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SOCIAL SECURITY'S REPRESENTATIVE PAYEE PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

AND

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

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

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SOCIAL SECURITY'S REPRESENTATIVE PAYEE PROGRAM

WEDNESDAY, MARCH 22, 2017

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

The subcommittees met, pursuant to notice, at 10:02 a.m., in Room 1100, Longworth House Office Building, Hon. Vern Buchanan [Chairman of the Subcommittee on Oversight] presiding.

[The advisory announcing the hearing follows:]

WAYS AND MEANS
CHAIRMAN KEVIN BRADY

Chairman Buchanan and Chairman Johnson Announce Second Joint Hearing on Social Security's Representative Payee Program

House Ways and Means Oversight Subcommittee Chairman Vern Buchanan (R-FL) and Social Security Subcommittee Chairman Sam Johnson (R-TX) announced today that the Subcommittees will hold the second of two joint hearings on Social Security's representative payee program. The hearing is entitled "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." The hearing will focus on how the Social Security Administration selects and monitors those serving as representative payees. **The hearing will take place on Wednesday, March 22, 2017 in 1100 Longworth House Office Building, beginning at 10:00 AM.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, April 5, 2017**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission 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.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

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.

Note: All Committee advisories and news releases are available at http://www.waysandmeans.house.gov/

Chairman BUCHANAN. The Subcommittee will come to order. Welcome to the Ways and Means Committee joint hearing of Oversight and Social Security Subcommittees on "Examining the Social Security Administration's Representative Payee Program: Who provides Help?"

During our last hearing on this topic, we examined how the Social Security Administration determines when someone needs a representative payee. Today we are examining how the SSA oversees these payees, why the SSA has made some recent efforts to improve how it monitors more than 6.5 million payees in the program. I believe that there is still significant room for improvement. I am a big fan of continuous improvement.

Historically, SSA has relied on annual accounting forms, and conducted limited onsite reviews. In 2004 Congress strengthened SSA's monitoring effort by requiring additional mandatory onsite reviews for some payees.

In addition, the SSA used a predictive model to identify high-risk payees for discretionary reviews. The SSA recently selected a new contractor to conduct 5,000 discretionary onsite visits, almost double the number 2,590 conducted last year.

However, the number of oversight visits appears to be far too few to effectively oversee the millions of payees in this program, or to assess the adequacy of the model. Other concerns have been raised by the agency's watchdog, such as the SSA inspector general, who continues to uncover example after example of payees taking advantage of the beneficiaries.

One such example is from my home state of Florida, in Hillsborough County, Achievement and Resource Center, HARC, a non-profit serving the greater Tampa Bay area, was established to assist Florida residents with development disabilities. HARC

served as a representative payee for Social Security beneficiaries who needed help—helped manage their finances.

However, between 2001 and 2011, HARC employees diverted over 600 million in Social Security benefits, using them for their own personal gain. HARC employees also annually filed fraudulent accounting reports with the SSA to conceal their action. A victim's relative noted to our local NBC news station that if it hadn't been for their reporting, WFLA reporting, and also their effort in terms of the behalf of the U.S. attorney, probably nothing would have been—taken place.

And while this example is particularly concerning because it occurred in my local community, similar stories exist across the country. Stories such as this raise serious questions about where the SSA for the past decade was, in terms of fraud that has been occurring. Unless the SSA improves its program monitoring, I worry that these problems will only worsen, as the population ages and numbers of individuals who need payee increases.

Nevertheless, I am encouraged by some of the progress being made through state programs. We have a number of witnesses here today to speak to the unique and innovative approaches that states are taking in areas of guardianship, much of which may be applicable to the representative payee program.

I also look forward to hearing from the SSA about ways in which Congress can assist you in better administrating and overseeing these programs.

Again, I want to thank the witnesses for being here today. I look forward to your testimonies on this important topic.

Chairman BUCHANAN. And now I yield to the distinguished ranking member, Mr. Lewis from Georgia, for the purposes of an opening statement.

Mr. LEWIS. Good morning. Thank you, Mr. Chairman, for holding this hearing. I would also like to thank all the witnesses for being here today.

This morning we will study the representative payee program. As you know, the Social Security Administration can appoint a person or organization to manage their benefits for some beneficiaries. These representatives must ensure that those with serious mental and physical disability receive good quality care.

A rep payee is expected to do all they can to protect the most vulnerable among us. SSA must carefully select and regularly monitor payees. In the past, Social Security Administration worked with each state's protection and advocacy agency, known as P&As, to perform this oversight. They knew what they were doing. But most rep payees do a good and necessary job. Some do not.

In my home state of Georgia, the P&A reviewers worked on behalf of the SSA to discover a horrible case of the neglect and abuse of multiple persons with disabilities. They live in terrible housing run by an unlicensed board and care operator. The buildings smell of rotten seafood, and they live in condition horrible.

The local P&A immediately sound the alarm to SSA to order—to adult protective service, and to the agency that regulate health care facility. The P&A took no chances. They waste no time.

Many of us are concerned that the Social Security Administration selected a contractor which does not appear to have the critical

skills. Perhaps this was due to the extreme budget situation facing the agency. Perhaps SSA thought that they could cut corners and save money with this contract. Respecting the dignity and the worth of every human being is not about a price tag. It is about doing what is right, what is fair, and what is just.

Mr. Chairman, we cannot strengthen this program by starving Social Security. You simply cannot squeeze blood from a turnip. Congress must give the hardworking staff the support and resources they need to protect and serve the most vulnerable among us. All of us agree that those who prey upon our brothers and sisters must be caught. They must be dealt with. They must be held accountable.

I know that each and every one of us will be paying close attention to this situation. On this issue there is no room for error. There is no space for failure. There is no time to delay. We are here today because we have a moral responsibility and an obligation to leave no stone unturned on this issue.

Again, I want to thank the witnesses for being here today. I look forward to their testimony.

And thank you, Mr. Chairman. And I yield back.

Chairman BUCHANAN. Thank you, Mr. Lewis. I now yield to the distinguished chairman of the Social Security Subcommittee, Mr. Johnson from Texas for an opening statement.

Chairman JOHNSON. Thank you, Mr. Chairman. Good morning, and welcome to the second of 2 joint Social Security and Oversight hearings on Social Security's representative payee program. While the first hearing focused on how Social Security decides who needs help managing their benefits, today's hearing is going to focus on how Social Security selects and oversees those who provide the help.

Today there are about 6.5 million representative payees managing benefits for about 8 million Social Security beneficiaries and Supplemental Security Income recipients. The number of representative payees is expected to increase as the population ages and more people need help managing their Social Security benefits. According to a 2015 study from Social Security, the number of adults who need a representative payee will increase by more than 20 percent over the next 2 decades. Furthermore, the number of people receiving help from someone other than a family member will increase by more than a quarter.

Who Social Security selects as a representative payee is a really important decision, since it is their job to make sure that benefits are used for the individual's basic needs. Folks who need a representative payee deserve to know that the person serving as their payee is up to the job. And while Social Security has some rules in place to help, those rules aren't always followed.

Commonsense would say that someone who relies on a representative payee themselves shouldn't be the representative payee for someone else. Can you believe that is happening? How can you manage someone else's benefits when you can't manage your own? Yet in 2016 the IG found that Social Security had people serving as representative payees, even though Social Security knew these folks had representative payees of their own.

The IG has even found people serving as representative payees that Social Security has no record of selecting. Worse, for nearly 20 years the IG has repeatedly found that Social Security continued to pay payees they knew were dead.

And the list goes on. This is simply unacceptable. You can have all the rules in place that say all the right things, but if these rules aren't followed, what good are they? There has to be a better way.

At our first hearing in this series Social Security said that the greatest challenge they face is monitoring representative payee behavior. Although Social Security has increased its monitoring of payees, the IG and others continue to find cases of representative payee fraud. Chairman Buchanan provided an example of why it is so important that Social Security get this right.

And, as we will hear today, some states, like Texas, are taking steps to get a better handle on managing their guardianship programs. While representative payees and guardianships are not the same, there are things we can learn from what our states are doing.

As I said at the previous hearing, the Congress has not made changes to the representative payee program since 2004 and now it is time to take a fresh look. I look forward to working with Social Security, stakeholders, and all my colleagues to make sure this very important program is working like it ought to. The American people deserve no less.

I thank our witnesses for being here today and I look forward to hearing your testimony. Thank you.

Chairman BUCHANAN. Thank you, Mr. Johnson. I now yield to the Ranking Member Larson for his opening statement.

Mr. LARSON. Thank you, Mr. Chairman. And I want to also thank both of you for holding this hearing. And I want to associate myself with the remarks of Mr. Lewis and join with our other colleagues in welcoming our panelists. We look forward to hearing from you.

We, of course—something I think all of you know—that 10,000 people a day turn 65 years of age. And so, I think it is constructive that our colleagues here across the board, Democrat and Republican, are concerned, especially about preserving a program that Dwight David Eisenhower brought into existence to make sure that we were taking care of those amongst us who have disabilities. That only continues to grow.

Unfortunately, in the same difficult times, the budget for Social Security continues to remain stagnant. And while we applaud the efforts—and we should do everything possible to route out any kind of fraud and abuse in any program, and they should face the most severe penalties, because they are detracting from the American citizens who need it the most, but we also have to make sure that we are strategic in the way that we handle this, and how we function.

I don't think it is strategic to take money out of an existing budget to focus on fraud and abuse, and then not leave the very agencies that are dealing with disability and Social Security with fewer dollars.

In fact, consider that 10 million new beneficiaries have entered the system since 2010, and that Social Security's operating budget

has fallen by 10 percent in the same period. With Baby Boomers coming in, as I indicated, at 10,000 a day, you would think that, in order to address this issue, this is not the time to be cutting the budget. This is a time that we should be expanding in these areas.

And so, we are together in terms of wanting to route out the fraud and abuse and waste. And one of the things that we are concerned about, though, especially with the long waiting periods and lines, also, is the various mechanisms that you are bringing.

We are particularly concerned on this Committee—and part of my questioning will focus on this area, as well—the hiring of the Information Systems and Network Corporation, ISN. And their contract calls for them to do 1,300 reviews by this August. They have done 11 to date. So we would like to get to answers with respect to that.

And we are also concerned in general—and I would like to submit for the record, if I might, Mr. Chairman, this LA Times article that Trump budget director revives a fact-free conservative attack on disability recipients, because I think it is very pertinent to the enormous stress that the agency is under in its ability to provide, obviously, the most successful governmental program in the history of the Nation. And to put it under further stress, or to discount what people on disabilities are going through, and to make allegations that are fact-free are something that need to be corrected for the record, and I will be asking our various panelists about that, as well.

And, with that, Mr. Chairman, I will yield back my time.

Chairman BUCHANAN. Thank you, Mr. Larson. Without objection, other members' opening statements will be made part of the record.

Today's witness panel includes 5 experts: Ms. LaCanfora, acting deputy commissioner, office of retirement and disability policy for the Social Security Administration; Ms. Stone, acting inspector general, Social Security Administration; Mr. Ford, senior executive officer, public policy, The Arc, who is testifying on behalf of Consortium for Citizens with Disabilities Social Security Task Force; Ms. Uekert, principal court research consultant, National Center for State Courts; Mr. Slayton, administrative director, Texas Office of Court Administration.

The subcommittee have received your written statements, and they will all be added to the formal hearing. You will both—all of you will have 5 minutes to deliver your oral remarks.

And let us, start with you, Ms. LaCanfora.

STATEMENT OF MARIANNA LACANFORA, ACTING DEPUTY COMMISSIONER, OFFICE OF RETIREMENT AND DISABILITY POLICY, SOCIAL SECURITY ADMINISTRATION

Ms. LACANFORA. Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and members of the subcommittees, thank you for inviting me to discuss how the Social Security Administration monitors its representative payee program, and to describe our recent accomplishments. I am Marianna LaCanfora, acting deputy commissioner for retirement and disability policy.

We appoint representative payees under our Social Security and Supplemental Security Income programs for minor children and for adults who are incapable of managing monthly benefits. We currently have around 5.7 million payees who assist about 8 million beneficiaries with their payments. Today I would like to describe our oversight of these payees.

First, I should note that being a payee requires a significant commitment of time and attention with few rewards beyond the satisfaction of helping someone in need. Yet millions of Americans rise to this challenge every day. Our reviews show that representative payees generally manage beneficiary funds appropriately. Even so, we must strive to protect our most vulnerable beneficiaries.

By law, we conduct reviews for all fee-for-service payees, organizational payees who serve more than 50 beneficiaries, and individuals serving 15 or more beneficiaries, as well as state mental institutions. We also conduct additional site reviews of organizational and individual payees beyond those that are required in the Social Security Act.

We select these payees for review using a misuse predictive model that is based on common characteristics in known misuse cases. Recently we redesigned and strengthened our onsite review program, and we are phasing in these changes over a several-year period. The most notable improvements are as follows.

First, we will use a skilled contractor to conduct all reviews. Most onsite reviews were previously conducted by our field office employees, a task that they were not always prepared to handle. The contractor will also handle follow-up activities, such as ensuring corrective action by the payee on such issues as record-keeping or titling of bank accounts. This will allow our field office employees to focus on programmatic issues, such as changing the payee when needed.

Two, we are targeting more high-risk payees, including those that live in a different state from the beneficiary.

Three, we are conducting face-to-face beneficiary interviews at the place of residence for the first time. These reviews were largely done by phone in the past.

Fourth, we plan to more than double the number of annual onsite reviews over several years, budget permitting. Our goal is to conduct 5,000 reviews annually. We believe that increasing the number of reviews is important to the integrity of this program.

And lastly, we have created a new, centralized monitoring team to ensure consistent application of our policies and procedures. We are also developing a new database to track all cases, detect trends, and quickly identify misuse.

While onsite reviews are the cornerstone of our oversight program, I would like to mention just a few other improvements that we have made to the rep payee program.

In February of 2014 we implemented a criminal bar policy, which prevents applicants who have committed serious crimes from serving as payee.

In 2015 we enhanced our business process with the Department of Veterans Affairs to share information that helps us with our misuse investigations.

In addition, we launched our electronic representative payee system in April of 2016. The new system ensures consistent application of policies and procedures and better access to data that will help us improve our predictive model.

And earlier this year we strengthened our capability determination policy based on our internal quality reviews and recommendations from the National Academies of Medicine.

Lastly, we have commissioned research through our retirement research consortium grant program to explore outcomes for individuals served by representative payees, focusing on those with dementia, to learn more about their experience with the rep payee program, and where we might make improvements.

Thank you for the opportunity to describe the ways in which we continue to strengthen the payee program. We look forward to our ongoing collaboration with your committee. I will be happy to answer any questions you may have.

[The prepared statement of Marianna LaCanfora follows:]

HEARING BEFORE

WAYS AND MEANS SUBCOMMITTEES ON SOCIAL SECURITY AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 22, 2017

STATEMENT
OF
MARIANNA LACANFORA
ACTING DEPUTY COMMISSIONER FOR RETIREMENT AND DISABILITY POLICY
SOCIAL SECURITY ADMINISTRATION

Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and Members of the Subcommittees:

Thank you for inviting me to participate in the second of your two-part series of hearings on the Social Security Administration's (SSA) representative payee program. Today, I will discuss how we monitor the payees who assist our most vulnerable beneficiaries. I am Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy.

Overview of the Representative Payee Program

Early on in Social Security's history, Congress recognized that some beneficiaries were incapable of managing their benefits and amended the Social Security Act to allow us to appoint representative payees for such beneficiaries. Representative payees help these individuals by managing their benefit payments to fulfill their basic needs. We appoint representative payees, as needed, for adult and child beneficiaries under Social Security's retirement, survivors, and disability programs, and for adult and child recipients of the Supplemental Security Income (SSI) program. Over half of the individuals with representative payees are minor children.

It is important to note that we presume adult beneficiaries are capable of managing or directing someone else to manage their benefits, unless there is evidence to the contrary. This presumption does not apply to adults who have been determined by a court to be legally incompetent or to minor children; under our regulations, we usually must pay those individuals through a representative payee. In all other situations, we will consider appointing a representative payee when we learn that a beneficiary has a mental or physical impairment that may prevent him or her from managing or directing the management of his or her benefits. In that case, our field office employees make a capability determination, using criteria set forth in our regulations, to see whether it is in the beneficiary's interest to have payments made through a representative payee.

Congress also recognized the need to oversee the performance of those individuals whom we select to receive benefits on behalf of a beneficiary. To that end, it required us to establish a system to monitor the performance of the representative payees we select, so that we can ensure that the representative payee uses the benefits in the best interest of the beneficiary. We monitor representative payees to ensure they continue to meet our qualifications and spend benefits appropriately.

Part of my testimony today will describe the various monitoring activities we undertake to help deter misuse. But first, I would like to briefly comment on the responsibilities that a representative payee carries out on behalf of beneficiaries. Being a representative payee requires a significant commitment of time and attention, with few rewards beyond the satisfaction of helping someone in need. Yet millions of Americans rise to this challenge every day. Our reviews show that representative payees generally manage beneficiary funds appropriately, and our monitoring policies are intended to identify the exceptions.

Recent Accomplishments in the Representative Payee Program

In 2013, we appeared before the Social Security Subcommittee to outline a series of planned initiatives intended to improve the administration of the representative payee program. Since that time, we have completed a number of these initiatives, such as:

Nationwide Implementation of the Criminal Bar Policy (February 2014)

This policy allows us to exclude representative payee applicants who have committed certain serious crimes from serving as representative payees. This policy helps us protect vulnerable beneficiaries from potential misuse of benefits. The twelve barred crimes are:

- Human Trafficking
- False Imprisonment
- Kidnapping
- Rape and Sexual Assault
- First-Degree Homicide
- Robbery
- Fraud to Obtain Access to Government Assistance
- Fraud by Scheme
- Theft of Government Funds/Property
- Abuse or Neglect
- Forgery
- Identity Theft or Identity Fraud

Sharing of Misuse Data with the VA (June 2015)

We developed an improved business process for sharing misuse information with the Department of Veterans Affairs (VA). Our new process provides detailed guidance on when and how misuse information should be shared, and ensures proper transmission of data. Both agencies act upon the shared information to initiate misuse investigations and possible changes in payees or fiduciaries.

Launching of Web-Based Electronic Representative Payee System (eRPS) for Representative Payee Applications (April 2016)

This effort modernized the representative payee computer system, which our employees use to take and process applications from individuals who want to serve as a representative payee. The new web-based application is easier to navigate and helps to ensure policy compliance. Prior to implementing eRPS, applications were taken through an older computer system, or through paper forms. The web-based application includes more search features and selection alerts, which enhance our ability to investigate representative payee applicants. The new selection alerts highlight specific problems,

such as poor representative payee performance or pending misuse allegations, thereby providing our employees with valuable information about a representative payee's suitability. We have numerous enhancements planned for this system, including a requirement to have employees thoroughly document capability determinations. We plan to implement this last enhancement in 2017.

Improvements to Capability Policy (January 2017)

We commissioned the National Academy of Medicine (NAM) to explore and make recommendations regarding our capability policy, and they released their report in May 2016. Based on its findings, we published revisions to our capability policy on January 26, 2017. As part of these revisions, we added new questions our technicians should ask a third party when determining a beneficiary's capability; added comprehensive instructions on documentation in our web-based eRPS system; and streamlined the instructions to improve user understanding. We have scheduled a nationwide video training for field office employees for April 2017.

