney, individuals in every state must pass a minimum two-day bar examination and must prove they meet the character requirements necessary for the practice of law. Thus, each state bar association requires prospective applicants to complete a lengthy application detailing information on each aspect of their lives that sheds light upon their character. This includes information on all civil and criminal proceedings (including traffic citations), financial and credit information, as well as numerous character references. Further, many states now add a third day to the written bar examination that deals solely with ethical issues. Many states also require a personal interview with a representative from the state bar committee. Such thorough investigations into an individual's background serve to protect those seeking legal services, which includes those individuals seeking the assistance of an attorney in a Social Security disability case. It is evident that the Social Security Administration benefits from these thorough character examinations, and such benefits arise at no additional expense to the agency.

In order to represent individuals before the Social Security Administration, the only requirement is completion of the one-page "Appointment of Representative" form. The form requires only the representative's name, address, and telephone number. The Social Security Administration has no method for verifying the character of a non-attorney representative; nor does it possess the resources to do so. The Social Security Administration can only rely on the representative's self-certification as to their "good character and reputation." In contrast, the Social Security Administration requires that an attorney must be admitted to practice law in a State and be in good-standing with that State's bar. Thus, attorneys must have been vetted by a state bar and have had to prove their good character before being allowed to engage in the practice of law.

Ethical Requirements

The actions of attorneys also are more heavily regulated and face greater scrutiny than the actions of unaffiliated non-attorney representatives. States have enacted institutional controls to govern the conduct of professionals such as attorneys. The *only* controls that exist for non-attorney representatives are two short pages of regulations entitled "Rules of Conduct and Standards of Responsibility for Representatives." By contrast, attorneys and paralegals they supervise must comply with both these Social Security Administration standards and state bar codes of conduct, which are much more stringent and impose much more severe punishments for violations. While the Social Security Administration standards for non-attorney representatives do provide a starting point, the standards are general and, to date, en-

forcement has been limited. In contrast, state institutional controls provide many protections for disability claimants who are represented by attorneys and those paralegals they supervise.

Because unaffiliated non-attorney representatives do not fall under the purview of such institutional controls, claimants do not have many protections from unscrupulous non-attorney representatives. In order to practice law, attorneys must swear to abide by the ethical code of the state in which they practice. Failure to abide by such codes will result in fines, censure, or even disbarment. In contrast, non-attorney representatives are not under any similar ethical standards promulgated by a licensing body. The legislation this Subcommittee is considering today includes an important provision, which we support, that would increase the institutional protections afforded to claimants represented by attorneys. This provision would prohibit disbarred attorneys from serving as non-attorney representatives for Social Security disability and SSI claimants. Because non-attorney representatives are not governed by equivalent ethical standards, claimants are not afforded adequate protection against unscrupulous non-attorney representatives.

More troubling, if an unaffiliated, non-attorney representative behaves unethically the client has no direct recourse. The client cannot bring a charge against the non-attorney representative before an ethics committee because such a committee does not exist. The client is limited to complaining to the Social Security Administration, which may or may not bring a charge against the non-attorney representative. Surprisingly, the Social Security Administration has no obligation to investigate a charge of misfeasance or malfeasance against a non-attorney representative, unlike a state bar commission of professional conduct which is required by law to conduct an investigation of any charge of wrongdoing. Thus, the state licensing scheme for attorneys provides clients with direct recourse if they have a complaint.

Furthermore, complaints against attorneys and any resulting disbarment proceedings are public records, and the information is available to potential and current clients. On the other hand, information that the Social Security Administration has disqualified or suspended a representative under its own rules is not available to the public. Unfortunately, Social Security and SSI disability claimants have no way to determine whether non-attorney representatives have had any complaints filed against them. However, they can obtain similar information about attorneys from the State bar. Thus, Social Security disability claimants have no way to determine whether certain non-attorney representatives have had any complaints filed against them, but they can easily ascertain similar information about attorneys from a state bar association.

The Social Security Administration standards of conduct for non-attorney representatives are reactive and not proactive. Whereas attorneys can be disciplined for ethical lapses that do not involve their work as attorneys, the Social Security Administration can only punish non-attorney representatives *after* they have harmed a Social Security disability claimant. Consequently, the Social Security Administration standards by themselves do not adequately protect Social Security claimants. The absence of strict ethical guidelines to govern the conduct of representatives is troubling and is a powerful argument for a thoughtful, deliberate GAO study.

More importantly, even state governments cannot protect their own citizens by prohibiting unskilled or disreputable non-attorney representatives from taking advantage of Social Security disability claimants who reside within their states. Under the law, the Social Security Administration is the *only* entity that can take action against those non-attorney representatives who bilk or otherwise harm Social Security disability claimants.

Additionally, most states require attorneys to contribute to a "clients' security trust fund" to reimburse clients for losses caused by attorney malfeasance. Such funds do not exist for non-attorney representatives, illustrating yet another control that protects attorneys' clients, but not non-attorney representatives' clients. Similarly, many states require attorneys to obtain malpractice insurance before they can practice law. Non-attorney representatives do not have such obligations, and claimants who suffer at the hands of non-attorney representatives cannot sue those individuals for malpractice. Furthermore, the Social Security Administration does not have the capacity to administer a similar "clients' security trust fund" for non-attorney representatives.

Furthermore, in completing an "Appointment of Representative" form, non-attorney representatives are not required to certify that they have the training or experience to handle the appeal of a Social Security disability claim. As such, the Social Security Administration provides no opportunity to claimants to allow them to investigate the competence of non-attorney representatives. The Social Security Administration study mandated in this legislation will shed light on the proper level

of training or education a non-attorney representative needs to adequately represent a Social Security disability claimant.

Because of the importance of the outcome of Social Security disability appeals, we believe the issues of qualifications, competency, accountability, ethics, and training should be studied by the General Accounting Office in the report mandated by this legislation.

Other Provisions of H.R. 743

Representative Payment Protections

We support the provisions in Title I of the bill that benefit the most vulnerable Social Security and SSI beneficiaries-those who require a representative payee. These provisions provide additional safeguards to ensure these individuals are protected from unscrupulous representative payees.

Issuance of Receipts to Acknowledge Earnings Reports or Change in Work Status

Under this legislation, the Social Security Administration, for the first time, would be required to issue a receipt whenever a beneficiary reports earnings or a change in work status. Overpayment due to work activity has been a serious problem for beneficiaries who take advantage of work incentives programs. These overpayments, which may amount to tens of thousands of dollars, often are caused by the lack of a single process for reporting earnings and the failure of Social Security Administration personnel to record earnings when they are reported. This legislation seeks to address this problem in a meaningful way.

Extending the Suspension of Benefits for Fugitive Felons

Similar to a provision in H.R. 4070, this bill extends the denial of Title II benefits to "fugitive felons and probation and parole violators." This ineligibility provision has existed in the SSI program since 1996. However, this legislation includes an important improvement-the "good cause" exception, which allows the Commissioner to continue benefits for fugitive felons. However, this exception does not apply to those in violation of probation or parole requirements. We urge that this provision is expanded to include fugitive felons and probation and parole violators.

This good cause exception is extremely important, in light of the hardships caused by the SSI ineligibility provision. While the agency has lauded the tens of thousands of fugitive felons identified under this provision, SSI advocates around the country have been inundated with requests for assistance from SSI beneficiaries whose benefits have been terminated for often minor, decades-old offenses which prosecutors have no intention of pursuing. However, the good cause exception, as currently drafted, only applies to fugitive felons.

We urge the Subcommittee to extend the good cause exception to probation and parole violators. In addition, the good cause exception should be extended to the SSI program. In determining whether to apply this exception, the Social Security Administration should consider: the seriousness of the alleged crime or violation; the length of time that has passed since the crime or violation occurred; whether there is an intent to extradite or prosecute the individual; any physical or mental limitations of the individual; and any linguistic and educational limitations of the individual. The inclusion of such protections, we believe, would ensure that the Social Security Administration considers all relevant information before determining the ineligibility of these individuals.

Conclusion

In conclusion, the members of NOSSCR and those claimants we represent thank the Chair and all members of this Subcommittee for your interest in these issues. I would be pleased to respond to any questions you may have.

Chairman SHAW. I find it very interesting, Mr. Morris, that you and Mr. Kaufman are seated next to each other.

[Laughter.]

Mr. Brady?

Mr. BRADY. Mr. Chairman, on two issues—sunset and attorney versus non-attorney representatives. On the sunset provision, it seems to me in reading the original bill that a sunset mechanism gives us an opportunity to really measure the results of that

change. It enforces the timetable for us to review it and lets us know if we are really accomplishing what we set out to accomplish. Is your concern with the sunset concept, or is it the 3-year period that is too short in order to measure that given the length of how long the process can work for a claimant? Can you be more specific about what the objections are—any of the panelists.

Mr. MORRIS. Our concern is the longevity of taking a Social Security or an SSI claim from beginning to completion. I try cases every day; some claims have lasted as long as 8 or 9 years. My office as well as most of my colleagues do a lot of the work that Social Security would do in terms of completing applications, completing forms, obtaining necessary medical evidence. My concern would be that if a law firm gears up to take care of this project and then finds out that it cannot successfully complete the actions, we have hired staff, we have——

Mr. BRADY. Within the 3 years? Is it the shortness that concerns you?

Mr. MORRIS. That is it at this point. I think we would have to further study whether the entire concept is totally bothersome. I would hate to see attorneys or non-attorney representatives gear up to take care of these cases and have the rug pulled out from under them.

Mr. BRADY. That makes sense—but you do not object to the concept of us measuring the consequences of this change to see if it is really accomplishing what we want?

Mr. MORRIS. I think that that is probably a good idea.

Mr. BRADY. Good. Any other comments?