Site Review Program

The key to our monitoring and oversight of representative payees is our site review program. We recently redesigned and strengthened our program. Before describing those improvements, I will summarize the site review process we used through late 2016.

The Social Security Act requires us to do site reviews for 1) fee-for-service (FFS) payees; 2) organizational payees serving 50 or more beneficiaries; 3) individual payees serving 15 or more beneficiaries; and 4) State mental institutions participating in our on-site review program. In addition, we conduct discretionary reviews on some other organizational and individual payees beyond those required in the Act. We select payees for a discretionary review using a misuse predictive model that we developed based on common characteristics in known misuse cases.

We conducted 2,590 representative payee reviews in FY 2016. In our reviews, we examined the representative payee's financial records and supporting documentation. We conducted onsite reviews at 76 State institutions. All of the institutions reviewed were performing satisfactorily with no significant problems or corrective recommendations noted.

This table summarizes the reviews we performed by representative payee category:

	Periodic Site Reviews	Targeted Reviews	Educational Visits	State Onsite Reviews	Optional Reviews	Special Reviews	Total
Volume Payees	686	169	0	0	15	0	870
State Mental Institutions	0	0	0	76	0	0	76
FFS Payees	437	42	24	0	9	0	512
Individual Payees	101	3	0	0	1	267	372
Other Organizational Payees	0	10	0	0	0	750	760
Total	1,224	224	24	76	25	1,017	2,590

Modernization of our Site Review Program

As noted earlier, we redesigned our site review program. In July 2016, we awarded a new contract to Information Systems and Networks Corporation (ISN) to assist us.

ISN will conduct a greater number of representative payee reviews and beneficiary interviews, targeting high-risk representative payees and including parents and spouses, to ensure we review all payees. ISN will also be conducting home visits to more effectively identify misuse of benefits and ensure that beneficiary needs are being met. Based on the results of the site review, ISN will conduct follow-up activities with representative payees on fiduciary issues, such as recordkeeping problems or bank account titling issues. Our own Operations staff will continue to address any programmatic issues that arise.

We will phase-in the contractor services over three phases, during which time field offices will continue to do some reviews. Ultimately, at the end of the phase-in period, our field offices will no longer conduct site reviews. The final phase of our plan will bring the total number of reviews we conduct to 5,000 – nearly double the number we completed in FY 2016. Our ability to implement the plan will depend on the availability of agency resources.

We have created a centralized monitoring team (CMT) to oversee the site reviews and to ensure consistent application of our policies and procedures. The CMT replaces our prior monitoring oversight, which was decentralized throughout the country. To support this new team, we are developing a new representative payee monitoring control database to ensure comprehensive review tracking and histories. To ensure the quality of the review reports and documentation submitted by ISN, the CMT reviews every report.

Annual Representative Payee Accounting

With the exception of certain State mental institutions, we require all representative payees to submit an annual representative payee accounting report that details the use of beneficiaries' funds. Social Security law and regulations require representative payees to use the benefits they receive for the current needs of the beneficiary and in the beneficiary's best interests. Representative payees are responsible for reporting on the use of benefit payments. The representative payee must complete a paper representative payee report or an online report annually. We may also request that a representative payee complete an accounting report whenever we receive information that raises a question about the representative payee's use of monthly benefits or conserved funds.

Field office employees may conduct an interview when the representative payee's responses on the accounting report indicate possible improper use of benefits or a change in custody, or when the representative payee fails to complete the initial and second request for an accounting report. We also may interview the beneficiary and custodian (if the custodian is someone other than the representative payee) to confirm information provided by the representative payee and to ensure the beneficiary's current needs are being met. We investigate indications of misuse of funds or a representative payee's unsatisfactory performance, and take appropriate actions to protect the beneficiary's best interests.

If the representative payee does not respond after repeated attempts by the field office to obtain the required accounting report, we will consider changing the representative payee. If we determine that the current representative payee is no longer suitable, we will look for a successor representative payee. If a new representative payee is not readily available, we generally can pay the beneficiary directly while we continue to search for a suitable payee.

Other Enhancements to SSA's Representative Payee Program

The Office of Inspector General (OIG) conducts audits to help us identify areas where we can improve our representative payee program. We analyze their findings and seek to address their recommendations. OIG's efforts help us to detect and prevent fraud by identifying changes we can make to our systems and documentation policies. For example, OIG cited in one of its audits that there were representative payees who had representative payees. While this affected less than one-half of one percent of representative payees, it is nonetheless critical to fix the issue. To satisfy the OIG report recommendation regarding this audit, we created a new representative payee system (eRPS) that facilitates documentation of representative payees across our field offices. We have incorporated new alerts to remind technicians prior to proceeding through an

application, so that we can prevent beneficiaries with representative payees from becoming representative payees. With each systems enhancement we carry out, we ensure that field offices document information regarding anything related to representative payees that will in turn improve our monitoring of representative payees. Additionally, the new system allows field office employees to create, track, and store allegations of misuse from beginning to end.

Lastly, we meet with your staff every quarter to brief them on the progress we are making in improving our representative payee program, and to solicit their input on how we can make it better. We will continue to identify and pursue innovative approaches to serve those beneficiaries who need us the most, and we appreciate the ongoing collaboration with your team in this effort.

Conclusion

We are committed to improving our representative payee monitoring program. We believe our new site monitoring program and more robust capability policy are examples of important steps in the right direction, but we do not intend to stop there. We must continue to look critically at how we use our limited resources to provide the best outcomes for our beneficiaries and for those who assist them. We must continue to be inventive in our approach, and willing to adjust our course when necessary. We look forward to working with Congress and other stakeholders to help ensure that we have an efficient, effective monitoring program that identifies payees who are not acting in the best interest of our most vulnerable beneficiaries.

Again, thank you for the opportunity to describe our efforts regarding these very important issues. I will be happy to answer any questions you may have.

Chairman BUCHANAN. Thank you.

Ms. Stone, you are next up.

STATEMENT OF GALE STALLWORTH STONE, ACTING INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION

Ms. STONE. Thank you, Chairman Buchanan, Chairman Johnson, Ranking Member Lewis, Ranking Member Larson. Good morning to you and the subcommittee members. Thank you for the opportunity to testify today and to continue our conversation about SSA's representative payee program.

On an annual basis, about 6 million payees manage $70 billion in benefits for about 8 million beneficiaries. Most payees are the beneficiary's family members, and SSA maintains that the vast majority of payees properly manage beneficiary funds.

However, with limited in-person monitoring of payees, the threat of misuse persists. We investigate cases of individual and organizational payee fraud, as well as conduct audits and make recommendations to improve payee selection and monitoring.

To investigate questionable payees, we rely on allegations from SSA, citizens, public and private organizations, and other sources. We carefully review every allegation to determine the appropriate actions to take.

In one case, based on an allegation from SSA, we investigated a Texas man who served as the payee for a disabled friend. The man had a criminal history, but SSA selected him to serve as the payee because the beneficiary did not have family members or other friends willing to serve. Soon after, the man received a $64,000 retroactive payment intended for the beneficiary. However, he used some of those funds to buy himself a truck and a motorcycle. As a result of our investigation, the man pled guilty to theft of government funds, a judge sentenced him to prison, and ordered him to repay $29,000 to Social Security.

In another case, based on allegations made to SSA, we investigated the owner of an organizational payee in Minnesota. This payee served more than 300 people. Beneficiaries complained that they could not contact the organization for assistance, they could not obtain funds for their personal needs, and their bills were not being paid. The owner, it turns out, used the beneficiaries' funds to pay for personal and business expenses. Because of our investigation, the owner pled guilty to representative payee fraud. A judge sentenced him to prison, and ordered him to repay $485,000 to SSA.

On the audit side, we have conducted several reviews of SSA's actions as it relates to payee misuse. When SSA identified misuse we found the agency did not always reissue benefits to beneficiaries in a timely manner; did not obtain restitution from payees; did not explain why payees that had misused benefits continued to serve as payees. And, in some instances, they did not refer all allegations to the OIG. We believe SSA should comply with its policies and procedures for resolving payee misuse issues.

Our audit work has identified several data anomalies in SSA's systems, some of which have been referred to today.

We found instances in which beneficiaries with payees actually serve as payees for others. This is against SSA policy.

We have also identified millions of dollars of payments provided to deceased payees, payees without Social Security numbers in SSA's systems, and payees identified in SSA's systems as either terminated or not selected.

To improve program integrity and payment accuracy, SSA should consider developing systems enhancements that, one, alert employees to these discrepancies or anomalies; and two require employees to resolve these discrepancies before continuing to process payee actions.

To conclude, the population of beneficiaries with payees includes some of our most vulnerable citizens. SSA has many service responsibilities, but it must prioritize careful administration and monitoring of the payee program. We will continue to work with SSA and your subcommittees to address these challenges.

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

[The prepared statement of Gale Stallworth Stone follows:]

United States House of Representatives

Committee on Ways and Means

Subcommittee on Social Security
Subcommittee on Oversight

SOCIAL SECURITY
ADMINISTRATION

OIG

Statement for the Record

Examining the Social Security Administration's
Representative Payee Program:
Who Provides Help

Gale Stallworth Stone
Acting Inspector General
Social Security Administration

Good morning, Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and Members of both Subcommittees. Thank you for the invitation to testify today, as we continue to discuss the Social Security Administration's (SSA) representative payee program and examine how the agency selects and monitors payees. It is my pleasure to appear before you, and I appreciate your continued interest in this vital program.

Some of our most vulnerable citizens—including the young, aged, and disabled—depend on representative payees to receive and manage their Social Security benefits to cover their basic needs and expenses. SSA places its trust in payees to manage these payments on behalf of beneficiaries. The Office of the Inspector General (OIG) is committed to overseeing how SSA administers the representative payee program; it is critically important that SSA select trusted individuals and organizations to serve beneficiaries in need, and that SSA effectively monitor payee performance. My statement will focus on: 1) our investigations of representative payee fraud and misuse, and 2) our audit reviews and recommendations to SSA to improve payee selection and monitoring.

Selecting, Monitoring Payees

SSA currently has about 6 million representative payees managing benefits for about 8 million beneficiaries. According to SSA, 54 percent of the beneficiaries with payees are minor children. Further, family members—primarily parents or spouses—serve 85 percent of the beneficiaries who have payees. About 34,000 organizational representative payees serve about 1.1 million beneficiaries. Generally, SSA will appoint an organizational payee to a beneficiary only when a family member is unable, unavailable, or unwilling to serve as payee.

SSA employees process payee applications in the agency's Electronic Representative Payee System (eRPS); during the application process, employees ask questions to assess the applicants' suitability. Information on the application includes the applicant's proof of identity, contact information, and relationship to the beneficiary. SSA employees are required to ask about the applicant's criminal history, request permission to run a background check, determine the applicant's income and capability, and determine if the applicant is receiving Social Security benefits. Finally, SSA employees ask for information to determine why the applicant would be an appropriate payee and how the applicant intends to meet the beneficiary's needs.

SSA maintains that the vast majority of payees are properly managing beneficiary funds, but with limited monitoring of payee performance, the threat of payee misuse and abuse remains. SSA mails annual accounting reports for payees to document how they utilized beneficiary funds, and the agency will contact the payee if the payee does not provide a timely response, but SSA conducts a very limited number of in-person site reviews each year. For instance, in Fiscal Year (FY) 2016, SSA conducted 2,590 face-to-face payee interviews.[1]

A harrowing case of payee fraud and abuse in Philadelphia emphasized the critical need for SSA's strict oversight of payee selection and monitoring. In 2011, the Philadelphia Police Department rescued four

[1] SSA conducts several types of payee site reviews, including periodic reviews as required by the *Social Security Act*, targeted reviews conducted in response to an event that raises questions about payee performance, and special site reviews based on predictive modeling that identifies potential risk payees. SSA, *Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews*, January 2017.

mentally disabled victims from the sub-basement of an apartment; the victims were held captive there for years. OIG contributed to the investigation with multiple agencies, including the FBI, the IRS, Philadelphia police and the Philadelphia District Attorney's Office, which determined that Linda Weston directed a decade-long racketeering enterprise in which she and several co-conspirators targeted mentally disabled victims and persuaded them to allow Weston to serve as their payee. Then, for years, Weston physically and psychologically abused the victims and stole their Social Security benefits and other government payments.

Weston's plot involved beating her victims, holding them captive in closets, basements, and attics, and depriving them of adequate food and care. Additionally, Weston moved the victims over the years between Philadelphia, Texas, Virginia, and Florida to evade law enforcement. Tragically, two of the victims died because of Weston's abuse. The FBI pursued the violent-offense elements of the case

Our role in the investigation involved gathering evidence, analyzing SSA documents, and interviewing various sources. From our review, we determined that Weston served as payee for six victims and made numerous misrepresentations and false statements to SSA during the payee application and monitoring process and on various payee accounting forms and other documents submitted to SSA. Weston concealed her criminal history from SSA, and she lied numerous times about her relationship to the victims, the victims' living conditions, and her use of their benefits. The scheme, abuse, and misuse became known only after Philadelphia police were alerted to the victims' whereabouts.

In September 2015, Weston pled guilty to multiple offenses, including racketeering conspiracy, kidnapping resulting in the death of the victim, government theft, and false statements. In November 2015, a judge sentenced her to life plus 80 years in prison and ordered her to pay restitution of $273,000 to SSA. Judicial proceedings for her co-conspirators are ongoing.[2]

The case remains the most horrific, disturbing example of payee fraud and abuse we have encountered, but it emphasizes the vulnerability of the payee system and the beneficiaries it serves. SSA responded appropriately to the case with new, stricter rules and regulations related to reviewing a payee's background and criminal history before selecting the payee.

Efforts have been made to determine whether certain payees have high risks of misuse, to guide payee-monitoring procedures. In 2007, the National Academy of Science identified several characteristics of individual payees that might be indicators of misuse or poor performance. Some of the key characteristics include:

- The payee served between four and 14 beneficiaries.
- At least one beneficiary was not a relative of the payee.
- The payee had self-employment income.
- The payee had no employment wages.
- The payee was under age 50 and had limited annual earnings.

In 2009, we identified a population of individual payees who had at least three of the characteristics identified. We concluded SSA should use the characteristics to identify payees with an increased risk of

[2] U.S. Attorney's Office, Eastern District of Pennsylvania, November 2015

benefit misuse, and the characteristics were reliable indicators of poor-performing payees. Specifically, 70 percent of the payees we reviewed engaged in one or more practices that increased the risk of misuse.[3] At the time, we encouraged SSA to study these characteristics to improve payee monitoring, and SSA said it would consider the characteristics when developing possible changes in policies and procedures for payee selection and monitoring.[4] In FY2012, SSA began using a predictive model to select organizational and individual payees for special site reviews, based on payee and beneficiary characteristics that indicate a higher likelihood of potential misuse. SSA conducted 1,017 special site reviews last year.

SSA is committed to conducting effective oversight of the representative payee program. Some program vulnerabilities exist, which SSA should address, but we acknowledge that SSA must also focus on its core workloads of processing retirement and disability claims, so the agency has to decide where and how it allocates its resources. The OIG is a partner in this oversight effort with SSA, through audits and investigations, as I have described. I would like to expand on how our investigations promote program integrity and how our audit reviews and recommendations help SSA improve its operations and oversight of the payee program.

Representative Payee Investigations

We receive and rely on allegations of representative payee fraud and misuse from various sources, including SSA, other law enforcement agencies, private citizens, private and public organizations, victims, Congress, and others.

In FY2016, we received 143,285 fraud allegations; 16,577 allegations (or about 12 percent) related to representative payee fraud. We carefully review every allegation we receive to determine appropriate action. We refer the majority of the payee fraud allegations we receive to SSA for administrative action, for several reasons, including local prosecutorial thresholds, the statute of limitations related to the allegation, and the existence of prior administrative action completed before referral to the OIG.

Last year, we opened 435 representative payee cases and closed 456 cases. Our investigative efforts in FY2016 led to 180 convictions related to payee fraud and about $10 million in monetary accomplishments, including restitution, SSA recoveries, judgments, fines, and settlements. We make every effort to seek prosecution against individual and organizational payees who abuse the system, to deter others from misusing government funds and neglecting their responsibilities to serve beneficiaries in need.

The following are examples of **individual** payee fraud investigations:

- Based on an allegation to our Fraud Hotline, we investigated a Delaware woman for misusing Social Security benefits intended for her disabled sister. The woman had served as her sister's payee since December 2013, but when her sister received large sums of retroactive benefit payments from SSA, the woman began embezzling the funds from her sister. She used the money to buy two vehicles,

[3] Payees would not confirm whether some beneficiaries were in their care, did not maintain adequate documentation to support expenditures for beneficiaries, did not provide basic needs for beneficiaries, for example.

[4] SSA OIG, *Characteristics of Representative Payees That May Increase the Risk of Benefit Misuse*, August 2009.

write a $25,000 check to her business, and make a number of withdrawals that she deposited into her own back account, including one as large as $51,000. Because of our investigation, the woman pled guilty to Social Security fraud, and in December 2016, a judge sentenced her to 12 months in prison and ordered her to repay $145,000 to her sister.

- Based on information from the Tewksbury, Massachusetts Police Department and from the victim's current payee, we investigated a woman for misusing Social Security benefits intended for a disabled friend who was in full-time residential treatment at a Massachusetts hospital. The investigation found the woman became her friend's payee in 2012, but from 2012 to 2014, she used more than $32,000 intended for her friend on herself; she used the money on a beach vacation, to make retail and restaurant purchases, and to withdraw more than $17,000 in cash. In doing so, she failed to pay her friend's hospital bills, leaving him with more than $20,000 in debt. Because of our investigation, the woman pled guilty to Social Security fraud, and in August 2015, a judge sentenced her to 24 months' probation, including six months' house arrest, and ordered her to repay $32,000 to SSA.

- Based on an allegation from the U.S. Embassy in Mexico City, we investigated a Florida man for stealing Social Security benefits intended for his son. The investigation found the man served as his son's representative payee, and from 2008 to 2014, he concealed from SSA that his son was not in his care, as his son actually lived in Mexico during that time. Because of our investigation, the man pled guilty to government theft, and in March 2015, a judge sentenced him to 12 months in prison and ordered him to repay $76,000 to SSA.

- Based on an allegation from the Fort Worth South, Texas SSA office, we investigated a Texas man who served as the payee for a disability beneficiary who lived in a group home. The investigation found that the man was a friend of the beneficiary, who did not have family members or other close friends to serve as his payee. SSA selected the Texas man as payee in 2012 despite his criminal record. The man received a $64,000 retroactive payment intended for the beneficiary, but he did not use the funds to serve the beneficiary; he used some of the money to buy a truck and a motorcycle. Because of our investigation, the man pled guilty to government theft, and in June 2014, a judge sentenced him to 60 months in prison and ordered him to repay $29,000 to SSA.

The following are examples of **organizational** payee fraud investigations:

- Based on allegations made to the Minneapolis SSA District Office, we investigated the operator of an organizational payee that served more than 300 beneficiaries. In 2014, clients of the service complained that they could not contact the organization for assistance, they could not obtain funds for personal needs, and their bills were not paid. We found evidence that the owner of the organization used the beneficiaries' funds to pay for personal and business expenses. Because of our investigation, the owner pled guilty to representative payee fraud. In November 2016, a judge sentenced him to 27 months in prison and ordered him to repay $485,000 to SSA.

- A 2011 SSA financial review of an organizational payee that served about 100 beneficiaries in Alaska found that the owner used beneficiary funds to pay for personal expenses, such as his mortgage and vehicles, rather than hold the funds in a trust for the beneficiaries' needs. We investigated and found that once beneficiary funds were determined to be missing, the owner's family placed about $100,000 in the trust to replace the missing funds. Based on our investigation,

the owner pled guilty to Social Security fraud, and in November 2016, a judge sentenced him to six months in prison. Additionally, the organization is no longer in operation, and SSA has found new payees for all of the organization's clients.

- A 2012 SSA financial review of an organizational payee that served as many as 350 beneficiaries in Milwaukee could not account for about $194,000 in beneficiary funds. We investigated and determined the organization's owner used beneficiary funds to purchase other properties and pay for business expenses, such as office rent, salaries, and supplies. Because of the theft, many beneficiaries lived in poor conditions, and some were homeless. Because of our investigation, the owner pled guilty to representative payee fraud, and in August 2016, a judge sentenced her to six months in prison and ordered her to repay $251,000 to SSA.

Representative Payee Audits

In addition to conducting investigations of representative payee fraud, we have reviewed SSA's actions concerning individual and organizational payee misuse, and payees' ability to monitor beneficiary needs.

Individual Payee Misuse

In 2012, we analyzed SSA data and identified 1,368 individual payees serving 14 or fewer beneficiaries misused about $7.6 million owed to 1,561 beneficiaries, over a three-and-half-year period. We found SSA did not always take appropriate actions concerning individual payees who misused benefit payments. For example, SSA did not always obtain restitution from payees or pay beneficiaries when misuse resulted because of SSA's negligent failure to investigate or monitor a payee. We also found that SSA did not always document negligence decisions; refer misuse cases to the OIG; follow policy with regard to payees who committed misuse; or record misuse-related data accurately.

We encouraged the agency to take additional steps to improve its oversight and management of this population of individual payees who misused benefit payments. We recommended that the agency address issues related to specific payees and beneficiaries identified in the audit, and to remind staff to comply with policies and procedures related to obtaining restitution from payees and repaying affected beneficiaries. SSA agreed with our recommendations and reported that it took corrective actions for the payees and beneficiaries identified by our audit.[5]

Organizational and Large-Volume Payee Misuse

We identified 165 organizational and volume individual payees who misused about $3.5 million owed to 3,671 beneficiaries, over a four-year period. We found that SSA generally complied with regulations and procedures when payees misused benefits. In some cases, the agency still did not reissue benefits misused by payees; obtain restitution from payees that misused benefits; document decisions to allow payees that misused benefits to continue serving as payees; and refer all payee misuse cases to the OIG. Similar to our 2012 review, we recommended that SSA address issues related to specific payees and beneficiaries identified in the audit, and to remind staff to comply with policies and procedures to

[5] SSA OIG, *Individual Representative Payees Who Misuse Benefits*, May 2012.

document decisions to retain payees that misuse benefits. SSA agreed with our recommendations and reported that it took corrective actions for the payees and beneficiaries identified by our audit.[6]

Fee-for-Service Payee Monitoring of Beneficiaries

In addition, in 2012, we reported that large-volume fee-for-service (FFS) payees did not always have the resources, procedures, and controls to fulfill their payee responsibilities.[7] Some of the payees we reviewed did not have sufficient staff to routinely contact or visit their beneficiaries; they relied on outside caseworkers or beneficiary self-reporting to ensure beneficiaries' needs were met; they did not have correct contact information for beneficiaries; or they were unaware of certain basic beneficiary needs.

As payees of last resort, FFS payees often manage benefits for SSA's most vulnerable beneficiaries—many without family members or friends who are willing or able to monitor their well-being. Given the importance of this responsibility, we believe it is essential for SSA to strengthen oversight of FFS payees. We recommended SSA develop and provide clarifying guidance to FFS payees regarding the issues we identified in the report, and SSA agreed with our recommendations and reported that it took corrective actions to provide detailed instructions for its employees to provide to FFS payees.[8]

Payee System Vulnerabilities

Our audit work has also identified system vulnerabilities that affect SSA's ability to oversee the representative payee program.

Beneficiaries with Payees Serving as Payees for Others

We have identified instances in which SSA made payments to beneficiaries serving as representative payees who have a representative payee.[9] We estimated, over a four-year period, SSA paid $6.3 million to about 400 incapable beneficiaries who were serving as payees. This occurred because SSA employees incorrectly selected incapable beneficiaries as payees, and though SSA's system at the time generated alerts, the system did not prevent employees from improperly selecting the payees.

For example, SSA selected a representative payee for a beneficiary in 2013. The beneficiary had been serving as the payee for her disabled daughter since 1997. However, SSA did not take corrective actions to terminate the beneficiary as her daughter's payee when it determined she was incapable of managing her own benefits. As a result, SSA paid the incapable beneficiary about $49,000 from 2013 to 2016 as the payee for her daughter. We recommended that SSA determine whether it should develop additional

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[6] SSA OIG, *Agency Actions Concerning Misuse of Benefits by Organizational and Volume Individual Representative Payees*, February 2016.

[7] SSA authorizes FFS organizational payees to collect a fee for providing services. According to SSA, in FY2016, there were about 1,400 FFS organizations. FFS organizations may collect a fee of up to 10 percent of the total monthly benefits from beneficiaries, up to a maximum of $41 per month.

[8] SSA OIG, *Representative Payees' Ability to Monitor the Individual Needs of a Large Volume of Beneficiaries*, June 2012.

[9] According to SSA policy, beneficiaries whom SSA has determined are incapable of managing their own benefits may not serve as a payee for other beneficiaries.

systems controls to prevent incapable beneficiaries from serving as payees. SSA agreed with the recommendation.[10]

Payments to Deceased Payees

We have also identified instances in which SSA made payments to deceased payees, because SSA's procedures did not ensure the agency selected new payees when the former payees died. We identified a population of beneficiaries with payees who had a date of death on SSA's Death Master File; we estimated that SSA paid about $47 million to more than 2,500 deceased payees.[11] SSA knew about the death of the payees in most cases within one month, but it took the agency more than a year to replace the deceased payees in 60 percent of the cases that we identified. The funds for beneficiaries who have deceased payees may be at risk for misuse, and SSA cannot ensure the funds are being used for the beneficiary's needs.

In response to our audit, SSA said it was undertaking a multi-year effort to improve its death-reporting process, and upon completion, the agency's death information would interact with all SSA systems, including eRPS, to limit future payments to deceased payees. SSA also reported that it took corrective actions for the beneficiaries and payees identified by our audit.[12]

Payees without Recorded SSNs

SSA is required to obtain Social Security numbers (SSN) of representative payee applicants to ensure the applicant may serve as a payee. In certain situations in which the applicant does not have an SSN, SSA must verify the applicant's identity with other acceptable evidence and process a paper application. In a recent review, we found that SSA needed to improve controls to ensure it records individual payee SSNs in its payment records and retains the application for any payee who does not have an SSN.

We reviewed beneficiaries who had an individual payee who did not have his or her SSN recorded on SSA's payment records; we found, from 2006 to 2016, SSA paid about $1 billion to payees who did not have an SSN recorded in the agency's systems, and SSA had not followed policy to retain the payees' paper applications. We also found, from 2004 to 2016, SSA paid about $853 million to payees who SSA had either terminated or not selected in eRPS.

We recommended that SSA address issues specific to the beneficiaries we reviewed for the audit, and that SSA improve systems controls to ensure it records payees' SSNs in its payment systems and develop alerts when there is a discrepancy between payee information in SSA's payment systems and eRPS. SSA agreed with our recommendations and stated it was adding mechanisms to eRPS to limit discrepancies between SSA's systems.[13]

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[10] SSA OIG, *Beneficiaries Serving as Representative Payees Who Have a Representative Payee*, August 2016.

[11] We calculated payments from the date of the payee's death through the earliest of the following: 1) the date SSA replaced the name of the payee in its payment systems, 2) the date the beneficiary stopped receiving benefits; or 3) March 2015.

[12] SSA OIG, *Deceased Representative Payees*, June 2015.

[13] SSA OIG, *Individual Representative Payees Who Do Not Have a Social Security Number in SSA's Payment Records*, February 2017.

Payees Not in SSA's Payee System

SSA should also improve controls to ensure it does not make payments to payees who are not in eRPS. We identified a population of beneficiaries who had a payee, according to SSA's payment records; however, according to eRPS, there was no payee information for these beneficiaries. As of December 2015, SSA had paid the payees about $218 million. We recommended that SSA address issues specific to the beneficiaries we reviewed for the audit, and that the agency remind employees to retain paper applications from any payee who does not have an SSN. SSA agreed with our recommendations.[14]

Payments to Terminated or Non-Selected Payees

Similarly, we identified a population of beneficiaries with an active payee in SSA's payment systems, but according to SSA's payee system, the payee was terminated or not selected. We estimated that the agency paid terminated or non-selected payees about $367 million over a year-and-a-half period. This occurred because SSA did not remove terminated or non-selected payees from its payment records, or it did not correct payees' status in its payee system from terminated or non-selected to selected. We found, at the time, the agency's payee system did not always generate alerts when payee information was not consistent across SSA's systems.

We recommended that SSA address specific issues related to the beneficiaries and payees we reviewed for the audit, and that SSA improve controls to generate systems alerts when discrepancies exist with payee information across SSA's systems. The agency agreed with our recommendations and reported that it took corrective actions for the payees and beneficiaries identified by our audit.[15]

OIG Recommendations

In summary, to improve payee program oversight, we recommend SSA pursue the following actions:

- The agency should regularly remind employees to follow all policies and procedures when payee misuse occurs, to address beneficiary needs and limit payee misuse in the future. The agency should also continue to refer all allegations of payee fraud and misuse to the OIG for review.

- The agency should continue to expand payee-monitoring efforts and increase the number and frequency of payee site reviews, as resources allow.

- The agency should continue to develop alerts in ePRS that notify employees when discrepancies exist in SSA's systems, to improve payee program oversight and payment accuracy. Additionally, SSA should consider developing systems controls that prohibit employees from taking certain steps related to processing payee actions and payment, until systems issues or discrepancies are resolved.

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[14] SSA OIG, *Active Representative Payees Who Are Not in SSA's Electronic Representative Payee System*, February 2017.

[15] SSA OIG, *Payments to Terminated or Non-selected Representative Payees*, February 2015.

SSA Actions

SSA, in its annual representative payee report to Congress and in its responses to our audit recommendations, has reported the following:

- SSA said it remains committed to deterring payee misconduct, through a strict payee-application process and payee monitoring efforts. When the agency identifies payee misuse, it refers misuse cases to the OIG for review and pursues administrative actions when necessary.

- SSA said it recently awarded a new payee site-review contract, and it is modernizing its site-review process to be more strategic in whom it reviews, what it reviews, and how it conducts reviews.

- SSA is developing various enhancements to eRPS, to compare information on SSA's payments records and in eRPS to ensure information is consistent, and to limit the discrepancies that can contribute to some of the program vulnerabilities that I have discussed. When the agency implements these systems enhancements, we plan to review eRPS effectiveness in addressing these issues.

Conclusion

SSA's representative payee program serves a vital purpose for about 8 million beneficiaries; this population includes some of our most vulnerable citizens. SSA has many service responsibilities, and it allocates its resources as it deems appropriate, but it must prioritize careful administration and monitoring of the payee program.

The OIG has made many recommendations to SSA over the years to ensure it is properly appointing and monitoring trusted payees and making proper payments; further, we are committed to promoting program integrity through payee fraud and misuse investigations. As we have recommended, SSA should continue to enhance its payee-monitoring capabilities, and it should develop and implement systems enhancements to improve program integrity. Finally, going forward, SSA should consider how to balance respect for beneficiaries' rights and decisions with appropriate service and oversight that addresses the needs of a vulnerable population.

We will continue to work with SSA and your Subcommittees to improve the representative payee program and ensure beneficiaries receive the assistance they need. Thank you for the invitation to testify, and I am happy to answer any questions.

Chairman BUCHANAN. Well, thank you.

Ms. Ford, please proceed with your testimony.

STATEMENT OF MARTY FORD, SENIOR EXECUTIVE OFFICER, PUBLIC POLICY, THE ARC, ON BEHALF OF THE CONSORTIUM FOR CITIZENS WITH DISABILITIES SOCIAL SECURITY TASK FORCE

Ms. FORD. Thank you. Chairmen Buchanan and Johnson, Ranking Members Lewis and Larson, members of the committee, thank you for this opportunity to testify on behalf of the CCD Social Security Task Force. We appreciate your ongoing oversight of the representative payee program.

For beneficiaries, payees, or monitoring, there is no one-size-fits-all. Roughly 80 percent of non-elderly adults with payees have a mental impairment, including intellectual disability, autism, or a mental illness. Because payees handle a critical source of income for vulnerable Americans, I will focus on several concerns.

Over the decades the CCD task force has considered whether there should be more formal procedures in the program to strengthen protections for the beneficiary. At the end, we felt that flexibility in determining need and appointment of payees is beneficial, and that the current framework is largely appropriate.

The need for support can change over time. Often older people see their financial skills diminishing over time, while some younger people may be gaining those skills over time, starting out with a payee and developing financial abilities until they no longer need one. We encourage Congress to continue to balance flexibility and individualization with protections and oversight, and to avoid turning the payee program into a process like guardianship, that is more rigid or formal and restrictive, further limiting individual rights.

The vast majority of payees perform their duties well under difficult circumstances. However, a small percentage have misused benefits and violated fiduciary duties. Some have even abused and neglected beneficiaries.

As you heard earlier, a recent case in Georgia illustrates the importance of in-depth, onsite monitoring. Ten beneficiaries were found living in social isolation and extreme poverty in a dilapidated, dirty personal care home run by the rep payee. A gate across the kitchen was locked at night to keep residents out. Women living on the second floor had access to first-floor common areas, including the kitchen, only through an outside staircase. The protection and advocacy system was reviewing the use of beneficiary funds, observed the deplorable conditions, and contacted adult protective services for that home, as well as other residences on the same property run by the same payee.

Monitoring the rep payee program must be robust and vigorous, particularly for people who are non-verbal or face other barriers to advocating for themselves. Monitoring agency must have extensive expertise to ensure that reviews will detect problems and uncover hidden abuse. The monitors must have on-the-ground presence in all 50 states, and familiarity with a range of local service providers and government agencies. They must have experience with the full range of settings where beneficiaries receive housing, treatment,

services, supports, and other assistance. And across persons with different types of disabilities.

They must have experience monitoring community facilities and representative payees and identifying fraud and abuse. They must be able to integrate across disability focus and understanding of disability rights, not limited to representative payee financial responsibilities, and have partnerships with national and state coalitions, including self-advocacy groups.

Organizational payees, or those who serve large numbers of individuals, are in a unique role of trust, handling government benefits for people who can be quite vulnerable. In some cases, they are also creditors who operate the place where a person lives, providing basic services and supports, and have significant influences—influence over many aspects of a person's life. Creditors especially require careful consideration before being appointed, and ongoing monitoring, because the role as payee may conflict with the role as creditor.

Adequate monitoring requires, among other things, home visits for all beneficiaries selected for review, and interviews of a sample of beneficiaries to confirm information provided by the payee, and to assess whether the payee is meeting the individual's needs. Monitors must be prepared for and expected to take appropriate action to protect vulnerable people whom they have learned are in need of additional assistance.

Given the necessary and appropriate scope of the monitoring, we believe that Congress should designate one or more statutorily authorized government entities to conduct this type of robust monitoring of large payees, and additional wild card monitoring.

Finally, the CCD Task Force has been alarmed by the impact of net reductions in SSA's operating budget since fiscal year 2010, on SSA's ability to adequately serve beneficiaries and the public. Congress must ensure that any new initiatives to enhance the representative payee program are adequately funded and staffed, so as not to further erode other agency services.

I appreciate this opportunity to testify, and would—I am happy to answer any questions. Thank you.

[The prepared statement of Marty Ford follows:]

CONSORTIUM FOR CITIZENS
WITH DISABILITIES

HEARING ON
"Examining the Social Security Administration's Representative Payee Program: Who Provides Help?"

March 22, 2017

Subcommittee on Social Security
Subcommittee on Oversight
U.S. House of Representatives Committee on Ways and Means

Statement of Marty Ford
On Behalf of the Social Security Task Force, Consortium for Citizens with Disabilities

ON BEHALF OF:

Association of University Centers on Disabilities
Autistic Self Advocacy Network
Community Legal Services of Philadelphia
Justice in Aging
National Alliance on Mental Illness
National Association of Disability Representatives
National Committee to Preserve Social Security and Medicare
National Disability Rights Network
National Organization of Social Security Claimants' Representatives
The Arc of the United States
United Cerebral Palsy
United Spinal Association

TESTIMONY OF MARTY FORD, ON BEHALF OF THE SOCIAL SECURITY TASK FORCE, CONSORTIUM FOR CITIZENS WITH DISABILITIES

Chairman Buchanan, Ranking Member Lewis, Chairman Johnson, Ranking Member Larson, and Members of the Subcommittees, thank you for holding this two-part series of hearings on Social Security's representative payee program and for inviting me to testify today. I am submitting this testimony on behalf of the undersigned members of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force.

CCD is a working coalition of national disability organizations working together to advocate for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

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Millions of Social Security and SSI beneficiaries have payees, with the vast majority performing their duties admirably under difficult circumstances. However, a small percentage of payees have misused benefits and violated their fiduciary duties, and some have even abused beneficiaries. Over many years, Congress has worked to enhance the Social Security Administration (SSA) representative payee program. The CCD Social Security Task Force appreciates your ongoing oversight of the program.

In general, the CCD Social Security Task Force supports provisions that protect beneficiaries. However, these protections, while foremost in importance, should not be implemented in such a way as to deter responsible individuals and organizations from serving as payees. In our experience, it can be difficult to recruit payees, and this problem is expected to grow worse in coming years.

In our view, the focus of the representative payee program should be to assist the person in using their SSA benefits to meet their individual needs. One of the strengths of SSA's representative payee program is its combination of flexibility and relative informality, which permits an individualized approach while avoiding a substantial administrative structure. However, that relative informality – compared to more formal processes such as court-appointed guardianship – can lead to problems.

Over the decades the CCD Social Security Task Force has looked at the representative payee program and considered whether we should ask for more formal procedures to strengthen protections for the person. At the end of the day, we have not, because we have felt that flexibility in determination of need and appointment of payees is beneficial and that the current framework is largely appropriate. We encourage Congress to continue to balance flexibility and individualization with protections and oversight, and also with the need to recruit capable individuals and organizations to serve as payees. As described in more detail below, we encourage Congress to avoid turning the payee program into a process like guardianship that is more rigid or formal and restrictive, further limiting people's rights.