Mr. KAUFMAN. I would like to interject on that. Presently, non-attorney representatives who do not have their fees withheld represent people for SSI. We have been doing it for years. For many members of our organization, their primary focus is on claimants with SSI. These are social workers, mental health workers, who have found out how to get through the process and how to help these individuals. There is no guarantee in the fees that these individuals receive, yet they have been doing it for years and helping these disabled, highly impaired individuals. Now what the attorneys are saying is let us un-level the playingfield, let us make it unlevel for the people who have been in business for years doing this work, helping these individuals, and—as he just said—we will ramp up and get started to process all of these individuals. What that will do, however, I believe, is it will put some of the people who have been doing this really good work for an extended period of time out of business or certainly reduce the business to a great degree.

Mr. BRADY. Thank you. Any other comments?

[No response.]

Mr. Chairman, the study in the bill regarding attorney versus non-attorney representation—what is the timetable for reporting back on that?

Chairman SHAW. Staff advises us that it is 1 year.

Mr. BRADY. I think that is a good approach, because one, you can never underestimate the value of a law degree and the training and regulation that goes with it. On the other hand, some of the non-attorney representatives who have been in my office on this

issue know the system well, and they are very sharp. It seems to me that if the system becomes more litigious and legal, that is where the emphasis ought to be. If we can start to reform this so that more decisions are made accurately before it gets to the activities of daily living system, then I think we need to have a good, strong system of non-attorney representatives in place. So, I think the study and the 1-year timetable is a very thoughtful approach. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Becerra?

Mr. BECERRA. Thank you, Mr. Chairman. Actually, I would like to ask a few questions about the fugitive felon and parole and probation violators, but before I go to that, Ms. Coleman, I want to make sure that you understand that I think most Members of Congress respect the work that is done by some of the non-attorney representatives on behalf of disability clients and Social Security clients and SSI clients. Some of the work done by these individuals is tremendous. They are extremely qualified; they have demonstrated the ability, with or without a license, to practice law. At least for me, what would concern me is the fact that there is no way to ensure that there is a prohibition against those who are not qualified. If you are an attorney and you abuse your license as a representative of a disability applicant, you are subject to any number of disciplinary actions, perhaps disbarment, and under this legislation you would be barred from ever practicing in an administrative hearing for an SSDI claim. So, there are protections, and affording someone who is licensed to practice law that opportunity to be paid directly I think is a way of saying we expect that we can hold you to a higher standard. Also, remember that if you are disciplined or disbarred, it will not just be for practicing law in this area. It is from any other area of law; you lose that license if you should be disbarred.

So, if there were something that non-attorney representatives had that was similar, perhaps I would have more comfort, but right now, I think that for the protection of the client, of the beneficiary, we need to do what we can to ensure that there is protection. I hope that we take a close look at this 3-year sunset, because to me, it does not seem to provide any additional protections to the beneficiary in trying to move through the process, which is already a big maze, as Mr. Brady pointed out. On the issue of violators of probation or parole and fugitive felons, it seems to me that because over half of the individuals who would be affected by this area on the parole or probation side, not necessarily fugitives from a felony, that we might want to look closely at this, because this bill applies to any parole or probation violator regardless of how minor that probation or parole violation might have been. If I could get comment from any of you on that particular matter and on the "good cause" exception that we provide in the legislation that would allow for some discretion on the part of the Social Security administrator to ensure that if there is good cause to provide payment to the beneficiary.

We have to remember that these folks did pay into the system, so what we are trying to do is avoid those who are fleeing jurisdiction because they committed a felony, or they are violators of probation or parole, and we do not think they are entitled to this. For

those who are innocently committing this violation—and it might be, in many cases, a very minor violation—perhaps what we could do is extend the "good cause" exception so that it applies not just to fugitive felons, as it does in this bill, but also to parole and probation violators. Perhaps what we should do is give some criteria for this "good cause" so that if someone makes an effort after being notified by Social Security that they are considered a parole violator, and you are in a nursing home, and you are not going to leave that nursing home, perhaps there is some way for you to show that you made a good faith effort to try to clear this, and if that is the case, all of a sudden, you will not find that you have been dropped from the rolls simply because the violation cannot be cured or has not been cured despite your effort. Any comments? Yes, Ms. Ford.

Ms. FORD. We agree with your position. We think that the parole and probation violators should also be subject to the "good cause" exception and that the entire "good cause" exception including parole and probation should apply to the SSI program. What I think we have learned from the Inspector General's work over the last year is that the computers are now very good at talking to each other and matching numbers and finding people. What is not appearing to happen in many cases is the human element of making a judgment about what is really going on there. Some of the cases that have come to my attention are people who had something filed against them in a State more than 20 years ago, and they have never even been notified of it, who learn about it in a nursing home when they are receiving benefits, and they get a letter from SSA. These are the kinds of situations that happen. Even when they take steps, they find difficulty in repairing the situation.

Mr. BECERRA. The image of a fugitive felon that we have, or even a parole or probation violator, is not the image of the man or woman who is pretty much set up in a nursing home and has been and is not going to try to run and would probably find it very difficult even to try to cure the violation.

Ms. FORD. Correct. In the cases that I have seen, it has taken a good deal of work for the attorneys or legal defenders to help the individual clean it up. Sometimes it is interstate. People have moved. The event was 20 years ago. It is very, very difficult sometimes to even remember the situation. There are lots and lots of things that need to be taken into account. In our testimony, I indicated that we also have to look at the issue of mental impairment. There are some people whose mental impairment—the very disability for which they are entitled to these benefits—is an important element in the fact that they are either fugitive felons or probation violators. That needs to be taken into account in looking at this issue, not just having the interface with the Social Security number and the judicial system. There is a judgment that has to be made in these situations. I would suggest that the Commissioner should have that authority to waive for good cause even if we have not yet seen the Inspector General's report in the fall.

Chairman SHAW. I would say to the gentleman that we share their concerns, and that is still under study and may be addressed in the final legislation by amendment.

Mr. BECERRA. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Lewis?

Mr. LEWIS OF KENTUCKY. Thank you, Mr. Chairman. Mr. Morris, is there a difference between an attorney and a non-attorney representative in the recourse that a claimant can have if they have been misrepresented?

Mr. MORRIS. I think there is a vast difference. First of all, many States require malpractice insurance before an attorney can practice law. There are all sorts of ethical grievance committees that are out there in every jurisdiction in the country where the claimant can file a complaint. There are funds that are set up to protect claimants from attorneys. I have an escrow account; the interest from my escrow account goes to a fund maintained by the State of New York as a client security fund. There is the fear of disbarment, there is public censure. We read about attorneys in the newspaper. The bar associations publish the results of disciplinary activities. None of this would apply to a non-attorney. There is no mechanism set up to inform the public. This is a claimant-oriented program, the SSA. It is not an issue between attorney and non-attorney. I believe the issue should be how do we best protect the claimants and allow the claimants to get those benefits that they need to maintain themselves. So, there is a vast, vast difference between the recourse available to a claimant when represented by an attorney or a non-attorney.

Mr. LEWIS OF KENTUCKY. Mr. Kaufman, would you like to respond to that?

Mr. KAUFMAN. I would, sir. The marketplace in and of itself takes place of quality representation or lack thereof. An individual who has never practiced before the SSA can come in today if they have a law degree, win their first case, and have their fee withheld. I, after practicing for 17 years, am not afforded that same option. What ends up happening is that inexperienced attorneys who do not truly understand the whole system and have not been able to grasp it, even though they may be very ethical and moral individuals and have all of the necessary background and studies and passed all the examinations that are necessary to pass the bar, they do not understand Social Security, just like they might not understand patent law. You would not want an individual to be able to obtain benefits that the government is granting to an explicit subset of representation. The SSA has always admitted that non-attorney representatives are perfectly acceptable and can practice before them. It was discussed in the rules for representation back in 1998. There is no question that those things continue today. I believe that we are trying to raise the bar—there is no question about that—because there has not been a standard throughout the country that we have been able to work with. I am a member of NOSSCR and have been for 15 years, and I still am today. It is a wonderful organization, but it does not look out, and it does not increase the bar or raise the bar or provide anything for non-attorney representatives, and that is what we are trying to do, sir, is to make it so that it becomes a more even playingfield.

Mr. LEWIS OF KENTUCKY. Let me ask you this, Mr. Kaufman. For a claimant who would like to have some assurances with a non-attorney representative about their success, their background, and so forth, what is available for them to check out a non-attorney representative?

Mr. KAUFMAN. Claimants call me all the time and say, "I got your name from a friend of mine who said you do a great job." That is about the best that I think anyone can do, be it an attorney or a non-attorney. With an attorney, you can open the phone book and see that I do Social Security law. I cannot do that. There is nothing there that says "Lawyer" or "Non-Attorney Representation" for me. So, I cannot advertise in that realm, but people can ask, "Have you done a good job?" I have long-term disability carriers that I have done work for for years, and this is a very important example as to how the marketplace works. I helped set up their Social Security program. I worked it; we got everything going. They would refer cases to me. That long-term disability carrier was purchased. A new carrier came in. When that carrier came in, they decided, "We are going to let the government pay for the checks that are going out to the representatives, and therefore, we are not going to provide any additional referrals to individuals who cannot have their fee withheld." I have been doing that work with that specific company for 10 years, and they were very happy with the work that I did, but because I cannot get my fee withheld now and the new company comes in, I am no longer able to. So, there are protections, and the protections are word-of-mouth and the marketplace.

Mr. LEWIS OF KENTUCKY. Do you want to respond to that, Mr. Morris?

Mr. MORRIS. I was not aware that we would be engaging in a debate, Mr. Lewis, but I do not think the concern of this Committee should be who gets the greatest share of the marketplace. The concern of this Committee, I believe, should be how do we protect the disabled claimant who is out there struggling for a way to pay his bills, and the only way that we can protect the disabled claimant who is least able than anybody else to determine who is a good representative and who is not a good representative is for the Committee to ensure that for them. Three years of law school teaches advocacy skills. There are clinical programs. It teaches us ethical guidelines, trains one's mind how to think in an analytic, attorney-like way. The concern should not be can a non-attorney with 17 years of experience adequately represent a claimant, but can anyone with no experience, which is what this legislation would allow. Can the claimant's next-door neighbor say, "I will take care of you, Joe; I will go in and I will represent you"? That is the concern that we have, and Joe, who may suffer from a psychiatric disorder or who may have cognitive defects, knows the next-door neighbor is a nice fellow, and he says, "Sure, why don't you take care of it for me?" That is the concern that we have is the protection of the claimant, not the market share and who makes money.