However, SSA should <u>not</u> be informal in its oversight and monitoring of the representative payee program. My testimony will address the importance of strong oversight and monitoring. I will also highlight key recommendations to strengthen SSA's training and support for payees and beneficiaries, to implement new procedures to support beneficiaries' rights, and to test ways for SSA to use less formal and restrictive alternatives than the appointment of a payee. The CCD Social Security Task Force also intends to develop additional recommendations to share with the Subcommittees.

Finally, the CCD Social Security Task Force has been alarmed by the impact of net reductions in SSA's operating budget since fiscal year 2010 on the agency's ability to adequately serve beneficiaries and members of the public. We are also concerned about the potential impact on SSA of initiatives to reduce the size of the federal workforce. Today, over 1.1 million Social Security disability claimants face record-high waiting times in excess of 18 months for hearings before an Administrative Law Judge. Wait times are high and increasing in many other core service areas, including at field offices and on SSA's toll free number. We are concerned that many people needing help with payee issues could be caught up in the huge backlog at SSA payment centers, and even getting through by phone or in person at field offices to report a problem is getting harder and harder. Budget cuts and hiring freezes mean front-line staff at SSA field offices are under intense time pressure to do more work with fewer employees, which could lead to cutting corners on screening and monitoring representative payees.

Over the years and regardless of the economic or budget outlook, Congress and advocates have grappled with the reality that most steps to strengthen SSA's representative payee program will require new investments. This point is even more important to emphasize today. **Congress must ensure that any new initiatives to enhance the representative payee program are adequately funded and staffed, so as not to further erode other agency services.**

1. **Who has a Representative Payee?**

Over 8 million people have a representative payee to help them manage their Social Security or SSI benefits. Over half are under the age of 18.[1] Adults with SSA payees include:

- Disabled workers who have experienced a qualifying disability and receive Social Security benefits based on their own earnings record;
- Adults who receive Social Security Disabled Adult Child benefits based on a parent's earnings record;
- Adults who are blind or disabled and receive SSI, including individuals who also receive Social Security;
- Seniors who receive Social Security, SSI, or both.

My testimony will focus on non-elderly adults with disabilities who make up the majority of adults with representative payees.[2]

All people who receive Social Security or SSI disability benefits and have a payee have met the Social Security Act's stringent disability standard – but within that narrow standard, beneficiaries have a range of diagnoses, abilities, and needs. Roughly 8 in 10 non-elderly adults who receive Social Security, SSI, or both and have a payee have a mental impairment, including intellectual disability, autism, or a mental illness.[3] Other common primary diagnostic categories identified by SSA among non-elderly adults with payees include diseases of the nervous system and sense organs, circulatory disorders, musculoskeletal disorders, and congenital anomalies.[4]

Some people with payees need decision making support in many aspects of their life. Other people need decision making support in a just a few areas, including in this case handling their SSA benefits. Additionally, some people may only need a payee to play a fairly limited role, such as paying the monthly rent, utilities, and other bills and then passing along a regular amount for monthly or weekly

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[1] Out of 63 million Social Security and SSI beneficiaries in 2013. Anguelov, C.E., Ravida, G., and Weathers II, R.R. (2015). Adult OASDI Beneficiaries and SSI Recipients Who Need Representative Payees: Projections for 2025 and 2035. *Social Security Bulletin*, 75(2), pp. 1-17.

[2] Non-elderly adults who receive Social Security disabled worker benefits, disabled widow(er) benefits, and DAC benefits make up 72 percent of all adults who receive Social Security benefits and have a payee; non-elderly adults with disabilities make up 53 percent of all SSI recipients who have a payee. U.S. Social Security Administration. *Annual Statistical Supplement, 2015*. Table 5.L1 Number of beneficiaries with a representative payee as a percentage of all beneficiaries, by type of beneficiary and age, December 2014, https://www.ssa.gov/policy/docs/statcomps/supplement/2015/5l.html and Table 7.E4 Number and percentage distribution of persons with representative payees receiving federally administered payments, by eligibility category and age, December 2014, https://www.ssa.gov/policy/docs/statcomps/supplement/2015/7e.html#table7.e4.

[3] U.S. Social Security Administration. *Annual Statistical Report on the Social Security Disability Insurance Program, 2015*. Table 15. Representative payment, by sex and diagnostic group, December 2015, https://www.ssa.gov/policy/docs/statcomps/di_asr/2015/sect01b.html#table15; and *SSI Annual Statistical Report, 2015*. Table 37. Recipients with a representative payee, by diagnostic group and age, December 2015, https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2015/sect06.html#table37.

[4] Ibid.

living expenses. Others may need their payee to be more involved in their day-to-day decisions about how to spend their SSA benefits.

Additionally, the decision-making support needs of people who receive Social Security or SSI benefits, including people with payees, can change over time. Some people, including many who are older, may see their financial capability skills diminish. Other people, including many who are younger, gain skills over months and years. They may start out with a payee, but develop their financial capability skills to the point that they no longer need a payee.

Approximately 4 in 5 payees for adults are family members, typically a parent who has been involved in a person's life from day one, or a spouse. Others individual payees include siblings, other relatives, or family friends. Some have stepped into the payee role after the death of a parent. Individual payees often support people living in the family home or living independently, as well as people who live in group homes, institutions, or other congregate settings.

Organizational payees include social service agencies; institutions including mental institutions, intermediate care facilities, and nursing homes; and government agencies. In many cases, these organizations are also creditors who operate the place where a person lives, provide primary services and supports, and have significant influence over many aspects of a person's life.

The diversity among beneficiaries and their payees highlights that one size does not fit all. SSA must ensure that the representative payee program operates from an individualized perspective.

Within this diversity, it is also important to keep in mind several factors that highlight the importance of strong oversight and monitoring. SSA benefits are generally very modest. For example, Social Security benefits average around $1,200 per month for a disabled worker and SSI benefits average around $560 per month for a non-elderly adult with a disability. For most people, these benefits provide their primary income, and for some, Social Security or SSI provide their only source of personal income. Every dollar and every penny counts. Most beneficiaries simply cannot afford any interruption in their benefits or any underpayment. Many have little or no savings, and could also face dire consequences in the event of an overpayment.

Social Security beneficiaries who had higher earnings during their working years, and as a result receive a larger than average benefit, can also be vulnerable to financial exploitation. For example, access to a person's Social Security benefits may lead to access to other bank accounts and financial assets, such as savings and retirement accounts.

Finally, people who have few or no supportive family or friends in their lives can be particularly at risk of financial exploitation, and much worse. Rare but horrifying cases – such as the confinement, forced labor, and abuse of men with mental disabilities in a turkey plant bunkhouse in Atalissa, Iowa – must be prevented and rooted out. SSA must take proactive steps to promote quality in the representative payee program to prevent problems before they happen, as well as to ensure robust monitoring and rapid response to identify and quickly address problems.

2. Training, Support, and Resources for Beneficiaries and Representative Payees

Representative payees are responsible for using a person's SSA benefits to pay for current and future needs, and to save any additional benefits to meet future needs. Payees must also maintain expense records and provide SSA with accounting reports. In addition, SSA requires payees to help the person get medical treatment when needed, and encourages payees to be actively involved in a

person's life and to include them in financial decisions.[5] For beneficiaries who attempt to work, payees must become knowledgeable about SSA work incentives, including reporting requirements. Payees for SSI recipients must also navigate the SSI program's complex income and asset requirements. With so many important responsibilities, payees often have many questions and desire guidance on how to best fulfill their duties.

In addition, people who have a representative payee often have many questions about the program, their rights, and what they can expect from their payee and SSA. As highlighted above, people who have a representative payee may also see their decision-making support needs change over time, and some individuals may experience or be at risk of misuse of benefits, abuse, or exploitation.

SSA provides a handbook and some additional online resources for both payees and beneficiaries.[6] It has also recently provided an online Representative Payee Interdisciplinary Training video series.[7]

In addition to these existing resources, SSA should:

- Develop regular training opportunities for beneficiaries on their rights as beneficiaries, becoming their own payees, and/or making complaints;
- Provide additional training and guidance to payees to help them fully understand their responsibilities; and
- Create a toll-free hotline, separate from SSA's existing toll-free number, for representative payee issues including the opportunity for payees and beneficiaries to seek guidance and for beneficiaries or other concerned individuals to make complaints.

3. Oversight and Monitoring of Representative Payees

As noted earlier, the representative payee program's framework has some informality and flexibility built in to meet individualized needs. However, rare but horrifying cases of abuse and exploitation, as well as cases of unintentional misuse of benefits, highlight the risks that many people who have a payee face. We applaud SSA's work with the states' Protection and Advocacy agencies in response to the abuses discovered at Henry's Turkey Service.

Quality implementation of the current representative payee model demands robust and rigorous monitoring. Based on our extensive past experience advocating for people with disabilities – including people who are nonverbal or face other barriers to advocating for themselves – we believe any reviewing agency must possess the following expertise in order to have the greatest degree of confidence that the reviews will be able to detect problems and uncover hidden abuse:

- Have on-the-ground presence in all 50 states, and familiarity with a range of local service providers and government agencies;
- Have experience with the full range of settings where a beneficiary may receive housing, treatment, services, supports, and other assistance, and across persons with different types of disabilities;
- Have demonstrable experience monitoring community facilities and representative payees, and identifying fraud and abuse;
- Be able to integrate a cross-disability focus and understanding of disability rights, not limited to representative payee financial responsibilities; and

[5] Social Security Administration, "Frequently Asked Questions (FAQs) for Representative Payees," https://www.ssa.gov/payee/faqrep.htm. Accessed March 11, 2017.
[6] Available at https://www.ssa.gov/payee/.
[7] Available at https://www.ssa.gov/payee/rp_training2.html.

- Have partnerships with national and state coalitions, including with self-advocacy groups.[8]

We support requirements under section 205 and 1631 of the Social Security Act for SSA to directly review certain organizational payees. It is also important that SSA continue to review a sample of large organizational payees as identified by SSA systems, plus a certain amount of "wild card" monitoring of payees as identified by the organization doing the monitoring. Effective reviews should:

- Review payees to evaluate compliance with banking procedures, account titling, and management of beneficiary funds;
- Refer suspected cases of abuse or neglect, health or safety, housing, or wage related issues to the appropriate agencies;
- Conduct follow-up activities and training to ensure deficiencies such as minor recordkeeping or bank account titling issues are corrected;
- Interview payees about how they handle the beneficiary's funds, how they determine a beneficiary or recipient's needs, and any services they provide;
- Review the payees' banking procedures (including accounting system and bank account titling), financial records, and documentation of how they managed the sampled beneficiaries' Social Security payments;
- Conduct home visits for all beneficiaries selected for review;
- Interview a sample of beneficiaries, including those with complex communications needs, to confirm information provided by the payee, verify large or unusual purchases noted during the financial review, ask if the payee is meeting his or her needs, and if there are any problems with the payee;
- Connect beneficiaries to advocacy services, including legal services, where appropriate;
- Receive, secure, protect and destroy beneficiary personally identifiable information and other confidential information; and
- Collect and submit data on representative payee reviews in a secure manner.

Given the scope of the monitoring that we believe is necessary and appropriate, the CCD Social Security Task Force believes that Congress should designate one or more statutorily authorized government entities to conduct this type of robust monitoring of large organizational payees (not including payees who must be directly monitored by SSA under the Social Security Act) and additional "wild card" monitoring. Given the recent reductions in SSA's LAE funding, such designation should be accompanied by appropriations sufficient to provide reviews that beneficiaries, families, and Congress can have a high degree of confidence are complete and thorough.

4. Other Enhancements Needed

As noted in my introduction, the CCD Social Security Task Force intends to submit additional recommendations to strengthen the representative payee program. At this time, I would like to highlight two important issues.

[8] 161 Cong. Rec. H10293 (2015) (U.S. House of Representatives, Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding House Amendment No. 1 to the Senate Amendment on H.R. 2029, Consolidated Appropriations Act of 2016 [P.L. 114-113]). https://www.gpo.gov/fdsys/pkg/CREC-2015-12-17/html/CREC-2015-12-17-pt3-PgH10161.htm

a. Payees who are creditors.

Government agencies, institutions, and service providers often act as payees for children and adults committed to their care and custody and for adults receiving their services. These include some of the most vulnerable beneficiaries who lack family and friends to act in their best interests. Too frequently, a fiduciary / creditor conflict arises in these cases. As a representative payee, the governmental agency, institution, or organization has a fiduciary duty to act in the person's "best interests." However, the payee is also a creditor, seeking to reimburse itself for the cost of care.

For example, payment for shelter and food is a priority use of benefits and is collected by creditors such as state institutions that may act as payees for people living in the institution. At the same time, SSA's definition of "current maintenance" for persons in state institutions also includes expenditures for items that will aid in the beneficiary's recovery or release from the institution or personal needs items to improve the individual's conditions while in the institution (20 C.F.R. § 404.2040(b)). This can pose conflicting priorities, and unfortunately, in too many cases, the creditor, and not the fiduciary, wins out.

We recommend that onsite reviews include interviews with beneficiaries, or if the beneficiary is unable to participate, with a family member where possible. Beneficiaries and family members can provide important information about the quality of services provided by the payees. Interviews also allow the monitors to make their own judgments about whether the payees are using benefits for the "use and benefit" of the beneficiaries e.g., does the person have adequate food, clothing, and shelter, access to a telephone or other communication devices and to needed accommodations, and are other needs being met, such as needs for medical treatment, physical therapy, and occupational therapy.

Another problem is that in some cases, a governmental agency, institution, or organization is selected as a representative payee even where family or friends are available and willing to serve as the payee. Too often, we hear of scenarios such as:

- Family members must "race" a creditor to get to the Social Security field office first in order to be named the payee.
- A creditor, such as a nursing home or group home, tells a person or family member that it must become the person's payee as a condition of entry or continued services.
- SSA appoints a creditor to serve as a payee for a person who already has a family member or friend serving as his or her payee.

SSA policy clearly ranks a spouse, parent, or other relative with custody or who shows concern above all other payee applicants, including governmental agencies and public or private institutions.[9] SSA policy requires that if the SSA worker becomes aware of a potential payee candidate who is equal to or higher than the payee applicant on the preference list, the worker should contact the candidate higher on the list to find out if he or she wishes to apply to become payee, before the institutional or agency payee is appointed.

We believe this is a serious problem in some areas and that more oversight is required to ensure that SSA's policy is followed. The potential for intimidation and overreach by an institutional creditor creates a very serious imbalance that must be carefully addressed and monitored beyond looking merely at financial audits. We also recommend that SSA conduct a study, and provide opportunities

[9] *See* 20 CFR, Sections 404.2021 and 416.621, and SSA Program Operations Manual Systems, GN 00502.105 Payee Preference Lists, https://secure.ssa.gov/poms.nsf/lnx/0200502105, accessed 03/11/2017.

for public input and comment, to review and reevaluate the orders of preference it uses to select a payee (20 C.F.R. §§ 404.2021 and 416.621).

b. Expand protection for restitution of misused benefits.

Prior to the Social Security Protection Act of 2004 (SSPA; P.L. 108-203), SSA provided restitution of misused benefits only where there was "negligent failure" by SSA to investigate or monitor a representative payee. The SSPA eliminated the "negligent failure" standard where misuse has occurred by any payee that is not an individual or is an individual who serves 15 or more beneficiaries. In these situations, SSA will repay the misused benefits to the person or the person's alternative representative payee (42 U.S.C. 405(j)(5); 20 C.F.R. § 404.2041).

Unfortunately, the "negligent failure" standard remains in place for all other payees. This standard places an onerous burden of proof on the beneficiary that, in practical terms, makes it extremely difficult to obtain restitution from SSA. First, the beneficiary must prove SSA's "negligent failure" to investigate. Under SSA's policies, this means there must be a showing that SSA failed to follow established procedures for investigating payee applicants and monitoring payees. Second, the beneficiary must show a causal connection between SSA's "negligent failure" and the payee's misuse of benefits.

While we recognize the problems with SSA providing restitution to beneficiaries for misuse by individual payees serving fewer people, we believe that a beneficiary should not be penalized for a payee's misuse of benefits. We recommend that Congress extend the protection by eliminating the "negligent failure" standard for all instances of misuse.

We also recommend that SSA formalize its procedures to assure uninterrupted continuation of benefits once a determination has been made to disqualify a payee. SSA's regulations provide that "when we learn that your interest is not served by sending your benefit to your present representative payee...we will promptly stop sending your payment to the payee." and go on to say, "We will then send your benefit payment to an alternate payee or directly to you, until we find a suitable payee." (20 C.F.R. §§ 404.2050, 416.650). Under these regulations, SSA may only suspend payment if "we cannot find a suitable alternative representative payee before your next payment is due." Unfortunately, in some cases beneficiaries have experienced extended payment interruptions when SSA has not yet identified an alternate payee. We recommend that SSA clarify its procedures to emphasize direct payment when the agency has not yet identified an alternate payee.

c. Distinguish "misuse" from "improper use".

There is a difference between "misuse" and "improper use" of benefits. With "misuse," benefits are not used for the benefit of the individual. In "improper use," benefits are not used in necessarily the wisest manner but are still used for the benefit of the individual. "Improper use" should not trigger the penalties associated with "misuse."

Existing regulations and SSA policies give payees a fair amount of discretion in determining the use of benefits so long as it is for "the use and benefit" of the beneficiary. This is defined as using the benefits for the individual's "current maintenance," i.e., food, clothing, shelter, medical care, and personal comfort items. To encourage individuals to serve as payees, they should be able to enter into that capacity knowing that their judgment will not be continually questioned, or subject to the penalties associated with misuse, while understanding that SSA has the duty to monitor their actions.

SSA currently defines "improper use" in its Program Operations Manual System (POMS; GN 00602.130.A) as follows:

> Improper use means an unwise expenditure of Social Security and/or Supplemental Security Income benefits. Improper use of benefits occurs when a representative payee allocates benefits for the beneficiary but not in the best interests of the beneficiary.

SSA's POMS goes on to instruct staff to talk with the payee about improper use, and if the payee is not willing or able to change, to develop a successor payee. SSA staff is not to seek restitution (GN 00602.130.B).

The CCD Social Security Task Force has recommended that SSA include a discussion of what is "improper use" in its regulations at 20 C.F.R. § 404.2040, which now explain what SSA considers to be proper use of benefits. It would be helpful if the regulations also provide examples of improper use. We also recommend that SSA should ensure that its training for agency staff highlights the difference between "misuse" and "improper use" and provides examples, and that training and educational materials for payees should similarly clarify this information.

5. Exploring Alternatives and Future Needs

a. Supported decision-making

Supported-decision making is an emerging model. It has been described by the American Bar Association (ABA) as a process in which people with disabilities are assisted in making decisions for themselves. The ABA explains that the person with a disability, "...is the decision maker, but is provided support from one or more persons who explain issues to the individual in a manner that he or she can understand. There is no one model of supported decision-making."[10]

Support for these concepts is growing. In fact, the Uniform Law Commission Drafting Committee on a Revised Uniform Guardianship and Protective Proceedings Act is currently considering, among many other changes, language for the next revision that would recognize the role of and encourage the use of less restrictive alternatives than guardianship, including supported decision-making. Similarly, a 2016 report by the Institute of Medicine of the National Academies of Sciences, Engineering, and Medicine recommended that SSA implement "a demonstration project to evaluate the efficacy of a supervised direct payment option for qualified beneficiaries," based on a model currently operated by the Department of Veterans Affairs.[11]

SSA should explore the use of supported decision-making to ensure that the representative payee capability determination process and resulting appointments promote autonomy and financial independence to the greatest degree possible.

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[10] American Bar Association, Beyond Guardianship: Supported Decision-Making by Individuals with Intellectual Disabilities, A Short Summary from the 2012 National Roundtable. http://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/SDMRoundtable_Summary.authcheckdam.pdf.

[11] *Informing Social Security's Process for Financial Capability Determination*, Chapter 6: Conclusions and Recommendations, pg. 161. Available at: https://www.nap.edu/catalog/21922/informing-social-securitys-process-for-financial-capability-determination. As explained in the report, "The VA's supervised direct payment option for individuals who are determined to be incompetent but able to manage benefits with supervision provides a model for such an approach. Instead of the VA's appointing a fiduciary for such individuals, they receive their benefits directly but under the supervision of a Veterans Service Center Manager."

The current payee program does not fully consider the right to self-determination after a representative payee has been appointed. Using the supported decision-making model, SSA should develop solutions that promote independence and dignity for people with disabilities and older adults. Supported decision-making is a viable alternative to appointing a representative payee where the beneficiary may make use of friends, family members, and professionals to help them understand their financial situation so they can make their own decisions. With proper support, some beneficiaries who might otherwise require the appointment of a representative payee may be able to manage or direct the management of their benefits.

Even in situations where a representative payee has been appointed, supported decision-making can inform how the payee carries out his or her duties. Payees using a supported decision-making model may encourage the beneficiary to express their own preferences and values in their spending, provide occasions for the beneficiary to exercise their skills to improve financial competence, and offer opportunities for the beneficiary to make independent decisions, whenever possible.

We recommend that Congress appropriate new funding for SSA to implement a demonstration project to evaluate how supported decision-making can be developed as an alternative to appointment of a representative payee, and as a "best practice" for certain populations who have a payee. We believe that a demonstration is necessary to ensure that Congress and SSA can review efficacy, efficiency, and costs. SSA's core mission rightly focuses on timely and accurate determination and payment of benefits. The CCD Social Security Task Force has long emphasized that this mission-critical work must take priority; a demonstration can help to evaluate the appropriate role for SSA.

b. Advance designation of representative payee preferences.

With the projected increase in cases of dementia and Alzheimer's, there is a growing need for persons who can serve as representative payees for older adults.

SSA does not recognize a power of attorney as an acceptable document to give an agent the authority to manage a person's monthly benefits. SSA only recognizes a representative payee who has been approved through the agency's appointment process. However, SSA should develop a form to allow beneficiaries to express their preferences for whom they would want to serve as their representative payee while they have the capacity to do so.

When the beneficiary no longer has the capacity to manage or direct the management of their SSA benefits, the individual nominated on the form would present evidence of this lack of capacity to SSA. The agency would then make a determination following the process described in 20 C.F.R. §§ 404.2015 and 416.615 (Information considered in determining whether to make representative payments). Then, following an investigation into the person nominated by the beneficiary as provided for in 42 U.S.C. 405(j)(2) and 1383(a)(2), SSA would appoint a representative payee by following the beneficiary's preferences as closely as possible.

6. Conclusion

In closing, thank you for the opportunity to testify on behalf of the undersigned members of the CCD Social Security Task Force. We thank the Subcommittees for your oversight of SSA's representative payee program and for your interest in strengthening this system on behalf of people with disabilities and older adults. I look forward to answering any questions.

Committee on Ways and Means
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Marty Ford		
1. Are you testifying on behalf of a Federal, State, or Local Government entity? a. Name of entity(ies). b. Briefly describe the capacity in which you represent this entity.	Yes ☐	No ☒
2. Are you testifying on behalf of any non-governmental entity(ies)? a. Name of entity(ies). Consortium for Citizens with Disabilities Social Security Task Force b. Briefly describe the capacity in which you represent this entity. Staff of a member organization (The Arc) of the Task Force	Yes ☒	No ☐
3. Please list any Federal grants or contracts (including subgrants or subcontracts) which you have received during the current fiscal year or either of the two previous fiscal years that are related to the subject matter of the hearing: none		
4. Please list any grants, contracts, or payments originating from foreign governments which you have received during the current calendar year or either of the two previous calendar years that are related to the subject matter of the hearing: none		
5. Please list any offices or elected positions you hold. no public office or elected positions		
6. Does the entity(ies) you represent, other than yourself, have parent organizations, subsidiaries, or partnerships you are not representing?	Yes ☐	No ☒
7. Please list any Federal grants or contracts (including subgrants or subcontracts) which were received by the entity(ies) you represent during the current fiscal year or either of the two previous fiscal years, which exceed 10 percent of entity(ies) revenues in the year received. Include the source and amount of each grant or contract. Attach a second page if necessary. none		
8. Please list any grants, contracts, or payments originating from foreign governments which were received by the entity(ies) you represent during the current fiscal year or either of the two previous fiscal years related to the subject matter of the hearing. Include the source and amount of each grant or contract. Attach a second page if necessary. none		

Chairman BUCHANAN. Thank you.

Ms. Uekert, we will hear your testimony next.

STATEMENT OF BRENDA K. UEKERT, PRINCIPAL COURT RESEARCH CONSULTANT, NATIONAL CENTER FOR STATE COURTS

Ms. UEKERT. Good morning, Chair Buchanan and Chair Johnson, Ranking Members Lewis and Larson and members of the subcommittees. Thank you for inviting me here to discuss the intersection of conservatorships and the Social Security representative payment program. My name is Brenda Uekert, and I am the principal court research consultant and director of the Center for Elders in the Courts at the National Center for State Courts. The National Center is a nonprofit organization with headquarters in Williamsburg, Virginia, whose mission is to improve the Administration of justice through leadership and service to state courts and courts around the world.

My areas of expertise include aging issues, elder abuse and exploitation, and adult guardianships and conservatorships. Because terminology varies from state to state, we use generalized terms. Guardianships refer to those cases in which the court has appointed an individual to handle the medical and well-being issues of an incapacitated person, while conservatorships refer to those cases in which an individual has been appointed by the court to manage the finances of another person. The following remarks focus on conservatorships, which are the most pertinent to the Social Security representative payment program.

We estimate that there are approximately 1.3 million active adult guardianship or conservatorship cases, and that courts oversee at least $50 billion of assets under adult conservatorships, nationally. My written testimony addresses issues that can dramatically improve efficiencies and oversight of conservatorships, including the modernization of processes and professional auditing, the use of differentiated case management strategies to prevent and address exploitation, the development of interactive online training programs to provide basic education for non-professional guardians and conservators, and improvements in information sharing between state courts and the Social Security Administration. For this hearing, I will focus on this last item, information sharing.

Data on the overlap between conservatorships and the Social Security representative payment program do not exist. But given the fact that persons under an adult conservatorship are elderly or disabled, a sizeable proportion of conservators are likely to be representative payees. The Social Security Administration, under the Code of Federal Regulations section 401.180(d), states that, "SSA will not honor state court orders as a basis for disclosure." Consequently, one of the biggest complaints we hear from judges is that SSA does not recognize an official state court order that removes a conservator for cause.

In practice, this means that a conservator who misappropriates or steals funds from the protected person may continue to serve as his or her representative payee. The Social Security Administration may address the issue through its own internal investigation, but their policy deems the official state court order to have no standing.

In 2014, the National Center conducted a survey of state court judges and staff to address collaboration between state courts and the Social Security Administration. When asked to provide recommendations for improving coordination, a number of judicial respondents suggested that SSA local or regional offices designate staff to act as a liaison to state courts. But such designated contacts, even if appointed, do not resolve the limitations placed on SSA by the Federal Privacy Act of 1974, which limits the sharing of information about beneficiaries and representative payees with state courts.

The Privacy Act works to the detriment of protected persons. For example, if SSA finds that a representative payee has misappropriated funds and is also a conservator, they are forbidden from sharing such information with the court.

Despite these challenges, the level of collaboration between state courts and SSA has improved substantially, primarily as an outcome of the creation of Working Interdisciplinary Networks of Guardianship Stakeholders, otherwise known as WINGS. WINGS groups currently exist in 17 states and territories to advance guardianship reform, improve coordination, address abuse, and promote less restrictive alternatives. SSA has initiated a structured set of contacts with state WINGS groups by appointing a regional SSA WINGS representative for each of the participating states, and has indicated willingness to adopt additional representatives to upcoming new state WINGS programs.

In sum, state courts have increasingly embraced collaborative approaches that introduce multi-disciplinary perspectives to specific problems, such as conservatorships. Yet for state court judges who strive to protect all assets, including Social Security checks, the SSA's interpretation of federal privacy law, and its refusal to honor state court orders—affects the court negatively. Thank you.

[The prepared statement of Brenda K. Uekert follows:]

Written Testimony to the U.S. House of Representatives Committee on Ways and Means, Subcommittees on Oversight and Social Security

Brenda K. Uekert, PhD, Principal Court Research Consultant
National Center for State Courts

I. Introduction

Chair Buchanan, Chair Johnson, Ranking Member Lewis, Ranking Member Larson, and Members of the Subcommittees, thank you for inviting me here to discuss the intersection of conservatorships and the Social Security representative payment program. My name is Brenda Uekert and I am a Principal Court Research Consultant and the Director of the Center for Elders and the Courts[1] at the National Center for State Courts ("the National Center"). The National Center is a non-profit organization with headquarters in Williamsburg, Virginia, whose mission is to improve the administration of justice through leadership and service to state courts, and courts around the world.

My areas of expertise include aging issues, elder abuse and exploitation, and adult guardianships and conservatorships. Because terminology varies from state to state, the National Center's Court Statistics Project uses generalized terms: Guardianships refer to those cases in which the court has appointed an individual to handle the medical and well-being issues of an incapacitated person, while conservatorships refer to those cases in which an individual has been appointed by the court to manage the finances of another person. The following remarks focus on conservatorships, which are most pertinent to the Social Security representative payment program.

The National Center works with the state and territory supreme courts and their administrative offices to compile and report data. We estimate that there are approximately 1.3 million active adult guardianship or conservatorship cases and that courts oversee at least $50 billion of assets under adult conservatorships nationally. Court practices tend to be highly localized and can vary widely. Yet there are national standards and innovative practices that

[1] See www.eldersandcourts.org

have implications throughout the United States. The issues that are most relevant for this testimony are:

- Modernization and auditing
- Differentiated case management strategies
- Training and assistance for nonprofessional conservators
- Information-sharing between courts and the Social Security Administration.

II. Modernization and Auditing

Most state laws require conservators to submit an initial inventory and annual accountings. Beyond those requirements, it is up to individual courts to track submissions, review accountings, and take actions when problems arise. At one end of the spectrum, some courts fail to record the receipt of annual accountings, do not follow up when conservators miss submission deadlines, and approve accountings without any examination or audit. This is in stark contrast to higher performing courts, which may require electronic submission of individual transactions, schedule "show cause" hearings when conservators miss their accounting deadlines, and subject each accounting to a professional audit. To date, the Minnesota Judicial Branch leads the nation in its use of modern tools to improve court oversight of conservatorships.

Minnesota is the only state that requires all conservators to use software to electronically submit transaction level data. They have a centralized team of professional auditors to audit those accountings. The National Center has been working with the Minnesota Judicial Branch, with funding from the State Justice Institute, on the Conservatorship Accountability Project (CAP). There are two aspects of CAP: the use of predictive analytics to develop a set of risk indicators, and technical assistance to help other states pilot similar types of software. The primary research question is: Can we predict which cases are more likely to have a high risk of exploitation? If we can predict this subset of cases, then we have the potential to divert resources to high risk cases for the purposes of a speedy audit and follow-up court actions to address the problem.

In this context, the National Center analyzed over 1,300 audited accountings from Minnesota. Our goal was to identify specific factors that predicted a level 4 audit finding—cases in which the auditor has a "concern of loss" (8.3% of the accountings). Examples of issues that arise in level 4 cases include cash withdrawals, missing income, unauthorized purchases of high-end items, loans from the protected person's funds, fraudulent documentation, and excessive fees. In some cases, there are legitimate reasons or data entry errors that explain the transactions. In other cases, the transactions noted in the level 4 audit are part of larger efforts to exploit or steal the protected person's assets. For example, checks may have been written to family members to provide services that never transpired, or the protected person's assets were used to purchase a vehicle for the conservator. For this reason, the National Center research team focused on the subset of level 4 cases. We used a variety of sophisticated statistical tools to ultimately develop ten risk indicators that successfully predicted 80% of the level 4 audits. The indicators are a huge leap from the anecdotal information that has predominated the literature on "red flags" associated with conservatorships. For example, we found that more than 12 separate vehicle expense transactions in a year was a predictor of a level 4 finding. The ten risk indicators have been programmed into the Minnesota software for the purposes of testing their validity and refining the indicators as needed. Results should be available later this year. Ultimately, the expansion of this approach and the creation of "dashboards" for judges will enable courts and judges to have readily accessible data that can be used to address specific items—for instance, the reasonableness of fees and changes in expenses and income over multiple years.

The Conservatorship Accountability Project includes technical assistance to help other states adopt software similar to that used in Minnesota. To this end, the National Center worked with 5 states—Indiana, Iowa, Nevada, New Mexico, and Texas—to develop pilot programs. Each state court's information technology division had access to Minnesota's source code for the goal of adapting the software to meet the needs of their state. This component of the project was hindered by the fact that states have different terminology, laws, business practices, and case management systems, thus creating obstacles for the

implementation of the Minnesota software. In hindsight, the National Center has learned that states have a difficult time adapting the software as much of the code is intricately woven to unique Minnesota court practices. Additionally, the lack of resources and competing priorities led to a halt in software development and implementation in two of the five states—Iowa and New Mexico.

Despite challenges, the National Center is confident that more generic software code and a companion handbook can be developed and adapted to fit most state courts. Modernization of the process to improve oversight and efficiencies should be the goal. While funding remains the primary challenge, the potential of combining technology with predictive analytics and professional auditing is enormous. Our Center for Elders and the Courts, working with the Conference of Chief Justices and Conference of State Court Administrators, drafted the *Adult Guardianship Initiative*.[2] The Initiative envisions a national resource center that would help states develop software, periodically analyze transaction data to improve the algorithms that predict "concern of loss" cases, assist states in developing strategies to audit a subset of accountings, and draft judicial response protocols that emphasize conservator accountability and the return of assets that have been misappropriated.

III. Differentiated Case Management Strategies

The National Center has worked with courts nationwide to apply the concept of "differentiated case management" or DCM to a wide variety of case types. The goal of DCM is to develop timely and just decisions consistent with the needs of each case and to optimize the use of court resources. For example, conservatorship petitions that are contested when filed or the subject of repeated family complaints may require additional resources and oversight than uncontested cases. Similarly, accountings that are "flagged" because they include transactions that have been empirically linked to potential exploitation deserve greater scrutiny than accountings without such transactions. DCM may be practiced formally or informally, and in the case of conservatorships, is aimed at preventing exploitation. An

[2] See http://eldersandcourts.org/~/media/Microsites/Files/cec/Guardianship%20Strategic%20Action%20Plan%202016.ashx.

example of the informal use of DCM is demonstrated by the Richland County Probate Court in South Carolina, which uses some of the following tools:

- In cases in which the nominated conservator has difficulty securing a bond or has a questionable credit history and there are no other qualified candidates willing or able to serve, the judge may order the conservator to establish a restricted account, which limits or prevents conservators from withdrawing funds.
- The judge may require conservators who appear to have difficulties handling their financial responsibilities to report more frequently to the court, submit monthly bank statements, establish automatic payments to service providers, and prove that the funds were spent appropriately.
- The judge may send a special visitor or guardian ad litem to the residence to verify certain expenditures and to review specific transactions. A full audit of current and past accountings can be ordered.
- When an expenditure is considered inappropriate, the judge may require a hearing to receive testimony on the issue. If funds were misappropriated, the judge may remove the conservator, set up a repayment schedule for the conservator, and hold a conservator in contempt if warranted.
- In cases where assets were misappropriated, in addition to referring the case for prosecution in the most egregious of circumstances, the judge may take several actions to prevent further exploitation and to provide relief to the protected person. For example, the judge may freeze assets, order a deed to be voided if real estate was transferred without permission from the court and to the disadvantage of the protected person, and order the repayment of funds if a vehicle was transferred without receiving full market value.

The DCM strategies described above are an outcome of an individual judge's leadership and commitment to this issue. But generally, the National Center has found that judges and judicial officers often handle conservatorships as part of a larger caseload and do not have expertise or guidance that would allow them to proactively and quickly respond to exploitation. For this reason, the National Center is planning to collaborate with the National

College of Probate Judges on a grant submission to develop a guide for judges on responding to evidence of abuse, neglect or exploitation in adult guardianship and conservatorship cases.

The courts' abilities to address exploitation by conservators is the subject of great concern, and federal agencies and state courts have recently begun to grapple with the problem. In 2015, the Office for Victims of Crime entered into a cooperative agreement with the National Center to carry out a study on conservatorship exploitation and convene a national multidisciplinary forum. The National Center is working with the American Bar Association, the Virginia Tech Center for Gerontology, and the Minnesota Judicial Branch to carry out the project. The project includes several research components: the collection and assessment of data, the identification of innovative programs, an analysis of judicial responses to level 4 cases in Minnesota, and an exploration of the experiences of victims of conservatorship exploitation. The national forum, which is scheduled for next week, will result in recommendations that address data issues as well as judicial monitoring practices, systemic approaches to detect exploitation, laws and practices to address and prevent further exploitation, and how to safeguard the rights and assets of individuals victimized by conservator exploitation. The forum is expected to result in a wide range of recommendations. Findings are expected to be published following a review by the Office for Victims of Crime.

IV. Training and Assistance

There are three types of guardians and conservators: public, professional and family/personal. The majority of conservators are family members, who may or may not have the experience and background to serve as competent conservators. Most courts provide a basic level of instruction, usually through a written handbook or video. Conservators may also be able to find resources online, such as the free publication from the Consumer Financial Protection Bureau, *Managing Someone Else's Money: Help for Court-Appointed Guardians of Property and Conservators.*[3] Some courts offer in-person training sessions, usually sponsored by members of the probate bar or professional conservators. For example, the District of

[3] Available at http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_guardians.pdf.

Columbia Superior Court's Probate Division offers monthly seminars for the public on how to prepare an inventory and offers tips on handling the finances of a vulnerable person.

Training opportunities tend to be offered on a court-by-court basis and dependent on the resources available in the community. But this is beginning to change, as more states emulate the training program that emerged from an innovative partnership between the North Dakota Supreme Court and the National Center. The North Dakota Supreme Court determined that one of the challenges in getting people to serve as guardians or conservators was the lack of user-friendly resources on the basic roles and responsibilities required of the position. The North Dakota-National Center partnership resulted in an interactive online course that is free and includes exercises and scenarios that require the learner to participate in decision making that supports the interests of the protected person.[4] It can be revisited as frequently as desired and is available around the clock. The course can be easily modified as statutes or court practices change.