Chairman SHAW. The time of the gentleman has expired.

Mr. LEWIS OF KENTUCKY. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Ms. Coleman looked like she was about to come across the table, so I will defer to her for a moment.

Ms. COLEMAN. Thank you, Congressman. I am in a funny position. I am sitting here representing the ABA, and the question is whether there should be attorneys or non-attorneys doing this. I think I would reflect on what Mr. Morris said and suggest that there are five or six elements that I think really need to be looked

at. One is the issue of malpractice insurance and whether or not from a claimant's perspective—we are talking about people who are very vulnerable—what is it if they do not have access to that kind of thing. The second is that there are disciplinary actions that State bars do take against attorneys. There are ethical rules that people must look at. There is a fee dispute mechanism in most State bars right now, so that if there is a difference between fees that are charged, they can go to that. Last is that—and I think Mr. Morris mentioned this—increasingly, there are funds that are put in escrow through client security funds. In fact, these are very voluminous kinds of things. They are taken very seriously, especially by vulnerable clients. So, I think those are the elements to look at. We at the ABA do not do disciplinary issues, so it is not our bailiwick, but it is what we support in terms of looking at State bars and providing issues for them.

Chairman SHAW. Thank you. Ms. Tubbs Jones?

Ms. TUBBS JONES. Thank you, Mr. Chairman. Mr. Kaufman is about to come over the table, so I am going to give him a minute and a half to respond to all these attorneys in the room—and I am one of them. Go ahead.

Mr. KAUFMAN. Thank you. I truly appreciate that. As far as the fee dispute, just to respond to some of the things that we have been hearing this morning, the SSA sets the fee. It sets the fee for the attorney and non-attorney representative alike. Every, single step of the process from the beginning paperwork that an individual signs all the way through the very end when you get the Notice of Award, is identical. I have no say over what my fee is going to be. The Administration says this is how much you can charge—no more. I can charge less, and many non-attorney representatives frequently do—but we do not charge more. If we did—and I think this is another important point—this is basically what we do. We do Social Security representation. We do not do wills, we do not do divorces, we do not do personal injury work. Most of us do Social Security. If the SSA reprimands us and does not allow us to practice, we cannot go to another area of specialty as an attorney could. Now, granted, a bar may disbar you, but if they have a problem with Social Security, they can do something else.

Ms. TUBBS JONES. Let me ask you this, Mr. Kaufman. So, in reality, what you are arguing to us is that you want to be able to have Social Security pay your fees directly, but otherwise you do not have any problem performing the services that you are performing.

Mr. KAUFMAN. We want parity, and if that is the only issue that is left, then that is what we want.

Ms. TUBBS JONES. I am too new to this to say that it is the only issue that is left one way or the other——

Mr. KAUFMAN. I believe it is.

Ms. TUBBS JONES. Let me ask you this, Mr. Kaufman. How do I, as Joe Jones out there on the street, learn about you doing this? Are you listed in the telephone book as a counsel? How do I find you?

Ms. KAUFMAN. As I said, word-of-mouth, typically. We have been in business for 15 years. We finally found a place in the Yellow Pages after working against and with Verizon for years. They

have headings and places. It is called "Social Security Representatives and Counselors."

Ms. TUBBS JONES. You represent an organization of those folks; is that a fair statement?

Mr. KAUFMAN. That is correct.

Ms. TUBBS JONES. Is there a fee charged to be a member of your organization?

Mr. KAUFMAN. Yes, $200.

Ms. TUBBS JONES. Is there some certification for your representation?

Mr. KAUFMAN. As I explained in my testimony, we are just a little over 2 years old—just under 3 years old at this point. We are working on all of those things, but——

Ms. TUBBS JONES. So, are you asking us as Members of Congress, then, to wait until you can certify your guys in some way before we take away your ability to be able to get paid directly?

Mr. KAUFMAN. We are receptive to certification as long as it is on an equal basis. If an attorney wants to——

Ms. TUBBS JONES. On an equal basis with what?

Mr. KAUFMAN. An attorney.

Ms. TUBBS JONES. You cannot be on an equal basis with an attorney, sir. That is the reality of law. I am trying to figure out how we—first you ask for parity; now you are asking for equal basis. What are you asking for? It is not the same thing.

Mr. KAUFMAN. Well, I had understood that it was interchangeable. We are asking for whatever an attorney gets as far as fee withholding; they would have to provide the same competency that we would have to provide. If a new attorney comes into the system, they should not have fee withholding if I am not able to access it as well. That is all that we are asking for.

Ms. TUBBS JONES. It is really a dilemma that my colleagues and I are put in with regard to this issue, and I am not adverse to at least walking through it. The dilemma that you really face is age-old—what attorneys supposedly have it up on non-attorney representatives. What I would suggest to you is that you continue to walk down the path of certification and whatever else there is and ultimately to give us a basis upon which to make such a claim of parity. Otherwise we are caught in a catch-22 with people out here saying, "Hey, how are we going to go after those people? Where did they come from? How do we find them?" because in reality, if we wanted as Members of Congress to legislate something away from you, it would be to legislate that you cannot do the job. I do not think anybody wants to go that far away at all, and I just think that you guys and women who do this practice need to give us a reason to put you in the position. I am personally not quite there, but I am not averse. I yield back the balance of my time, Mr. Chairman, and I appreciate it. I did not give anybody else a chance to answer because you all had all the time. I gave you parity, Mr. Kaufman, remember that.

Chairman SHAW. Mr. Pomeroy?

Mr. POMEROY. It has been a very good discussion. I commend both sides advancing their interests in very articulate ways. I would note a reservation similar to my colleague, Ms. Tubbs Jones. You are asking for parity on the one hand, and then you are indi-

cating but you are only 2 or 3 years along, and you are trying to get an organization and get some minimum certification or quality assurance dimensions. Let me pursue that just briefly. Mr. Kaufman, is there anything that would restrict me from calling Verizon now that you have got this Social Security counselor designation and saying, "Put me down there," and without any further check or anything, I am holding myself out to the public without the assurance of any type of licensure or any administrative sanction if I do something wrong or withhold the money, and mostly a prospect of not having malpractice insurance coverage?

Mr. KAUFMAN. I believe, Mr. Pomeroy, that you are an attorney?

Mr. POMEROY. I am, actually.

Mr. KAUFMAN. So, you would be able to qualify under that and have your fee withheld.

Chairman SHAW. Well, I think, Mr. Kaufman, the record will show that you are outnumbered by attorneys here.

[Laughter.]

Mr. KAUFMAN. Yes, sir.

Mr. POMEROY. The best thing I can say about my law practice is that the statute of limitations has now run; I am now out of the business. Hypothetically, let us say I am not an attorney. Let us say I am my brother-in-law. Could my brother-in-law call and get his name listed and just be ready to do this?

Mr. KAUFMAN. He probably would be able to get his name listed; you are absolutely correct, sir. However, what we are trying to do——

Mr. POMEROY. I hope no one would call my brother-in-law for this sort of thing.

[Laughter.]

Mr. KAUFMAN. What we are trying to say, sir, is that competency is the issue, and an individual who is not competent to practice in an area of specialization such as Social Security or patent law or things that just are not in the normal flow of practice—those individuals should not have their fees withheld. Whereas at the same time, individuals who are competent and have been doing it for an extended period of time—and obviously, the marketplace in this instance proves competency because if we do not get our fee approved by the Administration, we cannot collect it from the claimant, and if we do not collect it from the claimant, we cannot be in business for very long. If you are in business for 17 years or 12 years or 3 years or 5 years, and you are successful, and you are continuing to get individuals that you are representing and bringing them before the Administration at any level—and that is one of the things that we pride ourselves on is that we do it at all levels, not focusing primarily at the administrative law judge level—if you can get those individuals, and you can get paid, then you are probably successful and competent. We suggest, sir, that maybe an issue of competency or a methodology of determining competency be established so that competent representatives, be they attorneys or non-attorneys—that is the parity that we are talking about—get paid by the Administration. Those people who cannot or have not proven competency do not get the fee withheld. Therefore, you can put your name in there, but until you have proven competency, you

can work as hard as you can and try to collect the fees individually, but when you prove your competency, then the Administration can withhold your fee, and you can get it paid by the Administration.

Mr. POMEROY. Let us ask the ABA representative to respond to that because it is an interesting point.

Ms. COLEMAN. First of all, competency is one thing. Screening people to understand what is probably only second to the tax system, the most complicated system in the world—the Social Security System—is, in fact, a very difficult one. I think that Congresswoman Tubbs Jones really hit it on the head. When you have a screening process that allows you to screen and certify and educate and prove to the public—which is really part of what we are doing—it is a sale on two sides. It is a sale to the public—that is, how do you advertise who you are—and it is a sale to you guys and Social Security as to how they should be paid. It is a twofold thing. When that exists, I think you can go there. There could be a requirement of malpractice as well. It is certainly possible that Social Security could say to folks practicing in this area, "You must have malpractice insurance," and seek to do it. There are lots of ways that people do that who are not attorneys as well. So, there are ways of doing that. Again, the ABA does not sit there and hold that bar up for folks to pass under, so we do not license or certify or do those things.

Ms. FORD. Could I respond?

Mr. POMEROY. Yes, please.

Ms. FORD. Our fear from the beneficiaries' standpoint is the issue of those who are not competent and what happens to the beneficiary in terms of missing critical deadlines that may in fact have an impact on whether they are ever eligible because they could lose insured status. We try to come at this from the perspective of the beneficiaries, and we think that there are some issues like training, certification, monitoring, and enforcement that have run through this discussion that are really valid and need to be seriously look at. I think this whole discussion has pointed out the need for the GAO study for a year. I think we need to get all that on the table and look at it and figure out what makes the most sense—what needs to be done and who should do it, and how do you best protect the beneficiary in this process.