Recently, the National Center entered into a contract with the U.S. Department of Justice's Elder Justice Initiative to develop an online interactive course. The National Center is partnering with the American Bar Association and the Washington Courts to create and deliver *Enhancing Choice and Fulfilling Duties: National Training Resource on Decision Support and Guardianship*. The interactive course will focus on the range of decision supports, alternatives to guardianship and conservatorship, and best guardianship and conservatorship practices. While practices vary from state to state, the National Probate Court Standards and National Guardianship Standards provide a template on best practices nationwide. Online interactive training based on adult learning instructional design, though dependent on access to the Internet, is highly accessible to the majority of the population.

V. Information Sharing

Data on the overlap between conservatorships and the Social Security representative payment program does not exist, but given the fact that persons under a conservatorship are elderly or disabled, a sizeable proportion of conservators are likely to be representative

[4] The course can be found at http://ndtraining.org/course/guardianship-training/.

payees. The Social Security Administration (SSA) recognizes a state court finding of incompetence. But the same does not hold true for other court findings. One of the biggest complaints we hear from judges is that the SSA does not recognize a court order to remove a conservator for cause. In practice, this means that a conservator who misappropriates or steals funds may continue to serve as a representative payee. The Social Security Administration may address the issue through its own internal investigation, but the court order is insufficient.

In 2014, the National Center conducted a survey of judges and court staff on behalf of the Administrative Conference of the United States to address collaboration between courts and the Social Security Administration. When asked to provide recommendations for improving coordination, a number of judicial respondents asked for a personal contact in the local or regional Social Security office. But a personal contact does not resolve the limitations placed on SSA by the federal Privacy Act of 1974, which limits the sharing of information about beneficiaries and representative payees with courts. The Privacy Act works to the detriment of protected persons. For example, if SSA finds that a representative payee has misappropriated funds and is also a conservator, they are forbidden from sharing such information with the court.

Despite these challenges, the level of collaboration between state courts and SSA has improved substantially, primarily as an outcome of the creation of Working Interdisciplinary Networks of Guardianship Stakeholders, otherwise known as WINGS. WINGS groups currently exist in 17 states and territories to advance guardianship reform, address abuse and promote less restrictive options.[5] WINGS are multidisciplinary entities for problem-solving that bring together key stakeholders to formulate and act on strategic plans. Nine such entities were launched with incentive mini-grants from the State Justice Institute, coordinated through the National Guardianship Network, and an additional eight states have established similar programs on their own. The Administration for Community Living recognized the potential of WINGS in its 2016 Elder Justice Innovation Grant program in which it funded the American Bar

[5] District of Columbia, Georgia, Guam, Indiana, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oregon, Texas, Utah, Virginia, Washington, and Wisconsin.

Association Commission on Law and Aging, with the National Center, to establish, enhance and expand state WINGS, and currently these efforts are underway.

SSA has initiated a structured set of contacts with state WINGS groups by appointing a regional "SSA WINGS representative" for each of the 17 states. The intent is to enhance coordination between state courts with guardianship jurisdiction and the SSA representative payment program. SSA sponsors a quarterly or periodic conference call with WINGS state coordinators and SSA representatives. These calls resulted in the development by SSA of a set of judicial training slides called *Social Security Representative Payees: Judicial Training Guide,* which is currently in the final stages of review. SSA has indicated willingness to appoint additional regional representatives to upcoming new state WINGS under the Elder Justice Innovation Grant program.

VI. Conclusions

The National Center, other non-profit organizations, and individual states and territories are making substantial efforts to reform the guardianship and conservatorship processes. Several of these reforms may have applicability to the Social Security Administration, including modernization, differentiated case management, training and collaboration.

Modernization. The guardianship and conservatorship processes can be vastly improved through modernization. Many of the tools exist or are already in development, but what is lacking are the resources to modernize systems on a grand scale. In terms of monitoring and holding conservators accountable, the necessary ingredients are: Transaction-based accounting software (preferably integrated with court case management systems); the application of empirically-based risk indicators to "flag" cases most likely to involve exploitation; a team of professionals auditing conservatorship accountings; and trained judges who have the tools to prevent exploitation and quickly restore assets when funds are misappropriated. Modernization is not a cheap proposition, but it will bring accountability and efficiencies to the courts and greatly enhance the protection of assets of some of our nation's most vulnerable persons.

Differentiated Case Management. Differentiated case management is a "hands on" approach that recognizes the uniqueness of each case. As such, greater scrutiny of a subset of

cases can both prevent exploitation and provide an early warning system when exploitation does occur. By developing different levels of oversight based on the circumstances of the case, competent and honest conservators are not hindered by unnecessary layers of oversight, while those conservators who may have little knowledge of fiduciary practices or have less than honorable intentions are subject to additional and more frequent levels of monitoring.

Training. Technology, especially as it pertains to the development of online courses using adult learning instructional design, is a game changer that has the potential to reach millions of persons. The new technologies incorporate interactive exercises, including scenarios that require learners to make decisions and offer instant feedback as to whether those decisions were the most appropriate given the circumstances. This technology has been applied to conservatorships and could be used to serve the Social Security representative payment program.

Collaboration. Courts have increasingly embraced collaborative approaches that introduce multidisciplinary perspectives to specific problems, such as guardianships and conservatorships. The WINGS concept continues to expand to new states and territories and the participation of the Social Security Administration is promising. Yet for judges who strive to protect all assets, including Social Security checks, the Federal privacy laws have handcuffed the SSA, thus directly impacting the court's ability to protect assets from an exploitative conservator. These barriers should be addressed to better improve the financial stability of social security recipients who are placed under a conservatorship.

Committee on Ways and Means
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Dr. Brenda Uekert, PhD		
1. Are you testifying on behalf of a Federal, State, or Local Government entity? a. Name of entity(ies). b. Briefly describe the capacity in which you represent this entity.	Yes ☐	No ☒
2. Are you testifying on behalf of any non-governmental entity(ies)? a. Name of entity(ies). National Center for State Courts b. Briefly describe the capacity in which you represent this entity. Principal Court Research Consultant and Director of Center for Elders and the Courts	Yes ☒	No ☐
3. Please list any Federal grants or contracts (including subgrants or subcontracts) which you have received during the current fiscal year or either of the two previous fiscal years that are related to the subject matter of the hearing: Please see attached.		
4. Please list any grants, contracts, or payments originating from foreign governments which you have received during the current calendar year or either of the two previous calendar years that are related to the subject matter of the hearing: n/a		
5. Please list any offices or elected positions you hold. n/a		
6. Does the entity(ies) you represent, other than yourself, have parent organizations, subsidiaries, or partnerships you are not representing?	Yes ☐	No ☒
7. Please list any Federal grants or contracts (including subgrants or subcontracts) which were received by the entity(ies) you represent during the current fiscal year or either of the two previous fiscal years, which exceed 10 percent of entity(ies) revenues in the year received. Include the source and amount of each grant or contract. Attach a second page if necessary. Please see attached.		
8. Please list any grants, contracts, or payments originating from foreign governments which were received by the entity(ies) you represent during the current fiscal year or either of the two previous fiscal years related to the subject matter of the hearing. Include the source and amount of each grant or contract. Attach a second page if necessary. n/a		

Chairman BUCHANAN. Thank you.

Mr. Slayton, you may proceed with your testimony.

STATEMENT OF DAVID SLAYTON, ADMINISTRATIVE DIRECTOR, OFFICE OF COURT ADMINISTRATION, TEXAS JUDICIAL BRANCH

Mr. SLAYTON. Chairman Buchanan, Chairman Johnson, Ranking Member Lewis, and Ranking Member Larson, thank you for the opportunity to be here today to talk about some of the work we are doing with adult guardianship and minor guardianship in Texas. My name is David Slayton, and I work for the judicial branch in Texas.

In our state there are over 51,000 active guardianships, and the number of active guardianships has increased by 37 percent in just the last 5 years. The value of the estates under guardianship in our state exceeds $5 billion.

Texas law requires professional guardians in our state to be certified and continuously regulated by the state. A certified guardian is required to meet certain age, experience, and education requirements, along with passage of an examination and no disqualifying offenses on a criminal background check. The criminal background check continuously monitors the certified guardian and notifies the state if the guardian has an event appear on his or her criminal record.

There is currently no registration or regulation of guardians who are licensed attorneys, family members, or friends. These individuals are appointed in the majority of cases in Texas. However, in 2015 the legislature enacted a requirement that judges must obtain a criminal background check prior to the appointment of family members and friends, and a bill pending in the legislature at this point in Texas would add some registry of all these individuals to the registry.

Seeing what he referred to as the "silver tsunami" approaching in Texas, where the population over age 65 will double in the next 20 years, Supreme Court Chief Justice Nathan Hecht established a WINGS group and called for the Texas Judicial Council, which has representation from the—the WINGS group has representation from the Social Security Administration to make several key recommendations, including ensuring that all appropriate alternatives to guardianship were explored. Those provisions were enacted in 2015.

The new law requires applicants for guardianship, attorneys in the case, and judges certify that all alternatives to guardianship have been explored, and that none are feasible. Texas became the first state in the Nation to authorize an additional alternative to guardianship: supported decision-making agreements.

A supported decision-making agreement is an agreement between an adult with a disability and another adult that enables the adult with the disability to make life decisions with the assistance of an adult supporter. This type of agreement has been used and promoted as an appropriate alternative for minors with developmental or other disabilities who are reaching the age of majority, and other adults with disabilities. Since Texas's passage of this al-

ternative, Delaware has also enacted a supported decision-making agreement law, and other states are considering it, as well.

In addition to these, the legislature provided funding to assist courts in adequately monitoring guardianship cases. Since 2015, the pilot project has reviewed over 13,600 guardianships in our state. The pilot project has made disturbing discoveries.

For instance, the project reported that almost half of the cases were found to be non-compliant with statutory reporting requirements, including 48 percent of the cases which did not contain required annual accountings. The vast majority of the cases were out of—that were out of compliance were cases where the guardian was a family member or friend. While the numbers tell a disturbing story, each specific case paints a more horrific picture.

The project regularly found unauthorized withdrawals from accounts, unauthorized gifts to family members and friends, unsubstantiated and unauthorized expenses, and a lack of back-up data to substantiate the accountings.

Take Ms. Comacho, an elderly woman who is currently missing, and whose estate has been drained by the guardian, or Ms. Thomas, who was sexually assaulted by her guardian's husband and remained under the guardian's control, even after the husband went to prison, and for whom no well-being report of the person has been filed for the past 2 years. In my written testimony I provided several other examples.

When lack of compliance is found, we work with the court to get those cases back into compliance. Most have been resolved. Some have not been responsive.

While Social Security has been a partner to Texas as we have proceeded with reforms, concerns remain regarding the representative payee program. Most representative payees selected by the Social Security Administration are the same person appointed by the judge as the guardian for the ward. However, this is not always the case.

When the judge considers the criminal background and appropriateness of an individual seeking to be a guardian, the judge may find that person to be inappropriate to serve as the guardian. When 2 separate individuals are appointed to manage the affairs of the guardian, difficulties may arise.

In addition, since the Social Security Administration representative payee is not the subject of the judge's oversight the way the guardian is, the judge has little he or she can do to protect the ward from any abuse that might occur from the representative payee. Greater collaboration between SSA and the courts and guardianship proceedings would be beneficial.

For instance, if a judge appoints an individual as a guardian and there is an existing representative payee, it would be beneficial for the representative payee to be substituted with the guardian appointed for the—by the judge.

And I will be happy to answer any questions you may have. Thank you, Mr. Chairman.

[The prepared statement of David Slayton follows:]

Examining the Social Security Administration's Representative Payee Program:

Who Provides Help

Written Testimony of David Slayton

to the United States House of Representatives

Committee on Ways and Means

March 22, 2017

Background on Guardianship in Texas

Guardianship, as it is called in Texas, is a proceeding in which a court appoints an individual to make decisions and oversee the affairs of an individual ("a ward") who has lost mental capacity or the capacity to make decisions independently. When a guardian is appointed, the ward loses the ability to make decisions such as whether she can drive, where she should live, whether she can marry, and how her money is spent. It is the most restrictive form of oversight a court can place on an individual. Guardianship is meant to protect wards from abuse or exploitation due to the limitation in their mental capacity.

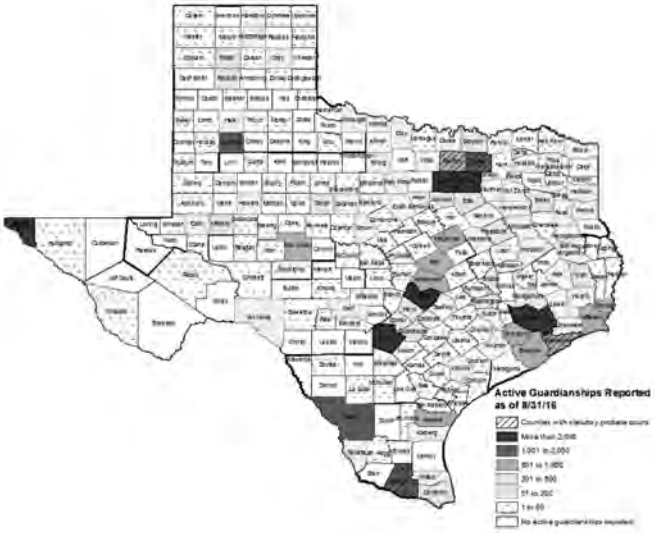
There are two types of guardianship proceedings in Texas. The first is guardianship of the person. In this type of proceeding, a guardian is appointed to manage the affairs of the ward with limited mental capacity but is not appointed as the manager of the finances of the person. Guardianship of the person is typically when the ward has a limited estate or income. For purposes of this hearing, it is important to note that individuals receiving only social security income would generally fall into this category. The second type of guardianship proceeding is guardianship of the estate. In this type of proceeding, a guardian is appointed to manage the ward's financial affairs. A guardian may be appointed as the guardian of the person, guardian of the estate, or guardian of both the person and estate. While the appointed guardian is typically the same person, this is not required.

Texas law provides a list of preference for who should be appointed as a guardian. In particular, the law requires that a preference be given to the person the ward might have designated as a preferred guardian, next to the spouse, and next to the nearest of kin. If no family members are appropriate for appointment, the judge can consider friends or other professionals, including attorneys and certified guardians.

A guardian is responsible for maintaining safeguards for the ward and reporting regularly to the judge on the affairs of the ward. First, a guardian is required to immediately file a bond sufficient to cover the value of the liquid assets of the estate and the annual income

to the estate. Second, the guardian is required to immediately file an inventory of all assets in the estate. Third, a guardian is required to file an annual report of the person detailing the condition of the ward each year on the anniversary of the qualification of the guardian. Lastly, the guardian is required to file an annual accounting of the transactions from the estate with sufficient detail and documentation on the anniversary of the qualification of the guardian. The judge is required to review each of the filings, as well as the continuation of the guardianship, and enter an order approving each filing.

In Texas, there are 51,388 active guardianships (as of December 31, 2016), with 4,957 new guardianship cases filed last fiscal year. Only 2,018 guardianship cases were closed during that period. The number of active guardianships has increased by 37% in the past five years and is one of the fastest growing case types in the state. We estimate that the value of the estates under guardianship in our state exceeds $5 billion. These cases are overseen primarily by constitutional county judges – judges who are not required to be law-trained and who also oversee the administration of counties. In a few of Texas' 254 counties, the cases are overseen by law-trained specialty probate courts.



Regulation of Guardians by the State

In 2007, the Texas Legislature began to require private professional guardians to be certified and continuously regulated by the state to be appointed by a judge as a guardian. The Judicial Branch Certification Commission (JBCC) performs this function, and there are currently 450 certified (368 full certifications and 82 provisional certifications) guardians appointed to just over 5,000 wards. A certified guardian is required to meet certain age, experience, and education requirements along with passage of an examination and no disqualifying offenses on a criminal background check. The criminal background check continuously monitors the private professional guardian and notifies JBCC if the private professional guardian has an event appear on his or her criminal record. The JBCC regularly rejects applications for certification due to disqualifying factors and receives numerous complaints each year about certified guardians. JBCC has revoked and suspended the certification of private professional guardians and has levied significant administrative penalties against the certified guardians where appropriate. When a private professional guardian's certification is revoked or suspended, the judge who appointed the guardian is notified to take appropriate action to remove the guardian from the ward(s).

There is currently no registration or regulation of guardians who are licensed attorneys, family members, or friends. These individuals are appointed in the majority of cases in Texas. However, in 2015, the Texas Legislature enacted a requirement that judges must obtain a criminal background check prior to appointment of family members and friends. However, the requirement does not provide for fingerprint background checks, which continuously check for changes in the criminal history. Legislation currently pending before the Texas Legislature would require all guardians not currently required to be certified to register with the JBCC and for those seeking to oversee estates over $50,000 to submit to fingerprint background checks.

Recent Guardians Reform Efforts in Texas

Seeing what he referred to as the "silver tsunami" approaching where the population in Texas over the age of 65 would double in the next twenty years, Supreme Court Chief Justice Nathan Hecht established a Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) and called for the Texas Judicial Council, the policy-making body for the judicial branch, to study issues related to the elderly and incapacitated and the impacts of guardianship and to make recommendations for reform. Working with the WINGS group, which has representation from the Social Security Administration, the Elders Committee of the Judicial Council made several key recommendations, as follows:

- Ensure that all appropriate alternatives to guardianship were explored;
- Expand the alternatives to guardianship to include Supported Decision-Making Agreements;
- Consider the ability of the ward to make decisions about residence;
- Consider whether the ward's condition will improve to negate the need for a guardian and review as appropriate;
- Require court approval prior to changing the residence of a ward to a more restrictive living facility; and
- Fund a pilot project to assist courts with appropriately monitoring guardianship cases.

The Judicial Council recommendations were filed as House Bill 39 (84th Legislature) and signed into law, effective September 1, 2015. In addition to these reforms, the legislature passed a ward's bill of rights and required a study on establishing a guardianship registry for use when law enforcement encounters a ward.

Alternatives to Guardianship

Since September 1, 2015, the law has required the applicant for guardianship to certify to the court that all alternatives to guardianship have been explored. Ad litem attorneys appointed to the case must also explore all alternatives and certify to the court that none are appropriate. Finally, before appointing a guardian for a ward, the judge must find by clear and convincing evidence that alternatives to guardianship have been explored and none are feasible.

Texas became the first state in the nation to authorize an additional alternative to guardianship, the supported decision-making agreement. A supported decision-making agreement is an agreement between an adult with a disability and another adult that

enables the adult with a disability to make life decisions with the assistance of the supporter adult. This type of agreement has been promoted and used as an appropriate alternative to guardianship for minors with developmental or other disabilities who are reaching the age of majority and other adults with disabilities. Since Texas' passage of this alternative, Delaware has also enacted a supported decision-making agreement law and other states are considering it as well.

The Guardianship Compliance Pilot Project

As mentioned above, at the request of the Texas Judicial Council, the legislature funded a pilot project at the Office of Court Administration to assist courts in adequately monitoring guardianship cases. This $250,000 per year project with three authorized employees began in November 2015. Since that time, the project has reviewed over 13,600 guardianship cases in 14 counties.

The pilot project has made disturbing discoveries. As mentioned above, guardians are required to file four basic items with the judge upon appointment or annually: 1) a bond; 2) an inventory of the assets in the estate; 3) an annual report of the person; and 4) an annual accounting of the transactions from the estate. In a report to the legislature issued on January 1 of this year detailing its work, the project reported that:

- 13% of the cases did not contain a bond;
- 46% of the cases did not contain the inventory of the assets;
- 35% of the cases did not contain the annual report of the person; and
- 48% of the cases did not contain the annual accounting of the transactions from the estate.

Overall, **43% of cases were found to be out of compliance with reporting requirements**. The vast majority of the cases out of compliance were cases where the guardian was a family member or friend. While the numbers tell a disturbing story, the findings from reviews of filed accounting and reports tell a more disturbing story. The project regularly found unauthorized withdrawals from accounts; unauthorized gifts to family members and friends; unsubstantiated and unauthorized expenses; and the lack of backup data to substantiate the accountings.

When lack of compliance was found, the project worked with judges to contact the guardian seeking to restore compliance. Most of the guardians responded and reestablished compliance. However, many have not been responsive.

In addition to the physical review of guardianship files, the project is developing an automated tool that will allow guardianship filings to be electronically audited through fraud detection. This will enable the project to focus its efforts on potential abuse and exploitation. The automated tool is expected to be released later this spring.

The Office of Court Administration, which oversees the program, has requested expansion of the project to allow the project to cover the entire state and review all guardianship cases regularly. This request of $3 million annually will provide a total of 39 staff. The Texas Senate Finance Committee has provided preliminary approval of the funding request, but the Texas House of Representatives has yet to give its approval.

Collaboration with the Representative Payee Program

The Social Security Administration (SSA) was invited as an original member of Texas' Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) group established in 2013. The representative from SSA was engaged in all discussions of the WINGS group and provided valuable feedback as Texas undertook its efforts of reform. SSA continues its engagement in this area through regular phone conference with regional and national SSA administrators.

While that collaboration continues to be fruitful, there are some concerns expressed by judges regarding the representative payee program. In most cases, the representative payee selected by the SSA is the same person appointed by the judge as the guardian for the ward. However, this is not always the case. When the judge considers the criminal background and appropriateness of an individual seeking to be a guardian, the judge may find that person to be inappropriate to serve as the guardian. When two separate individuals are appointed to manage the affairs of the guardian – one as the SSA representative payee and one as the guardian of the person and/or estate – difficulties may arise. In addition, since the SSA representative payee is not subject to the judge's oversight the way that the guardian is, the judge has little he or she can do to protect the ward from any abuse that might occur from the representative payee. Greater collaboration between the SSA and the courts in guardianship proceedings would be beneficial.

For instance, if a judge appoints an individual as a guardian and there is an existing representative payee, it would be beneficial for the representative payee to be substituted with the guardian appointed by the judge. Since states like Texas check and monitor criminal backgrounds for guardians, this would ensure that an individual who may not be appropriate or who may become inappropriate as a representative payee is not serving in that role.

Conclusion

We are instructed to "honor our fathers and mothers...and the least of these" however, some of the practices involved in guardianship neither honor nor protect the elderly and incapacitated. We are working diligently in Texas to correct those practices and look forward to continuing our work with the Social Security Administration moving forward.

Appendix A: Specific Examples of Findings from Guardianship Compliance Project

- Unauthorized ATM withdrawals totaling $20,000+ and $40,000 in "gifts" to grandkids.
- Unauthorized purchase of Ford pick-up truck, $7,000.
- Checks written to cash $2,000 and guardian's credit card account paid $18,000+.
- $89,378.81withdrawal with no court approval or additional information.
- $400,000 transferred out of account. Forged checks. Additional $500,000 allegedly hidden and unaccounted for. Case currently in District Court.
- Guardian of Person withdrew $44,683.35 in Ward's funds.
- ATM expenditures of $16,390.66 in 2014. In 2015, there were ATM withdrawals over $21,000 including charges to Victoria's Secret and Bath and Body Works.
- Aircraft missing from estate.
- Guardian was reimbursed over $25,000 for clothing/accessory costs and over $4,000 for a birthday party from the ward's trust.
- Order Authorizing Sale of Real Estate totaling $543,140 was granted. No Report of Sale filed with the court. No follow-up.
- Estate dwindled by $422,274 with no explanation.
- Ward's Estate value of $1,263,077.25. Appointing authorizes guardian to draw down an additional $32,000 annually with no oversight.
- $4,000 unauthorized monthly transfers to guardian's account. Multiple $200 ATM withdrawals from ward's account.
- Ward awarded settlement and received $108,983. No information as to how $108,983 would be managed or guardian of estate appointed.
- $1,500,000 trust for the ward. No Initial Inventory or Annual Accountings ever filed.

- Certified guardian failed to file an Inventory, Annual Report, or Annual Accounting. Estate value in application listed as over $500,000. Another ward's personal funds were used by the certified guardian to pay the bond premium for this case.

- Certified guardian failed to respond to notice from Bastrop County that the ward had delinquent taxes due. Certified guardian failed to notify the court. Ward's property went to foreclosure and was sold on the courthouse steps. Property valued at $153,808.

- Guardian ordered to place $103,176.64 into safekeeping account and did not do so. $18,711.39 in unauthorized withdrawals. Guardian sold a used refrigerator to the ward for $529. Guardian has not visited ward since May 2012.

- Ward died due to neglect in a facility. Letter from Adult Protective Services in the file on 1/21/15 states ward's death was caused by facility staff neglecting him. Ward moved into the facility 10/15/2013, which was the last time the guardian saw him in person. No Annual Report filed for that year.

- Proposed guardian never qualified (never paid bond) and has moved onto his father's land. Guardian investigated by Adult Protective Services for exploiting his father's finances. Guardian never filed Initial Inventory or Annual Accountings.

Chairman BUCHANAN. Thank you for your excellent testimony. We will now proceed to the questions and answer session.

In keeping with past precedent, I will hold my questions until the end. I now want to recognize the distinguished gentleman, Mr. Johnson, for any questions he might have.

Chairman JOHNSON. Thank you, Mr. Chairman.

Ms. LaCanfora, after the Weston case, the Social Security Administration piloted a criminal policy that prohibited individuals who have committed certain crimes from serving as representative payees. This pilot is now nationwide. Can you give me some examples of the types of crimes that would keep someone from being selected as a payee?

Ms. LACANFORA. Sure, I would be happy to do that. There are 12 crimes that are really very severe crimes, like first-degree homicide, rape, forgery, things like that, that are basically indicators that the individual would not serve as a good payee, in which case we will bar them from being a payee. To this point we have barred approximately 1,000 people from becoming representative payees as a result of that bar policy.

Chairman JOHNSON. How do you get that information?

Ms. LACANFORA. We do criminal background checks, and we have a contractor from whom we obtain the information.

Chairman JOHNSON. Is that nationwide, or by state?

Ms. LACANFORA. Nationwide.

Chairman JOHNSON. Thank you. Those are serious crimes. However, the policy is only applied to new payees, and Social Security has never checked existing payees. Is that true? And, if so, what is stopping you?

Ms. LACANFORA. So it is partially true. Part of the challenge that we have, as you know, is that the scope of the representative payee program is enormous. We have got around 6 million people serving as payees. And in order to do a criminal background check, we have to actually get the consent of the individual to access their criminal background information. So you can imagine the task we would have, going out and getting consent from around 6 million payees.

That said, every time we change a payee, we will do the criminal background check. And approximately 300,000 payee changes are done every year, in addition to the new ones that we select. So, while we are not doing a wholesale check on the 6 million, we are getting to those folks, little by little.

Chairman JOHNSON. How many, in your estimation, are sitting out there that are unchecked?

Ms. LACANFORA. It is hard to tell. I think, if we are doing 300,000—that is an approximation—each year, and we have been doing it for a few years, we should be close to about a million now that we have done, out of the 6 million. And that doesn't include the ones that have been newly selected, which are all checked.

Chairman JOHNSON. Thank you. Mr. Slayton, Texas uses background checks to screen guardians. What types of crimes would keep someone from being a guardian? And do you screen everyone?

Mr. SLAYTON. So, we basically look at any sort of theft, any serious offense. It is—there is a matrix of offenses, mostly the serious offenses, but anything that would also call into question the integ-

rity of the individual to appropriately manage funds for the protected person.

We do check—the law requires every new guardian to be checked. And for individuals who are certified by the state, it is continuously checked. So we require them to submit fingerprints, which then allows there to be a continuous check. And if there is a hit on the criminal background check, it notifies the state where we can then take action in those cases.

Chairman JOHNSON. Is Texas Tech providing you facilities out there?

Mr. SLAYTON. Say that again, I am sorry.

Chairman JOHNSON. Is the university providing you facilities out there?

Mr. SLAYTON. They are not, but it is a really great university.

Chairman JOHNSON. You know, Texas has made some changes to background checks for state guardians. One of those changes is to collect fingerprints to allow for ongoing monitoring. Why did you all think that was a necessary step?

Mr. SLAYTON. Well, I think there are 2 main reasons. There is basically 2 ways to get the criminal background check. There is a name check and a fingerprint check. Obviously, with name checks, we can often times have names that are very similar, and so it is hard to be able to tell exactly if this is the individual we are looking at. And those are 1-time checks. So we run it today, we see if the person has a criminal issue on their background today, but it doesn't provide any continuous monitoring.

The fingerprints allow us to, of course, ensure that the person that we are monitoring is the right person we are looking at, and it provides, any time something shows up on the record in the future, we will immediately be notified that there is a criminal history issue on their background.

Chairman JOHNSON. Thank you. I appreciate that work. Thank you, Mr. Chairman.

Chairman BUCHANAN. Thank you. I now recognize the ranking member, Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman.

Mr. Slayton, it would be my honor, I guess, pleasure to be visiting Austin this weekend, if we get out of here. I look forward to—you know, we may be here—left up to the guys on this side. But I look forward to being in Austin.

Mr. SLAYTON. Great.

Mr. LEWIS. Ms. Ford, it is clear that someone who would need a representative payee may also be very vulnerable to abuse. We are talking about children, adults with severe mental disabilities, and seniors who are very frail. Representative payee reviewers must personally assess each situation.

Can you talk more about what difficulties payee reviews can encounter when trying to determine if abuse is going on, or taking place?

Ms. FORD. Thank you. I think it is important to be able to see a situation on site, as I mentioned, and to talk to the individual and see the setting that they are in. It is not always possible to tell what is going on from just a paper review of where the money is going. You need to find out whether the individual is receiving

their money, obviously, and whether their needs are being met by the representative payee, their financial needs.

But in asking questions of them, you can determine some things. If you are knowledgeable about disability and how an individual might react, you can find out certain things, and how they react can tell you whether you need to go further.

For instance, just—does silence mean that everything is okay? Does it mean that the person does not understand the question? Do you need to probe a little further? Is there a cognitive impairment here that means that more is needed to find out what is going on? Is there a fear of the representative payee? Is there some undue influence going on? Are the conditions that they are living in, as we discovered in Georgia, really untenable? Those kinds of things can only be seen, not on paper, but on site and by talking to the person and to their—and seeing the situation that they are in.

Mr. LEWIS. Well, for an example, if a beneficiary cannot communicate, what do you do? What steps do you take?

Ms. FORD. There—if a person is not able to communicate verbally, there are ways that people do actually communicate non-verbally. The way that they handle themselves, the way that they communicate with their facial expressions, their eyes, the—do they flinch when somebody comes near them, a certain person? Do they reach out? They may have communication boards, they may have ways of communicating in that way. There may be family members who can help communicate or help another individual understand their particular language, their vocal sounds.

So it is—it takes time, it takes being careful. But these people are particularly more vulnerable to being ignored, for one thing, and that is why it takes a little more time, and that is why it is more important to pay attention, because it is not going to be as easy to find out what is going on if you don't take that time.

Mr. LEWIS. Ms. Ford, it sound like a representative payee reviewer need to be a special kind of person, a special person to be sensitive, caring. Is it easy to find these type of people?

Mr. LEWIS. I think that—I don't know how easy it has been for SSA to find all the rep payees that they need to find. I do think that, in the monitoring system, it is going to take a particularly type of monitoring to be able to detect that there are problems going on.

I think it takes both. You have got to have the right kind of representative payee, whether that is an individual or an organization. You are going to have to have the right people in that organization.

And then, when you go to find out how it is working, you need to have the right kind of people who can look at it and say, "This is more than just whether the money is in the right place." This is these are the right people doing the right thing, or these are people who don't care, they are just moving money around, and they are letting this person's life just, you know, go to nothing. They are not really doing the right thing for this individual.

So it takes the right people in both places.

Mr. LEWIS. Thank you very much, Ms. Ford.

Ms. FORD. Thank you.

Mr. LEWIS. I yield back. Mr. Chairman.

Chairman BUCHANAN. Ms. Walorski?

Mrs. WALORSKI. Thank you, Mr. Chairman.

Ms. LaCanfora, I am just trying to logistically get my mind around the process, so I am just going to ask you really short questions. Short answers would help me understand this, just so I can get the process through here.

So Social Security requires most payees to submit an annual accounting form, correct?

Ms. LACANFORA. Correct.

Mrs. WALORSKI. Can they do that in writing, or is it online?

Ms. LACANFORA. Either or.

Mrs. WALORSKI. So what steps does SSA go through when it receives these forms, then? And my question is this. So what would trigger, when these forms come in, whether or not—that they are going to go for further review to a field supervisor? So if—what would trigger that?

Ms. LACANFORA. There is 2 main reasons that something would go to somebody in a field office to review. One is a non-responder, so somebody just doesn't send back the form, and we need to track down what is going on there. And then, secondly, there is something anomalous on the form. The numbers don't add up, they write a lot of remarks that need to be reviewed by a human being, that sort of thing.

Mrs. WALORSKI. So, in going through that process, so if the numbers look fine, if the numbers jive, and there is nothing that really flags anything, that moves through the system. Correct?

Ms. LACANFORA. Correct.

Mrs. WALORSKI. So if there is a problem and a flag, does SSA require supporting documentation that backs up the amounts on the form, like receipts or anything like that, or logs, cash logs or anything?

Ms. LACANFORA. It is possible that we would do that. It depends on what the anomaly is. In some cases it might actually trigger us to do an on-site, in-person review. In other cases it might be a simple, you know, mathematical error on the part of the beneficiary that could be resolved with a conversation—or on the part of the payee, rather. Sorry.

Mrs. WALORSKI. So this is just a note. In the Social Security Administration's handbook it says, "If the total is less than 90 percent of the total acceptable amount, and the payee cannot resolve the difference, the FO will conduct a face-to-face interview and complete an SSA624–F5." Put another way, if the payee's total is off by less than 10 percent, it really is okay.

Ms. LACANFORA. I think——

Mrs. WALORSKI. Technically, at the end of the day, that would be——

Ms. LACANFORA. We have to remember that a lot of these payees—in fact, the vast majority of them—are custodial parents and spouses. And so they—you know, we encourage and hope that people keep books very carefully. But the reality is that people who are, you know, living with—day to day are not always doing that.

Mrs. WALORSKI. Right.

Ms. LACANFORA. So we give them a little bit of latitude.

Mrs. WALORSKI. Right, and I understand. The folks doing this are well-intentioned, they are volunteers, and we owe them a debt

of gratitude. But technically, theoretically, a bad actor could submit an accounting form with made-up amounts, no supporting documentation, but as long as their numbers are close, they really aren't flagged. They really could—a bad actor could maneuver through the system like that, correct?

Ms. LACANFORA. Through the accounting process?

Mrs. WALORSKI. Correct.

Ms. LACANFORA. That is true.

Mrs. WALORSKI. So I think it is interesting. I have this article that just came out today in an Indiana paper. I just got it this morning. It is in the neighboring district to mine. It says, "Woman Sentenced for Social Security Fraud," and it says the woman reported—failed to report to SSA her children no longer lived with her, while continuing to receive benefits. She was sentenced on Tuesday in federal court to serve 15 months in prison and pay back in restitution $71,410.

And so, you know, I guess my final question here is, you know, I made reference and read a 2007 report by the National Academy of Science. They recommended that the SSA "redesign the annual accounting form to obtain the meaningful accounting data and payee characteristics that would facilitate evaluation of risk factors and payee performance." It would seem to me this would be a commonsense kind of practice.

And I guess my question is, how does the SSA address that recommendation which was made 10 years ago?

Ms. LACANFORA. So the reality is we are already collecting that information at the point of initial application. Everything that was recommended in that particular report, most of those recommendations we implemented. But that particular one was redundant with what we already do.

When someone applies to be a payee we ask them a whole variety of questions to make sure that they are, in fact, suitable to be a payee. And that is part of our capability determination process. If we collected the same information on the accounting form, it would be redundant.

Mrs. WALORSKI. Would you think it would be—I guess in the future are you moving to an online system from the individual scripted reports to an online system? Is SSA moving in the direction of online——

Ms. LACANFORA. We have an online reporting system. I think the—one of the questions that we have, and it is one that we have been discussing with your staffs, is what is the right balance between the self-reporting that is done through the annual accounting process, versus the on-site reviews? Which are really more effective? And where should we be putting our resources? Right now those accountings are required by law, which is why we do them.

But, you know, in light of these hearings, it may be time to think about what options we have.

Mrs. WALORSKI. I appreciate it. I yield back, Mr. Chairman, thank you.

Chairman BUCHANAN. I now recognize the ranking member, John Larson.

Mr. LARSON. Thank you, Mr. Chairman. Mr. Chairman, I would like to submit 2 articles, 1 by NPR, "A Wake-Up Call to Protect

Vulnerable Workers from Abuse," and the other, "Life Deal for Woman Who Enslaved Disabled Adults in Tacony Basement," for the record.

Chairman BUCHANAN. That is fine.

"A 'Wake-Up Call' To Protect Vulnerable Workers From Abuse"

Yuki Noguchi

May 16, 2013

NPR

Four years ago, 21 men with intellectual disabilities were emancipated from a bright blue, century-old schoolhouse in Atalissa, Iowa. They ranged in age from their 40s to their 60s, and for most of their adult lives they had worked for next to nothing and lived in dangerously unsanitary conditions.

Earlier this month, the Equal Employment Opportunity Commission won a massive judgment against the turkey-processing company at which the men worked. The civil suit involved severe physical and emotional abuse of men with intellectual disabilities.

The EEOC now says the $240 million judgment will be reduced because it exceeds a legal cap on jury awards. But the case highlights the difficulty of preventing and identifying abuse of vulnerable workers, who are also the least likely to come forward about violations.

Susan Seehase, director of Exceptional Persons, a support center that took in most of the men in Iowa, visited their old dwelling. Windows were boarded up, allowing little ventilation or light. The cockroaches were overwhelming, she says. A leaky roof, mildew, accumulated grease and mice droppings contributed to an overwhelming stench.

A fire marshal immediately condemned the building, later testifying it was the worst he'd seen in nearly 3,000 inspections.