Mr. POMEROY. Thank you. I yield back, Mr. Chairman. Thank you for this excellent hearing.

Chairman SHAW. Yes, sir, I think this has been interesting, and I think it has been shown that we have a little bit of a dilemma which really boils down to the simple fact that we depend upon the States to monitor who is a lawyer and who is not. They make that determination, and each of the 50 States has their bar association with the ability to disbar or qualify or disqualify. Just because someone is an attorney does not mean they are competent in this area—I can tell you that—in fact, most attorneys do not know beans about this area, but at least it gives us a framework to work with, and that is the dilemma that we are facing. I think we have had a very open discussion of both sides of the argument. Now this Committee will have to decide how it is going to go. Thank you. The hearing is adjourned.

[Whereupon, at 11:00 a.m., the hearing was adjourned.]

[Submissions for the record follow:]

Statement of Association of Texas Professional Educators, Austin, Texas

The 100,000-member Association of Texas Professional Educators (ATPE), the largest educators' association in Texas and the largest independent educators' association in the country, is opposed to HR 743 in its current form. While ATPE supports the legislation's goal of reducing fraud and abuse in the Social Security and Supplemental Security Income programs, Section 418 of HR 743 will hurt Texas' ability to recruit and retain quality teachers for our classrooms. For that reason, HR 743 should be amended to strike Section 418.

The state of Texas faces a teacher shortage approaching 40,000 and a $10 billion budget deficit for the 2004–05 biennium. One of the major concerns of ATPE members and other educators across the state is the loss of their retirement benefits due to the Government Pension Offset (GPO) and Windfall Elimination Provision (WEP).

The GPO reduces, by two-thirds, the spousal or widow(er) Social Security benefits of those who also receive a government pension. The history behind the creation of this provision was Congress' desire to prevent "dual entitlement" of Social Security and spousal benefits or government pensions and spousal benefits. However, the practical consequence of the GPO has been a financial penalty against public educators and others who work in relatively low-paying public service careers and who are eligible for government pensions.

Most educators affected by the GPO do not learn they will be subject to the provision until they are preparing for retirement; the Social Security Administration does not inform educators that their benefits will be reduced by the GPO when the administration sends benefit projection notices to educators. For these reasons, ATPE supports HR 594, the Social Security Fairness Act of 2003, which would completely repeal the GPO and WEP.

Because of our opposition to the GPO and WEP, we cannot support Section 418 of HR 743. This section would effectively remove a provision in current law that allows Texas educators exemption from the GPO if they work a short period of time in school districts that pay into or participate in both the Teacher Retirement System and Social Security.

Enactment of Section 418 could induce hundreds of veteran teachers to retire immediately so they can receive exemption from the GPO while the opportunity still exists. This would create a financial crisis for the state and local districts as they scramble to hire substitutes and replacements for those who retire. Plus, students would suffer the loss of the benefit of experienced and skilled teaching. In this time of teacher shortage and rising accountability standards, Texas needs its most experienced teachers to remain in the classroom.

Public educators and other public servants who make the sacrifice to work in low-paying government careers should not have their retirement benefits reduced because they choose careers of service. Until legislation to repeal the GPO and WEP is enacted, the provision in current law that allows educators exemption from the GPO should be retained in its current form. For these reasons, ATPE urges the subcommittee to amend HR 743 to strike Section 418.

Statement of Frank O. Cannon, North Hollywood, California

I strongly support HR 743. However, it would be even more effective legislation, if it included a provision to keep Social Security numbers confidential. I recently had my SS # changed by the California DMV, due to an entry error made by a clerk during an application for replacement drivers license. I believe that SS numbers should only be used for the original intended purpose—for benefits tracking—and not for a convenient way to identify citizens.

I would be very interested in your viewpoint on my comment.

Statement of the Honorable Wally Herger, a Representative in Congress from the State of California

Over the past several years, Chairman Shaw and other Members of the Ways and Means Committee have worked tirelessly to improve Social Security programs that provide an important safety net for many of our nation's neediest disabled and el-

derly individuals. These changes have been designed to ensure that the right benefits go to the right people, which should guide all our efforts on behalf of the taxpayers we serve. I am pleased that the *Social Security Protection Act of 2003* continues this important work and builds so effectively on earlier Committee action.

For example, we've made sure that drug addicts and alcoholics are no longer eligible for Supplemental Security Income (SSI) cash benefits. Also, thanks to changes we have made, thousands of prisoners, fugitive felons, and probation and parole violators have been disqualified from getting SSI cash benefits that should be reserved for those in need. In the process, literally billions of dollars have been saved for taxpayers and rightful recipients.

Through such changes, we have made significant strides in reducing fraud and abuse in Social Security and SSI programs. It is noteworthy that SSI, which for years suffered from rampant abuse, was recently removed from the U.S. General Accounting Office's list of programs at high risk for fraud and abuse.

Still, there is more work to be done. For instance, prisoners, fugitive felons, and probation or parole violators still collect Social Security benefits and can even act as representative payees for disabled individuals, entrusted to handle their cash benefits for them.

The legislation being discussed today would end these destructive practices. In addition, it would make other important changes to protect Social Security programs and further prevent fraud and abuse. Doing so will save hundreds of millions of dollars more for taxpayers.

I look forward to continuing to work with Chairman Shaw and the Social Security Administration as we look for more ways to stop fraud and abuse and further improve the integrity of these important programs. The *Social Security Protection Act of 2003* builds on the successful reforms we already have made, giving the Social Security Administration new tools to more effectively combat fraud and abuse. I strongly support this legislation.

Statement of Sally Montague, Bridge City, Texas

Please help to eliminate the GPO/WEP Offset law so that the public servants in 15 states can get their OWN Social Security. I have taught in the Texas Public Schools for 32 years, but worked for other businesses before and after to get more than forty quarters paid into SS. The government wants to give me only one-third of my benefits due. Being a widowed teacher, I am having to substitute teach in the schools to pay bills. My retired teacher friends and I would appreciate it if we could just get what we paid into the Social Security System. Please help!

National Association of Disability Examiners
Madison, Wisconsin, 53707
March 11, 2003

The Honorable E. Clay Shaw, Jr.
Chairman
Subcommittee on Social Security
1102 LHOB
Washington, DC 20515

Members of the National Association of Disability Examiners (NADE) have reviewed with interest the testimony presented at the February 27, 2003 hearing on H.R. 743, "The Social Security Protection Act of 2003". We would like to offer our support for that legislation.

NADE strongly supports the provision to amend existing law to provide a criminal penalty for corrupt or forcible interference with SSA employees acting in their official capacity. We appreciate the language in this bill that defines an employee to include state Disability Determination Service (DDS) employees, as well as SSA employees and contractors. We agree with the Inspector General's statement that, "On a daily basis, SSA employees interact with members of the public who are undergoing times of great stress, such as after the death or disabling injury of a loved one. This exposes our employees to an increased risk of danger." This seems to be increasingly true and additional tools, such as those provided in H.R. 743, are needed to protect employees.

In addition, while we believe that most Representative Payees act in the best interest of the beneficiary they serve, additional safeguards are needed to protect this

most vulnerable population. We support those provisions of H.R. 743 which would increase oversight of Representative Payees. In order for this oversight to be effectively conducted, however, adequate resources must be provided. Periodic onsite reviews, for example, can be very effective monitoring tools. They are also more labor intensive. As with any legislatively mandated initiative, appropriate resources must be allocated to enable SSA to conduct these reviews on a timely and ongoing basis.

Thank you providing this opportunity to comment.

Sincerely,

Theresa B. Klubertanz
President

Statement of Witold Skwierczynski, American Federation of Government Employees, Social Security General Committee, and National Council of Social Security Administration Field Operations Locals

Chairman Shaw, Ranking Member Matsui, and members of the Social Security Subcommittee, I respectfully submit this statement regarding H.R. 743 "The Social Security Protection Act of 2003". As a representative of AFGE Social Security General Committee and President of the National Council of SSA Field Operations Locals, I speak on behalf of approximately 50,000 Social Security Administration (SSA) employees in over 1300 facilities. These employees work in Field Offices, Offices of Hearings & Appeals, Program Service Centers, Teleservice Centers, Regional Offices of Quality Assurance, and other facilities throughout the country where retirement and disability benefit applications and appeal requests are received, processed, and reviewed.

Ticket to Work Enhancements **(Section 202 and Title IV—Miscellaneous and Technical Amendments; Subtitle A—Relating to Ticket to Work and Work Incentives Improvement Act of 1999)**

As members of this Subcommittee are well aware, Congress unanimously passed the Ticket to Work and Work Incentives Improvement Act, including Section 121 calling for a corps of accessible and responsive trained work incentives specialists within SSA. This position is the key to delivering service to the public in the beleaguered and complex area of work incentives. The success of TWWIIA is dependent on implementation of this legislatively mandated position as SSA's corps of trained, *accessible* and *responsive* work incentives specialists.

SSA created the Employment Support Representative (ESR) position as this work incentives specialist. The pilot of 32 ESRs that tested models of how best to service the disabled community concluded in August 2001. AFGE has testified on many prior occasions about the success of the ESR pilot. AFGE has advocated for the implementation of the Employment Support Representative (ESR) in SSA's field offices throughout the country since the enactment of TWWIIA. SSA's own pilot of the ESR position recommended that ESRs be established, as soon as feasible, in every SSA field office. The pilot results concluded that a key success factor for the Ticket to Work effort was national implementation of the ESR.

There are numerous undisputed reasons the ESR is a key element of enabling beneficiaries to successfully understand and navigate work incentives and, consequently, is a key factor in a successful transition to work.

The ESRs were able to develop a single point of contact with beneficiaries, monitor their work progress in a timely and supportive manner, and process work reports and work-issue Continuing Disability Reviews (CDRs) timely. This resulted in reducing large benefit overpayments and a reduction in anxiety for the beneficiary. ESRs gave examples of customers who, with ESR guidance, were able to reliably predict the outcome of their work activity and viewed benefit cessation as a mark of achievement.

The significance of the single point of contact within SSA that the ESR provides cannot be overemphasized. Currently, little coordination exists in offices between the work incentives in SSI and SSDI. This confuses beneficiaries, and often results in discouraging them from working, or from not effectively utilizing all available work incentives. The ESR is a specialist in both SSDI and SSI work incentives, processes trial work periods, completes work issue continuing disability reviews, promotes Plans to Achieve Self Support, posts wages to SSI records, and explains Medicare and Medicaid entitlements. Furthermore, the ESR, as a specialist in work issues for both programs, recognizes and develops timely entitlement to SSDI benefits on the part of the SSI recipient.

Many disabled individuals with mental impairments are those who would benefit from a return to work program. Work activity is a key element in the therapeutic treatment of mental conditions. The nature of work activity on the part of these individuals characteristically includes frequent work attempts, many different employers, and work under special conditions. These beneficiaries especially require the consistency and expertise that a single point of contact within SSA provides.

The troublesome treatment in SSA of work reports made by disabled beneficiaries is the subject of Section 202 of H.R. 743, requiring SSA to provide a receipt each time a beneficiary reports a change in work activity. AFGE has previously testified about enormous overpayments incurred by beneficiaries, who have timely reported a return to work to SSA, yet the Agency failed to process such a report. Consequently, beneficiaries are confused about their reporting responsibilities. The requirement to issue a receipt amplifies the need to have a dedicated person within SSA acting on the reports in a timely and consistent manner. The ESR handles work reports effectively and promptly. The ESR controls and monitors the case on a continuing basis from the initial return to work by the beneficiary.

Overpayments on backlogged cases can reach hundreds of thousands of dollars for an office, and employees have encountered overpayments on individual records reaching $100,000! Unfortunately, the Union is unaware of any statistical data regarding the numbers of work CDRs processed, the number pending, and the cessation rate due to work activity. SSA should be required to maintain and produce such data. In processing the medical issue CDRs, SSA contends that for every dollar spent, seven to twelve dollars in benefits are saved. The cost savings are greater for "work" CDRs since the cost of medical decision-making is eliminated, and the cessation rate on work issues is higher. AFGE estimates cost savings approaching $30 to the Trust Fund, for every dollar spent. Investing in the ESR position is a perfect example of applying stewardship responsibilities effectively and investing resources in a high cost-benefit manner. Full ESR implementation should have a significantly positive impact on the Trust Fund balance and consequently extend the solvency of the Fund.

Unfortunately, SSA does not plan to implement the ESR position, due to shortages of staff and resources in field offices. SSA does not plan to ask for additional funding earmarked for ESR implementation. SSA's latest alternative strategy is apparently a combination of training all employees again on work incentives, providing "systems enhancements" and designating additional duties called "Work Incentives Liaison (WIL)" or " Work Incentives Specialist (WIS)" as collateral functions for existing Claims Representatives, Technical Experts, Management Support Specialists, Public Affairs Specialists, and other management personnel.

AFGE conducted a Work Incentives Liaison (WIL) survey in August 2001. The survey results indicated that most WILs had insufficient time to address their duties, that they received inadequate training, and were provided with no other workload adjustment to enable them to process their additional work incentives assignments. Many employees did not know who the WIL was in their offices.

AFGE conducted an updated WIL survey in January 2003 in order to have a current picture of the WIL situation. This was done to assess the feasibility of assigning the duties of work incentives specialists to a myriad of management and bargaining unit positions.

Nationally, the survey results were incredibly consistent in all the regions. Less than 10% of the WILs reported they spend more than 25% of their time on WIL duties. Some noted they had spent no time, had no WIL duties, and a disturbing number had received no WIL training. Sixty percent of the more than 200 respondents said they had received no specialized training. Most of the WILs indicated their WIL duties basically consisted of serving as a point referral person for office staff and outside groups. Outreach functions, such as organizing workshops and conferences and coordinating or leading outreach activities for beneficiaries, were indicated in one-third of the respondents. Many respondents indicated they would like to have the opportunity and time to conduct this type of outreach.

Ninety-six percent of the respondents said they had no workload adjustments to accommodate their WIL duties. They expressed frustrations with this. The following are representative comments from WILs:

- "The broad possibilities of the WIL are only slightly worked in our office."
- "All I do is answer phone calls averaging one every 3–4 months."
- "My manager does not expect me to perform all the WIL duties because manpower-wise we cannot afford it."'I would love to present workshops, but I don't have time."
- "I am not given time to research material needed to further my knowledge of WIL duties."

- "I do not have the time or the training to adequately perform WIL duties. In essence, I am a figurehead solely for management to say that there is someone with that title."
- "No training. No assignments. No idea what duties might be, if any, ever."

WILs were asked to provide numbers, if known, of pending work CDR cases in their offices. Most were not responsible for processing the work CDRs. Many did not know the numbers pending. It appeared the work CDRs were disbursed among Claims representatives in many offices. Numbers reported varied widely, as high as 200, 350, 400, 600, and 1000 were reported as pending work CDRs.

There were some comments from WILs about work CDR cases:

- "Someone needs to get a clue about how time consuming work CDRs are. Frequent requests for info going back 10–15 years."
- "Work CDRs are some of the most labor-intensive and technically demanding cases this Agency has. Just think about subsidies, IRWEs, self employment SGA, etc., . . . trying to uphold integrity in rules and regulations while making a fair and timely decision for each claimant."

This survey clearly demonstrated that the approach by the agency of assigning work incentives duties to many existing positions has relegated work incentives to the back burner and not fulfilled the legislative mandate requiring trained accessible and responsive work incentives specialists within SSA.

In contrast, following are views submitted by ESRs as to why this position is so successful with beneficiaries, your constituents, and with organizations:

- "Congress should be concerned with the person being treated fairly and getting the full benefit of the law, not just how many work CDR's were cleared for an office. Cases laid for 2–3 years and were never worked and then the claimant had a tremendous overpayment to pay back. The whole point in the Ticket legislation calling for this position was to correct what was going on in the offices."
- "The other part of our job, which has been the outreach, has been an invaluable service to the public. I have provided training in most offices in my state on the MRTW and Work CDRs. Still, most of the CRs, SRs and even TEs in the field do not know work CDRs. They also were stupefied by the complexity of the MRTW. It's not that they can't learn it, it is that they don't have time for it!"
- "These relationships, both with the claimants and beneficiaries, and with the community, are essential if we are to be serious in our endeavor to help individuals with disabilities to work. The CRs, though most of them are excellent servers of the public, cannot be dedicated to only the task of work issues. There are just too many other issues to be dealt with. It was necessary to have the "dedicated" language in the legislation because an effort like this merited one on one and on going attention. That was the problem with the WILs; they were not dedicated and they could not concentrate on the problem of work issues. This is the reason we have so many overpayments. However, if you dedicate someone to be the point person for these issues, then you curb these negative effects."
- "The ESR acts as an ombudsman to the community, resolving public relations problems, solving complex work incentive issues, teaming with community leaders to form best practices in addressing vocational needs in their area, and acts as an expert resource for field office employees. There is no computer program that can "take over" for these duties."
- "Additionally the outreach fosters better relationships with organizations. This eliminates the fear factor and fosters faster reporting, which also minimizes overpayments. Overpayments are a major disincentive to keeping the disabled in the workforce. When claimants receive an overpayment letter the most likely course of action is for the person to stop working. This is particularly true when the nature of the impairment is mental rather than physical. The added stress of the overpayment very frequently is enough to trigger a relapse."

The following are some opinions expressed by disability advocates regarding SSA's ESR position:

- "The ESR position is particularly helpful in concurrent cases. Because (ESR) is knowledgeable in both programs, he can figure out a complex situation or problem and the beneficiary gets immediate resolution."

- "With the onset of the Benefits Planning, Assistance and Outreach (BPAO) projects, the need for more ESRs is clear. Our goal is to reach as many SSI recipients and SSDI beneficiaries as possible, and to provide information which will allow them to make an informed choice about employment. Our efforts would be greatly enhanced by the addition of an ESR for every resident."
- "Not all disabled are able to work, but for those who can, an ESR should be available in every SSA Office to help eligible individuals through a sometimes intimidating process."
- "By giving beneficiaries and benefits planners access to an ESR, the Social Security Administration will improve communication between the local offices and the communities they serve, resulting in better services, fewer overpayments, and more time for beneficiaries with disabilities to experience the joy of working."

AFGE believes an Agency decision not to implement the ESR would be a tragic mistake when the ESR has proven to be a winner for all parties. For SSA, it shows superb service to the public, provides stewardship in reducing benefits and overpayments, and results in SSA compliance with the legislative mandate for work incentive specialists within SSA. For the public, it provides stellar service, a single point of contact, and assists beneficiaries in leaving the disability rolls. For the taxpayer, it saves money and prolongs Trust Fund solvency.

In the Union's view, the only way to ensure that Ticket to Work is successful is for Congress to mandate the rollout of the ESR position and to fully fund the ESR. AFGE has submitted a proposed amendment to HR 743, which is attached, that would ensure that the ESR is fully funded within SSA. Additionally, legislation should also require SSA to report on continuance and cessation rates of work issue CDRs, overpayments due to work cessations, and benefits saved the Trust Fund by work cessations.

Thank you for the opportunity to submit this statement.

Statement of National Education Association

On behalf of the National Education Association's (NEA) 2.7 million members, we would like to thank you for the opportunity to submit our comments onthe Social Security Protection Act (H.R. 743). Our comments will focus solely on Section 418 of the Act, which would require a public employee to work a minimum of 60-months in a job covered by Social Security in order to avoid application of the Government Pension Offset (GPO).

NEA strongly supports complete repeal of the Government Pension Offset and the Windfall Elimination Provision (WEP), which unfairly reduce the Social Security and Social Security survivor benefits certain public employees may receive. We oppose efforts, such as that in Section 418 of the proposed Social Security Protection Act, that would close the so-called "loophole" employed by some public employees in order to avoid the devastating impacts of the GPO. Instead, we urge the Subcommittee, and the entire Congress, to address the underlying problem, by repealing the GPO and WEP. Although Section 418 attempts only to close the "loophole" with respect to the GPO, we will address both the GPO and WEP in our testimony.

The Government Pension Offset: Background

The original Social Security system, established in 1935, excluded state and local government employees from coverage. In the 1960s, however, state and local employees were given the opportunity to elect to participate in the Social Security system. As a result, public sector employees in 36 states opted to enroll in Social Security in the 1960s and 1970s.

In 1977, Congress enacted legislation requiring a dollar-for-dollar reduction of Social Security spousal benefits to public employees and retired public employees receiving earned benefits from a federal, state, or local retirement system. This offset impacted educators in 15 states as well as other public servants—including police, firefighters, and federal workers across the country.

In response to significant calls for repeal of this dollar-for-dollar reduction, Congress and the President agreed in 1983 to limit the spousal benefits reduction to two-thirds of a public employee's retirement system benefits. This remedial step, however, falls well short of addressing the continuing devastating impact of the GPO.

The Windfall Elimination Provision: Background

The original Social Security formula was intended to help low-paid workers by replacing a higher proportion of their earnings than for workers with higher earnings. However, the formula could not differentiate between those who worked in low-paid jobs throughout their careers and those who appeared to have been low paid because they worked many years in jobs not covered by Social Security. Congress enacted the WEP in 1983, intending to remove this advantage. Yet, instead of protecting low-earning retirees, the WEP has unfairly impacted lower-paid retirees such as educators.

The Impact of the GPO on Public Employees

The GPO penalizes individuals who have dedicated their lives to public service, often at substantial financial sacrifice. Nationwide, more than one-third of teachers and education employees, and more than one-fifth of other public employees, are not covered by Social Security, and are, therefore, subject to the Government Pension Offset. These individuals lose benefits earned by their spouses—benefits they counted on in planning their retirement.

The Government Pension Offset (GPO) reduces public employees' Social Security spousal or survivor benefits by two-thirds of their public pension. Estimates indicate that 9 out of 10 public employees affected by the GPO lose their *entire* spousal benefit, even though their deceased spouse paid Social Security taxes for many years. Moreover, these estimates do not include those public employees or retirees who never applied for spousal benefits because they were informed they were ineligible. The offset has the harshest impact on those who can least afford the loss: lower-income women. Ironically, those impacted have less money to spend in their local economy, and sometimes have to turn to expensive government programs like food stamps to make ends meet.

For example:

- Stella, and NEA member, worked for over 20 years in the Colorado public school system as a teacher's aide. She receives a monthly pension of $637. Her husband worked in the private sector, paying into Social Security for 50 years. After her husband's death, Stella expected to receive $520 a month in survivor benefits. However, the GPO reduced Stella's survivor benefits by ⅔ of her public pension. As a result, Stella only receives $96 a month in Social Security. Her total monthly income is $733, instead of the $1157 she would have gotten if not for the GPO.
- NEA member Martha began working as a teacher in Texas in 1978. Martha's husband worked in the private sector and paid into Social Security. Based on his earnings, Martha should have been eligible for $970 in widow's benefits. However, Martha has also been told that, should she outlive her spouse, her widow's benefits would be reduced by ⅔ of her public pension, or by $949 a month. Therefore, her $970 benefit would be reduced to only $21 a month.

The Impact of the WEP on Public Employees

The Windfall Elimination Provision (WEP) reduces the earned Social Security benefits of an individual who also receives a public pension from a job not covered by Social Security. While the amount of reduction depends on when the person retires and how many years of earnings he or she has accumulated, many public employees can lose up to 60 percent of the Social Security benefits they *earned* in other jobs.

- Debbie, an NEA member in Georgia, worked for several years in the private sector and then for 14 years as a school bus driver. She expected to receive a monthly Social Security benefit of $600. However, Debbie's actual Social Security benefit is only $61 a month because of the WEP—a loss of over $500. Debbie fears having to turn to food stamps and other government programs to survive.
- NEA member Bob worked for many years in Oklahoma in jobs covered by Social Security before moving to California and becoming a teacher. He was informed by the Social Security Administration that he would receive approximately $360 a month based on his earlier earnings in the private sector. However, when he retired, Bob discovered his Social Security benefit was reduced to $172 a month because of the WEP. Bob calculates he loses $2196 a year, because of the WEP and has already lost nearly $11,000 in total.

The National Impact of the GPO and WEP

The GPO and WEP have an impact far beyond those states in which public employees like educators are not covered by Social Security. Because people move from state to state, there are affected individuals everywhere. The number of people impacted across the country is growing every day as more and more people reach retirement age.

Perhaps most alarming, the GPO and WEP are impacting the recruitment of quality teachers to meet urgent national shortages. Record enrollments in public schools and the projected retirements of thousands of veteran teachers are driving an urgent need for teacher recruitment. Estimates for the number of new teachers needed range from 2.2 to 2.7 million by 2009.

At the same time that policymakers are encouraging experienced people to change careers and enter the teaching profession, individuals who have worked in other careers are less likely to want to become teachers if doing so will mean a loss of Social Security benefits they have earned. Some states seeking to entice retired teachers to return to the classroom have found them reluctant to return to teaching because of the impact of the GPO and WEP. In addition, currentteachers are increasingly likely to leave the profession to reduce the penalty they will incur upon retirement, and students are likely to choose other course of study and avoid the teaching profession.

The GPO and WEP also impact other critical public services fields, including police and firefighters. Our nation can ill-afford to allow the very real fear of poverty in retirement to force talented, dedicated individuals out of these professions.

The So-Called "Loophole"

Educators in some states have sought to avoid the unfair and often devastating impacts of the GPO and WEP by transferring from non-Social Security school districts to school districts in which educators are covered by Social Security. By retiring from a Social Security district, these educators are then able to collect the Social Security benefits they or their spouse have earned.

The rationale behind these educators' actions is clear and understandable. Educators who have served in the public schools their whole lives, and who have counted on spousal benefits when planning their retirement, are often shocked and frightened to learn these benefits will not be there for them. Similarly, educators who paid into Social Security in previous careers are also surprised to learn that they cannot collect from the system they spent years paying into. Individuals facing retirement on substantially less income than they anticipated cannot be faulted for attempting to salvage their retirement benefits.

Given the reality of the impact of the GPO and WEP on public employees, it is clear that the underlying GPO and WEP, not the "loophole," must be fixed.

Recommendations

NEA urges Congress to respect, not penalize, public service. We urge you to delete Section 418 of the proposed legislation as you move the rest of the bill forward. Instead of working to close a "loophole" that allows dedicated educators to avoid the harsh impacts of the GPO, Congress should focus its efforts on addressing the underlying problem.

Representatives McKeon (R–CA) and Berman (D–CA) have introduced the Social Security Fairness Act of 2003 (H.R. 594). This bipartisan legislation, which already has over 100 cosponsors, would eliminate the GPO and WEP, thereby allowing public employees, like all other employees, to collect the benefits they earned and need. The McKeon-Berman legislation garnered the bipartisan support of over 180 Members of Congress last year.

NEA urges the Subcommittee, and the entire House of Representatives, to take immediate steps toward passage of the McKeon-Berman bill. Passage of this legislation would restore equity to public employees, would prevent public servants from facing poverty in retirement, and would eliminate the need for the so-called "loophole" addressed by Section 418 of the legislation before the Subcommittee today.

We thank you for your consideration of these comments.

Statement of Gerald A. McIntyre, National Senior Citizens Law Center, Los Angeles, California

In over thirty years of advocacy on behalf of America's low income elders and people with disabilities, the National Senior Citizens Law Center (NSCLC) has long

recognized the pivotal role played by Social Security and SSI in enabling older Americans to live independently with a modicum of dignity. We are concerned that § 203(a)(4) of the bill expands a significant hole in the Social Security and SSI safety net and, for that reason, must oppose passage of the bill as currently written.

We recognize that the bill contains provisions which are beneficial to America's elders and people with disabilities. In particular, we applaud the inclusion of the provisions of Title I of the bill, designed to protect vulnerable beneficiaries from misuse of funds by representative payees. However, the benefits of Title I will be significantly outweighed by the harm which will ensue from § 203(a)(4) of the bill which will extend to Title II, the restriction on receipt of benefits for those who are "fleeing to avoid prosecution, or custody or confinement . . . for . . . a felony" and those who are "violating a condition of probation or parole." If the experience of the last couple of years with the parallel provision in SSI, 42 U.S.C. § 1382(e)(4), is any guide, this provision is likely to result in the loss of benefits for hundreds of thousands of the most vulnerable beneficiaries and will serve no useful law enforcement purpose.

NSCLC has no quarrel with § 203(a)(5) of the bill, which authorizes the Commissioner, with appropriate safeguards, to release information to law enforcement authorities with respect to the address, Social Security number and photograph of individual beneficiaries. We agree that someone who has been accused of a crime should not be able to hide under the confidentiality provisions of the Social Security Act to elude law enforcement. It is the analogous provision for reporting to law enforcement agencies which is responsible for virtually all of the apprehensions reported in the SSI program, not the provision which renders individuals ineligible for benefits.

Section 203(a)(4) will penalize only those individuals law enforcement agencies have decided not to pursue. It is important to recognize that the Social Security Administration (SSA), in its implementation of the parallel provision governing SSI benefits, does not even notify the SSI recipient that benefits will be suspended until after it has notified the appropriate law enforcement agency of the individual's whereabouts and given the law enforcement agency ample opportunity (60 days) to take the individual into custody.[1] Thus, it is only those who law enforcement has chosen not to pursue, for whatever reason, who will be penalized. Ironically, those who law enforcement decides to apprehend and who presumably are wanted for more serious offenses will not be subject to the loss of benefits by this bill because they will either 1) be incarcerated and thus not eligible for benefits under 42 U.S.C. § 402(x) or 2) they will be released on bail or on their own recognizance and will then be eligible for full benefits because the warrant will have been vacated. Thus, only those whose offenses are too minor or too remote in time are likely to suffer the loss of benefits. This is borne out by the requests for assistance on this issue that NSCLC has received and by the Los Angeles County Public Defender in responding to requests from SSI recipients who had lost their benefits. In an informal survey done in one office of the Los Angeles County Public Defender last year of individuals who contacted them because they had lost their SSI benefits as a result of 42 U.S.C. § 1382(e)(4), 40 of 61 warrants were more than ten years old and a majority of the defendants had been diagnosed with either a serious mental illness or cognitive impairment. In one case the warrant was 38 years old and in another the SSI recipient was 91 years old. Fortunately, the experience of the Los Angeles County Public Defender is that they are able to get most of these warrants vacated, and benefits are thus presumably restored, although after a significant period of deprivation. Unfortunately, in other jurisdictions it is often more difficult for an individual to obtain assistance in getting the warrant vacated. Since most of the cases involve warrants from a state other than the one in which the individual resides,[2] it is close to impossible for an individual of limited means to return to the jurisdiction from which the warrant was issued and remain there until the matter is disposed of.

While the number of people affected by the SSI "fugitive" provision was relatively small in the first several years of the statute, the number of people losing benefits in the last couple of years has increased dramatically. More SSI recipients lost their benefits because of this provision in FY 2001 than in the previous 4 years com-

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[1] GAO (U.S. General Accounting Office), GAO–02–716, *Welfare Reform: Implementation of Fugitive Felon Provisions Should Be Strengthened* 35, Figure 2: SSA's Process for Identifying and Terminating SSI Benefits to Fugitive Felons and Providing Information about Them to Law Enforcement Agencies.

[2] SSA., Office of Inspector Gen., Audit Report A–01–98–61013, *Identification of Fugitives Receiving Supplemental Security Income Payments* 10 (2000).

bined.[3] By September 30, 2001, SSA reports that 45,071 people had been determined ineligible as "fugitive felons."[4] By June 30, 2002, SSA reports that the number had increased to 77,933, an increase of 32,862 over a nine month period.[5] At this pace, the number of individuals who have lost SSI benefits is certainly over 100,000 by now. Extension of this penalty provision to the much larger Title II program would be sure to impact a far greater number of older Americans and people with disabilities. The number of vulnerable individuals who will be subjected to needless deprivation by § 203(a)(4) of this bill will far exceed the number who will be saved from loss of benefits by the representative payee provisions of Title I of the bill.

We strongly believe that § 203(a)(4) serves no useful purpose and should be deleted from the bill because of the significant harm it will bring to some of our most vulnerable citizens. However, if this is not possible, consideration should be given to ameliorating some of its harsher effects. One way to limit the harm done by the statute would be to limit the sanction to situations where the underlying offense is a crime of violence. An additional possibility might be to not apply the sanction if the warrant is more than five years old since a successful prosecution is much less likely in such situations. Also, it is often more difficult to obtain access to older police and court records since they are likely to be archived. Another option might be to restrict the application of the statute to probation or parole violators to those instances in which the underlying offense is a felony.

Finally, it is worth noting that one area in which more problems might be expected when the "fugitive" provisions are extended to Title II, is cases of mistaken identity. A small number of such cases have been brought to our attention in the context of SSI. However, cases of mistaken identity are likely to be much more common among Title II beneficiaries because of the increasing prevalence of identity theft. This is likely to have a greater impact on those receiving retirement benefits since, by and large, they are a more attractive group of victims for this particular type of crime since they are likely to have better credit ratings than most SSI recipients.

In sum, we believe that § 203(a)(4) is by far the most important part of this bill. It is the one section that will have the most far reaching impact on America's most vulnerable elders and people with disabilities. It should be deleted from the bill. If this provision remains in the bill, the bill should not be enacted into law.

We are attaching as an Appendix to this statement, a few sample cases to demonstrate how the analogous "fugitive" provision in the SSI program affects SSI recipients.

APPENDIX

"FUGITIVE FELON" EXAMPLES

1. **Flight to a Nursing Home**—In April, 1978, J.B. of Macon, Georgia, was sent to Seattle, WA as part of his job as a telephone installer/repairer. After he settled into his motel his employer notified him that the job fell through and that he would not receive the advance pay he had been told he would receive. He had no money to pay the motel bill and the innkeeper seized all his belongings when he left to go to his next assignment in Portland, OR. As far as he was concerned, that was the end of the unpleasant episode. What he did not realize was that in August, 1978, long after he left Seattle, the motel owner filed criminal charges for fraud against an innkeeper for his failure to pay the bill and that in August, 1978 a Seattle Justice Court issued a warrant for his failure to appear on the charge. He was not aware of the warrant or the criminal charges filed against him until October, 2001, by which time he was residing in a nursing home. At that time, both his SSI and Social Security[6] benefits were terminated because he was allegedly fleeing to avoid prosecution. He was also sent an overpayment notice for all benefits received since October, 1998. In January, 2002, he obtained representation from a legal services office, which, in turn, contacted the Office of the King County Public Defender. The public defender brought the matter to the attention of the court in Seattle,

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[3] GAO–02–716, *supra,* 15, Table 3.

[4] *Id.*

[5] SSA, Office of Inspector Gen., Fact Sheet, Fugitive Felon Program (June, 2002), available at www.ssa.gov/oig/executive_operations/factsheet3.htm.

[6] Title II benefits are not covered by the current fugitive felon provisions and those benefits were soon restored after a legal services office in Georgia intervened.

which then dismissed the charges in February, 2002. SSA then agreed to restore benefits prospectively, but refused to concede entitlement to benefits for the period before dismissal of the charges and continued to pursue the overpayment. In September, 2002, an ALJ reversed the determination finding that J.B. was not notified of the criminal case and found there was justification for his conduct in leaving Washington.

2. **Flight to Care for an Ailing Grandfather—**M.G. of Richmond, CA is a California native who receives SSI on the basis of the combined effects of a developmental disability and mental illness. In 1981, at age 14 she moved to Virginia with her mother who was transferred there by the U.S. Navy. She remained there until June, 1990 when she moved back to California with her mother who needed to return to care for M.G.'s ailing 86 year old grandfather, whose wife had just died. However, in May, 1990, before she left Virginia, she was charged with unauthorized use of a motor vehicle. After her arrest, there was a fire in the courthouse resulting in the courthouse being closed because of asbestos contamination on the day later in May when she was scheduled to appear. She then moved to California in June and states that she did not receive notice of a new court date. In December, 2001 she was notified that her benefits would be terminated. She requested reconsideration by means of a formal conference at which she would be able to present witnesses, cross-examine adverse witnesses and see any documentary evidence the agency has. However, she was denied her right to a conference. Instead SSA just sent her a Notice of Reconsideration affirming the original decision without stating any reasons. Her benefits were then discontinued in February, 2002. On April 26, 2002 an ALJ reversed the agency's decision to terminate benefits, stating that he found the facts in her case to be "compelling" and noting that she had a reason for returning to California and was now experiencing "considerable hardship." Nevertheless the Appeals Council took the case on own motion review and in July, 2002 reversed the ALJ decision. The Appeals Council cited undisclosed "Social Security Administration guidelines" for the proposition that whenever there is an active felony warrant, "the claimant is assumed to be a fugitive felon." M.G. has now been without benefits for a full year and has had to rely on the kindness of members of her church. She has appealed her case to the U.S. District Court, but a determination is not likely before summer. M.G. has no money to be able to return to Virginia to defend the charges.
3. **Mistaken Identity—**J.G. is a severely ill AIDS patient in San Diego, CA who is unable to leave his home because of severe respiratory problems. He has an extremely common name which also happens to be the name of a serial offender in Los Angeles who was born on the same day he was. J.G. is a Mexican immigrant who has never had criminal charges filed against him either in Mexico or in the United States. He has also never been to Los Angeles which is where all the offenses have occurred. When his benefits were terminated, it was ascertained that all of the offenses were alleged to have taken place in Los Angeles and that the defendant, while having the same name and birth date, had a different Social Security number. Nevertheless, he was told that the warrant would have to be satisfied for benefits to be restored. Fortunately for him, the police in Los Angeles did catch up with the other J.G. and put him behind bars for a period, thus causing the warrant to be recalled. SSA then restored benefits to J.G. in San Diego. However, J.G. in Los Angeles is apparently on the loose again and J.G.'s benefits in San Diego have once again been terminated.
4. **Mistaken Identity—**G.A., a Mexican-American woman from California, had her SSI benefits terminated based on a warrant from Massachusetts although she had never been to the East Coast. With the assistance of a public defender working with a legal services lawyer in California, benefits were restored when it was established that the defendant in Massachusetts, who had the same name, was Puerto Rican and was in fact a different woman.
5. **Shoplifting—**J.G., a Connecticut resident, returned to his native Georgia for his mother's funeral over ten years ago. At the time he was drug addict and his life was a shambles. He had no money and nothing to eat. He was charged with shoplifting. However, he was unable to stay to respond to the charges because he had no place to stay and no money to live on. Instead he returned to Connecticut. In the intervening decade he has become a different person and has kicked his drug habit. However, he has AIDS and

is unable to work and was receiving SSI because of his AIDS diagnosis. His SSI benefits were terminated last year because of the pending Georgia warrant. He is waiting for an ALJ hearing and still has no benefits. He is financially unable to return to Georgia to defend the charges.

6. **Hazy Memories of a Visit to New York—**L.G. is a Texas resident who had her benefits terminated in early 2002 based on a warrant from New York City. She clearly recalled visiting New York over twenty years ago but her serious mental limitations made her a very poor historian and she was unable to recall anything about the alleged incident. However, a dogged pro bono attorney in a law firm in Houston enlisted the assistance of a Legal Aid Society lawyer in New York and they discovered that the underlying charge from over twenty years ago was for fourth degree larceny involving an undisclosed item valued at $7.00 and that the charge was not a felony. Thus it clearly does not fall within the purview of the statute. However, that did not end the matter. The attorney representing L.G. reports that it took over a month of persistent haggling to finally restore benefits in November, 2002.

Many attorneys and other advocates report similar experiences with clients whose severe impairments prevent them from providing an adequate account of the circumstances surrounding the warrant.

7. **No knowledge of charges—**C.C. is a Cambodian refugee who arrived in the United States in 1981 and settled in Allston, Massachusetts. He remained there until 1985 when he and his family moved to San Francisco. Their departure 18 years ago was a case of flight to escape the cold winters of the Northeast. He began receiving SSI in 1989 and now resides in Antioch, CA, outside of San Francisco. He was unaware of any criminal charges until he received a notice dated June 26, 2002 telling him his benefits would be terminated because he was a fugitive felon. Benefits were terminated on July 1 without any opportunity for reconsideration.

With the assistance of both a public defender and a legal services lawyer in Massachusetts, documentation was obtained from the Brighton Municipal Court where the charges were filed. The court records show that the charges were for welfare fraud and were filed on September 1, 1988, three years after C.C. left Massachusetts. The reason given for issuance of the warrant was that the prosecutor had indicated that the defendant "may not appear unless arrested."

C.C. requested reconsideration of SSA's decision in July. SSA promptly responded with a notice stating "we are not reconsidering your claim since the principal issue is that we received an Office of Investigations notification that you are a fugitive felon." The notice goes no to state "you will need to clear up this warrant before SSI benefits are reinstated." He has had no benefits since June of last year and has no funds to return to Massachusetts to respond to the charges. He is currently awaiting an ALJ hearing.

8. **No criminal charges—**C.B. is a Los Angeles resident who lost his SSI benefits because he is alleged to be a "fugitive felon" on the basis of a warrant in a child support case in Chicopee, Massachusetts. Since child support proceedings are not criminal proceedings, they clearly do not fall within the statute and the matter should be resolved.
9. **Contract dispute—**J.G. is a 69 year old man currently residing in California who lost his SSI benefits in September, 2001 because he was determined to be a fugitive felon. He had been receiving benefits on the basis of disability since 1996. He lived in Nebraska in 1992 and that year entered into a contract to do some carpentry work for which he was given a $2,000 advance. In the fall of that same year he moved to Colorado prior to completing the work. However, before he left Nebraska, he met with the property owner and a friend of his who agreed to complete the work. The three of them agreed to the terms and he paid the friend the $2,000 advance and left for Colorado. In May, 1997 the owner of the property wrote to him in Colorado alleging that the work was never completed and that J.G. owed him $2,000. J.G. agreed to pay $75 per month with the understanding that criminal charges would not be filed. He was only able to continue this for a few months on his limited SSI income. It was only when his SSI benefits were stopped in 2001 that he learned that criminal charges that had been filed against him in Nebraska on Dec. 29, 1993, more than a year after he left the state.

After spending a year without SSI benefits, J.G. received an ALJ decision restoring his benefits in September, 2002. The ALJ noted that J.G. was unaware of the criminal charges, that the County Attorney's office in Nebraska had declined extradition and that J.G. could not afford to travel to Nebraska to defend the charges.

10. **Flight to a Nursing Home—**L.B. has had three heart attacks and is another nursing home resident in Macon, Georgia. She was threatened with termination of benefits in July, 2001 for failure to appear on a charge of filing a false instrument in Elmira, NY that dated to 1979. Prompt coordinated action by a legal services lawyer in Georgia, and the public defender and the District Attorney in Elmira resulted in a judge promptly dismissing the charges in the interests of justice in August, 2001 and benefits continuing.
11. **Flight to a Nursing Home—**In yet another case of flight to a nursing home, also in Macon, Georgia, M.F. had been accused of fleeing to avoid prosecution for an eleven year old burglary charge in Texas. A legal services advocate in Georgia obtained verification that the charges in Texas had been dismissed and benefits were promptly restored.

Statement of Barbara Padgett, Iowa Park, Texas

As a public school teacher in Texas, I am distraught that your committee continues to ignore the many thousands of Federal, State and local government workers such as myself in our plea to repeal the Government Pension Offset provision of Social Security law. I find it **even more disturbing** that you will soon further try close any possibility of myself and many of my fellow Texas teachers of being able to receive spousal S.S. because of the offset penalty. Your provision to lengthen the time of working for a system that pays Social Security to at least 5 years is a very unfair, discriminatory proposal. It would be unfair to change S.S. law now because it would single out teachers such as myself who are retiring and prevent us from receiving the same benefits that are now being enjoyed by those who who have preceded us in retirement. I am not asking for full benefits that are received by those who have worked in professions where social security was paid. I do however feel that I should be able to receive spousal S.S. benefits based on my husbands S.S. benefits. Why should I be denied benefits solely because I chose to be productive and work outside the home when a spouse who never worked in a paying job will be able to receive spousal and widows benefits without any penalty whatsoever? Sure, I will have some retirement benefits based on my years of teaching, but it will scarcely be enough to meet my basic needs in my retirement years. In the event of my husbands death I will be living in poverty since I will have *NO* S.S. benefits to assist me in my basic needs. I plead that you amend H.R. 743 to exclude Section 418. I further ask that you as members of Congress, that you lend your wholehearted support to H.R. 594 and S 349 which both seek to repeal the offset provisions in Social Security law that reduces and in most cases eliminate Social Security benefits for thousands of teachers and other government employees. Think about the phrase" **Teaching is the profession that teaches all other professions." As you weigh your decisions think about all the dedicated teachers who helped to mold and to encourage you to be what you are today.** Is this the way that you want to penalize these dedicated individuals by denying them benefits that others now enjoy? I think not!! Just examine your heart and conscience and I know you will undo this gross injustice. Thank you.

Statement of Joan Rutkoski, Jane Sweeney, and Ruth Wise, San Antonio, Texas

We are sending an appeal to you on behalf of all educator—the majority of which have held down full teaching positions, dedicating themselves to the betterment of our youth and therefore our nation. At the same time, they have both supported and helped their spouses to achieve success in their chosen fields. Yet, these educators will not qualify for social security based on spousal benefits.

This is just another slap in the face for those of us who have dedicated our lives to helping America's children reach their potential. We beseech you to either elimi-

nate the social security windfall provision totally for educators or allow the loop hole to remain in place. The loop hole would at least allow those who are eligible for benefits to find alternate employment with a district paying social security at the end of their career.

You know, this nation is supported by us, the working class. We raise our families, support our Presidents, send our children to war, pay our taxes—Do you not think it is time to give us some support. In our cases, as I am sure is the case of other educators, the windfall provision will make a difference of approximately $1,000. in retirement income. We listen daily to talk shows that condom our educators and educational system, yet arrive each morning at 7:30 to tutor, often here till 5:00. It is provisions like the Windfall that continue to demoralize good and caring teachers and will do nothing but cause future competent teachers to think twice about this profession.

If we can be of any assistance to you or answer any questions, please contact us through e-mail or at Madison High School, San Antonio, Texas. We thank you for the opportunity to voice our concerns.

Statement of Lynne Walters, Auburn, Maine

As a soon-to-be retired teacher and recent widow, I implore you to do everything you can to eliminate the WEP and the GPO! Teachers and other public employees in a number of states are hurt badly by the current laws regarding the offsets.

These offsets hurt me in several ways. As a retiree, my earnings under Social Security would be offset and thus, substantially reduced by more than half. As a widow, I will be entitled to ZERO benefits based on my pension from the state. We have always heard from the government that Social Security, a pension plan, and savings should all be counted on for retirement. Now, one of those basic pieces has been eliminated. A large portion of the people who are hurt are widows like myself.

There are other problems and questions: How about teachers and other public workers in the affected states who work at a second job? They are paying into Social Security with every check, but will never get in retirement what workers in the other states will receive. How about people who change to teaching, for example, in mid-career? If they work in an affected state, they will lose much of their Social Security for themselves as well as their spouses. (Laura Bush has made a concerted effort to encourage career changes in order to get many more teachers, yet they will lose a great deal financially.) How about people who live in other than the 15 states, but work in an affected state? These offsets affect many, many people.

I have heard the phrase "double-dipping" when referring to the affected people. There are people who have been in the military, had second and even third careers, receive pensions for all, plus full Social Security. Friends and family in PA (where I used to work) collect from both Pennsylvania State Retirement System and Social Security and receive full benefits from each.

The offsets are an insult to people who have worked hard all of their lives in public service. We have had low-paying jobs, and since our salaries determine the amount of our pension, we therefore have low pensions. Then we are penalized in our Social Security benefits.

Please support Senate Bill 349 which would repeal the offsets. Please also help convince other members of Congress how important this bill is and what it will mean for senior citizens throughout the country who have spent their careers working in the public sector.

Thank you.

Statement of Stephen Zwirn, Fort Lauderdale, Florida

My name is Stephen Zwirn, a vendor under the name of the Work Search Organization, Coconut Creek, Florida, under contract with the Social Security Ticket to Work program, assisting disabled Floridian's return to work.

I write in support of this legislation, and ask the Sub Committee to pass this important piece of legislation on behalf of many disabled beneficiaries who want to work.

An important component to HR 743 in my view is the provision to allow tax credits to qualify employers who hire a disabled beneficiary under the provisions of the Ticket legislation.

In addition, I am a member of U.S. Chamber of Commerce and member in the national organization Society for Human Resource Management, and wish to state for the record, tax credits for businesses are highly relevant.

This provision in the proposed bill, will give individual Employment Networks the opportunity to issue the tax credits directly. This will allow greater flexibility in the issuance of the tax credit and allow many employers to deal directly with Employment Networks without having to go through a State or other bureaucratic agency, thus reducing the costs, with greater efficiency.

Thus, to re-state, as a Florida Employment Network, alongside other Florida Employment Networks, asking to support this legislation.

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