Decades Of Abuse, For $2 Per Day

The men had worked at a nearby processing plant, gutting turkeys under the watchful eye of a contractor called Hill County Farms. The contractor was paid to oversee the men's work and living arrangements. The supervisors hit, kicked, handcuffed and verbally abused the men, who were each paid $2 per day. This went on for three decades, affecting 32 men.

Seehase says medical exams later revealed the men suffered from diabetes, hypertension, malnutrition, festering fungal infections and severe dental problems that had gone untreated.

It went on and on, she says, because the men knew nothing better and because no one reported the abuse.

"Their life experiences didn't tell them that there was really another option for them," Seehase says. "It's incredibly difficult to try to understand. And I have no explanation. And I don't know who can explain how this really happened."

Kenneth Henry, the owner of Hill County Farms, could not be reached and his attorney didn't respond to requests seeking comment. In testimony, Henry acknowledged paying the men $65 a month, but denied knowing about the neglect or abuse.

Robert Canino, the prosecuting attorney for the EEOC office that won the verdict, says, "We are always shocked to find out about these extreme cases because we don't believe that they could have happened in our own backyard."

This year, the EEOC is making a priority of prosecuting cases involving "vulnerable workers." Examples include migrant farm workers who are raped by supervisors in the fields, or those who are the most likely to be exploited and least able to speak out in their own defense.

'People Who We See But We Don't Notice'

Canino says the turkey workers' case reminds him of human-trafficking cases he's prosecuted. The men were originally from Texas but transported out of state, where they lived isolated lives. He says vulnerable workers often remain silent because they don't know their legal rights. They're usually isolated by design from family, friends and community, and live in fear of abuse.

"We see the impact of the verdict as one that will hopefully open all our eyes to be more vigilant as a society, to be more watchful," Canino says. "Maybe they're people who we see but we don't notice. We don't notice them because we consciously or subconsciously assign them to some different station in life, and we assume that we can't connect with them, we can't relate to them, so we go about our business."

This case, he says, demonstrates the cost of failing to notice. "It's a wake-up call, and hopefully we don't ever in the future have to ask the question: 'How could this go on for so long and nobody notice?' "

Hill County Farms, also known as Henry's Turkey Service, is now out of business. Canino says it's unclear how much of the money will be recovered to compensate the men. But he says they say the real value of the victory isn't the money.

"They told me that they were glad that people knew their story was the truth," Canino says. "They fully understand the concept of people understanding them and believing them and then valuing them. They got that."

"Life deal for woman who enslaved disabled adults in Tacony basement"

Jeremy Roebuck

September 10, 2015

The Philadelphia Inquirer

Linda Weston—the Philadelphia woman charged with enslaving and torturing disabled adults for years in a Tacony basement so she could steal their benefit checks—pleaded guilty Wednesday in a deal that spared her a potential death sentence.

Instead, she agreed to accept a life term plus 80 years after admitting to all 196 federal counts filed against her including charges of murder, kidnapping, sex trafficking, hate crimes, forced labor, and benefits fraud.

Weston, 55, appeared addled and confused through much of Wednesday's hearing, at one point loudly proclaiming she wanted to enter a "not-guilty plea" before quietly reversing herself.

Her decision ends years of internal Justice Department debate over whether to seek her execution for a gut-churning series of crimes.

"This is a sufficient sentence to mete out justice here," U.S. District Judge Cynthia M. Rufe said, signaling that she intends to adopt the sentence Weston and prosecutors have agreed upon at a formal sentencing hearing Nov. 5.

Weston's lawyers, Patricia McKinney and Paul M. George, said their client was ready to admit to what she had done almost as soon as she and four others were indicted in early 2013.

"Her decision was motivated largely by concern for her children, so there could be some sort of closure for them," McKinney said.

Yet, those same children were among Weston's many victims in a decadelong, four-state conspiracy outlined in chilling detail in a plea memorandum filed Wednesday.

She and the other members of what prosecutors have dubbed the "Weston family" lured, confined, and controlled their mentally disabled targets, while seeking to make money off of them in any way they could.

Together, the documents say, the group stole more than $200,000 in Social Security benefits from their captives by pressuring them to sign documents naming Weston their designated payee. They forced others, including Weston's 17-year-old niece, into prostitution.

To keep the costs of care low, they locked their wards naked in basements, attics, cupboards, and closets. They fed them with depressant-spiked beans and ramen. And when supplies ran low, they forced their victims to eat their own and other people's waste.

"The mentally disabled individuals were targeted and in large part were estranged from their families," said Assistant U.S. Attorney Faithe Moore Taylor. "The Weston family offered them a place to stay."

The group shuttled their captives from Philadelphia to Texas, Virginia, Florida, and back again to avoid detection and left in their wake the bodies of those who did not survive malnourishment and beatings with sticks, bats, guns, and hammers.

All the while, Weston admitted Wednesday, they continued to add victims to their menagerie by snatching them off of street corners, proposing romantic relationships, and even forcing their captives to have children together so Weston could file new government benefit claims.

Authorities rescued four of the family's victims in October 2011 after discovering them emaciated, covered in filth, and chained in an apartment basement in the Tacony section of the city. The captives begged police not to take them away for fear that they would be punished for disobedience.

But even as prosecutors detailed that depravity in court, it was hard to reconcile the crimes they described with the timid woman who sat before them in court.

She answered the judge's questions in a meek, childlike voice—her answers frequently coaxed by her lawyers with encouraging smiles and pats on the shoulder.

She told the judge she was on medication for schizophrenia and depression and still had trouble reading and writing after receiving only a fourth-grade education.

Assistant U.S. Attorney Richard Barrett would not say Wednesday whether the Justice Department had made a definitive choice on whether to pursue a rare federal death-penalty case before Weston agreed to plead guilty.

The decision to offer a plea deal, he said, came after a "very deliberate process" in consultation with Weston's defense team and

U.S. Attorneys General Eric Holder and Loretta Lynch. All of Weston's victims and their families were notified in advance of the plea deal and none objected, Barrett said.

McKinney, Weston's lawyer, said her client's own childhood—marked by physical and sexual abuse—justified the cautiousness with which prosecutors' approached their decision.

She blamed the media and local police for painting Weston as a monster.

"Usually people are not born with a '666' on their heads," McKinney said. "Nothing that Linda Weston did was not also done to her as a child.

"The safest place Linda Weston has ever lived," she added, "is the place she is now."

Mr. LARSON. I think they are consistent with a number of the concerns that the committee is investigating and looking at.

And one of the things I want to start with is, Ms. LaCanfora, you were talking about earlier that you are only going to be able to get to a million of the 6.5 million, and that is provided things go well.

What is the reason for that? Is it a lack of resources? Is it a lack of ability? Is it just getting that permission that is required? Is it a problem with the courts, as Ms. Uekert apparently pointed out? What is the problem there?

Ms. LACANFORA. So I think you are referring specifically to the criminal bar policy, where we check to see if a person is convicted of 1 of 12 serious crimes before we appoint them as payee. We do that now in all cases where someone is applying to be the payee, or where we are making a change in the payee.

But there are, of course, around 6 million payees out there. And, as Chairman Johnson pointed out, we haven't done a wholesale look at those around 6 million——

Mr. LARSON. What would it take to do that? That is my question.

Ms. LACANFORA. We would have to—because we have to get the consent of each individual to check their criminal background——

Mr. LARSON. What kind of resources?

Ms. LACANFORA. We would have to contact 6 million people and get their authorization——

Mr. LARSON. Do you have the resources to do that?

Ms. LACANFORA. It would be cost prohibitive for us to do that.

Mr. LARSON. Okay. So you don't have the resources to do that.

I just wanted to—now, Ms. Ford, in your testimony, one of the things that we are concerned about is, as—I mentioned in my opening remarks about the Information Systems and Network Corporation. And in your testimony you indicated that the expertise that representative payee reviewers should have should be statutorily authorized governmental entities. For the committee's sake, what did you mean by that?

Ms. FORD. There are entities that the Federal Government has authorized in various ways to do other things that can be brought in here. And one, in particular, is obviously the protection and advocacy systems.

Mr. LARSON. So they would have a better understanding of the kind of clientele that they are dealing with. And what is alarming

to us, of course, is when we are looking at where SSA is, in terms of performance. And scheduled to do 1,300 by this company by August, and only having done 11 is not a very good track record.

You also mentioned something in your testimony, scenarios you described regarding payees who are also creditors, which is very concerning, especially in cases where there is a family or friend who is willing to serve as the payee. What recommendations do you have for SSA? And what did you mean by "more wild card monitoring"?

Ms. FORD. I think that, on the creditors, we would like to—we are planning—the task force is planning to submit some additional recommendations to the committees. And I would like to develop that further, in terms of the creditors, because that is a big issue for both aging and for people who are younger, in terms of residents in a nursing home or any other sort of facility, group home, or something like that. They are—those are very serious issues.

Mr. LARSON. Sure.

Ms. FORD. In terms of the wild cards, that is something that was developed with—in 2015 between the protection and advocacy agencies and the Social Security Administration. Together, they—SSA authorized that the P&A agencies would be allowed to identify additional payees to review that were not included in the SSA-generated list of payees. And this allowed the P&As to take advantage of their years of working with these populations, and their experience in uncovering abuse and neglect, and the knowledge of the payees in their states, and the fact that some of the organizations that knew that they were doing this work were saying, "How come you haven't reviewed this payee or this organization?" And so these were called the wild cards. They didn't come up through the SSA's algorithm.

And the wild cards actually found a higher percentage of problems than the SSA algorithm did. And the problems found in the wild cards were also likely to be more severe in nature, and to contain possible—more likely to contain possible mismanagement of beneficiary funds, and to contain other problems. They contained higher instances of possible fraud, health or safety and residence problems, and possible Fair Labor Standards Act violations.

Mr. LARSON. Mr. Chairman, if we could allow her, just for the record, if you have anything further—are we going to have another round?

Chairman BUCHANAN. We haven't talked about it, I guess.

Ms. FORD. We have got some data on that, the percentages, that we could enter into the record, if you would like.

Mr. LARSON. Thank you.

Chairman BUCHANAN. Mr. Kelly, you are recognized.

Mr. KELLY. Thank you, Mr. Chairman. And thank you all for being here. Just to get a little bit of size and scope of what it is that we are trying to address—and I want Mr. Larson—because this takes a lot more time. And I think, when we talk about these things, sometimes it is hard to realize the universe.

Mr. Slayton, you made a comment. You called it—about this new group of people that were coming in every day. You called them, what, the silver——

Mr. SLAYTON. Silver tsunami is how we are referring to them——

Mr. KELLY. Silver tsunami. See, well, Mr. Larson is part of the tsunami. I am partially there, but not there the whole way. [Laughter.]

But the size and scope of this population, this is the thing that really worries me, because it does comes down to dollars that are allocated to handle this. When we talk about beneficiaries—just if any of you could talk about—when it comes to Social Security beneficiaries, in the total universe how many are there that receive a payment?

Ms. LACANFORA. Sixty million.

Mr. KELLY. Sixty million? Of the 60 million, the number is how many that are—there is an individual or an organizational payee that takes care of that for them? That is how many in that universe?

Ms. LACANFORA. Approximately 8 million.

Mr. KELLY. Eight million. And so then it comes down to, on some of the individuals—now, Chairman Johnson talked about that Weston case in Philadelphia, which is absolutely horrible, where people actually died. They were chained to the furnaces in the basement of the house, people died, and then they had the—some of the other folks stage it like they died in bed, and they moved them to different areas.

But when it comes to Safety Net—now the Weston case I think there was maybe a dozen payees, right? But when it comes to Safety Net in Oregon, there is 1,000 payees. So the organizational payee, how in the world would you address that situation?

I think this is really critical for people back home that are listening to us, especially for those who fund Social Security. And those are members of the workforce. That money that is allocated to Social Security, can you give me an idea of how big that budget is? Because I think Mr. Larson saw something. Do we have enough dollars to actually do the things we need to do?

Ms. LACANFORA. [No response.]

Mr. KELLY. It is okay. I mean if we don't, just say we don't.

Ms. LACANFORA. I am sorry, can you just repeat the question?

Mr. KELLY. Well, my question is the numbers that you just gave me, to me, are staggering. And then we are asking Social Security, well, you need to do this, this, this, and that, and you need to make sure that everybody who is a payee is legit, and you need to make sure that you are following up with this.

And I say to you, okay, well, in order to do that, in addition to the beneficiaries receiving a payment, we also have to run SSA. So how are we funding that? And what dollar amount are we right now to run—the budget, if you can, just tell me, roughly, what the budget is, because the numbers are always staggering for me.

Ms. LACANFORA. It is $12.4 billion, administrative budget.

Mr. KELLY. $12.4 billion, with a B?

Ms. LACANFORA. Yes.

Mr. KELLY. Okay. And how many people are in the agency, working. Any idea on that?

Ms. LACANFORA. I am going to approximate that. It is about 60,000, including our state disability determination offices.

Mr. KELLY. Okay. So $12.4 billion, 60,000 work in the agency. But we are still not really able to fully handle responsibly what we are doing with our beneficiaries. I mean I am not pointing a finger at anybody, I am just trying to figure out, if this is the model, how are we going to fund it? And our expectations exceed what we actually have the dollars to do.

Ms. LACANFORA. With respect to the representative payee program, I think you stated it properly, that the scope of that program and monitoring, essentially, the behavior of 6 million people is a daunting challenge for the agency, yes.

Mr. KELLY. Yes. Well, I don't think there is anything more—I love being online, but I have already seen what is going on online, and I don't know how you check people to find out if these are really the people that we think they are, and if they are really doing the right thing for the people that they are supposed to be taking care of.

Are you able to look into the private sector and see how they are able to meet the needs of whatever it is that they do, credit card companies, people that actually are keeping track of this? Because I am looking at the size and scope of what we are talking about, and I am really wondering, as you are, how in the world are we going to be able to build a model that actually is effective and efficient?

Listen, I am disturbed about what happens with some of our payees, and the fact that they are not in a position, and they are deemed not to be in a position where they can actually make the right decisions for themselves. I didn't even think about people who can't communicate. Ms. Ford, that thing about people flinching when somebody comes near them, I can picture that in my mind. I can't imagine how horrible it must be for some of those folks. But this is a huge, huge problem.

So I think, when we talk about budgets, we need to understand that there is dollars allocated, and then the question would be—especially people from the private sector—how are they prioritized? And are we looking at it in the right way? And are we missing, somehow, what we could do to make it more beneficial for the people that are the beneficiaries? Because I am really worried about the way this is heading. This silver tsunami that we are facing? It just gets bigger every single day. So it is incredibly important for us to have a deeper dive into this.

But thank you all for being here. I applaud you for what you do, especially on behalf of those who can't take care of themselves. I mean those are the most vulnerable. Those are the people we always want to take care of. So we need to have a better scope about what we can do to help you help them. I thank you.

Mr. Chairman, thank you. This is a great, great hearing. I am on board with you.

Chairman BUCHANAN. I do want to add one thing, because you like numbers. And the Commissioner in Sarasota last year, we were talking about the cost, the benefits they pay. A trillion dollars. That is the number. I think it was 993 billion. A trillion, a thousand billions is what they have to put out in the community. So just think about that, and the demographics.

Mr. KELLY. Yes.

Chairman BUCHANAN. I just wanted to add to your point here about this—you know, the scope of this agency. It is one thing to look at the expense. You got to look at what are they actually processing and they have got to work with. I just want to——

Mr. KELLY. Just to follow up with you, because you and I do understand this: 6.2 percent from the person who receives a pay, 6.2 percent match from the person who pays them, that is 12.4 percent. But those people have to be in the workforce.

Chairman BUCHANAN. Yes.

Mr. KELLY. And until we increase our workforce numbers, it is hard to find out where that revenue is going to come from. And I really worry about that.

I know, because of Chairman Johnson, he has been tireless on making sure that we are getting the right dollars to the right people at the right time, and getting it from the right source. And we have to find a way to grow that workforce, and we have to find a way to use those dollars in the best way to take care of the most vulnerable.

So I really appreciate what you are doing. I think this is a fantastic hearing. I really do wish we had a lot longer to spend with you.

Chairman BUCHANAN. Well, thank you.

Mr. Curbelo, you are recognized.

Mr. CURBELO. Thank you very much, Mr. Chairman. I thank you and Chairman Johnson for this opportunity. We are exploring 2 critical issues today: how we take care of the most vulnerable Americans, seniors who need help managing their Social Security benefits; and I think the other major theme here today is government competence. And we have seen over the years an erosion of trust and confidence in our government institutions. And some of the examples that have been mentioned today I think exacerbate that current reality.

I want to ask the acting inspector general, Ms. Stone, a June 2015 study found cases where the SSA made benefit payments to representative payees who were deceased. Can you expound on that a little bit, and explain how this happens and what some of the solutions might be?

Ms. STONE. If I could sum this up, I would say that it is a matter of the systems within SSA not talking to each other. When you do not have complete information within the representative payee system on payee data, you cannot compare that to other information in SSA such as the death master file. When there is inconsistency there, there is a likelihood that you will continue to pay a payee who is deceased. And that is, in fact, what happened in this situation.

Mr. CURBELO. Ms. LaCanfora, what is being done to mitigate to address this situation?

Ms. LACANFORA. So thank you to the inspector general for helping us to identify the problem. And we have begun the complete redesign of our death reporting system, so that they do talk to each other. We have already had a couple of different releases of that software so that, in fact, it makes it impossible for us to record multiple differing dates of death across our systems. There

will only be one date of death, it will be the one that we always reference, and it will override everything else.

So, in effect, we have corrected the problem, and we will continue to strengthen our system's infrastructure to close other gaps that have been identified by the IG.

Mr. CURBELO. Ms. Stone, can you confirm that? Do you think the SSA is taking positive steps that could address this effectively?

Ms. STONE. I cannot specifically confirm whether or not the changes they have made are actually working as intended, because we have not done any follow-up work in that area. But I will say they are definitely heading in the right direction with respect to really trying to get their hands around the representative payee issue. The fact that they are doing predictive modeling, and the fact that they have the electronic representative payee system are the building blocks that will be necessary for the agency to be able to address this problem, going into the future.

Mr. CURBELO. Well, I thank you all for your work on this issue, and for collaborating with the committee. I think our shared goal here is that the American people have greater trust and confidence in the Social Security Administration and, more broadly, in their government.

So thank you, Mr. Chairman. I am happy to yield back the balance of my time.

Chairman BUCHANAN. Thank you.

Mr. Meehan, you are recognized.

Mr. MEEHAN. Thank you, Mr. Chairman. And I thank this panel for the work that you are doing in this very, very important area. As a former prosecutor, I spent time frequently dealing with the sorry circumstances where people who were charged with caring for elderly neglected that responsibility.

I also saw so many circumstances where people really took on the responsibility and managed the affairs of elderly, and did it in a very admirable fashion. So I know we are working towards a time in which, as we grow older, we are going to see more reliance on these relationships. And there has already been one aspect that has been pointed out, which I think you have commented on, but—if anybody has any further words about how we might be able to fix it—is that we have created a point in time in which checks only go back—or representative payees, you know, people have been grandfathered in.

I had a circumstance in which, in my own Philadelphia region, we had a woman by the name of Linda Weston who served as a representative payee for 4 separate individuals. Only later did they discover the horrid circumstances, including abuse and other things that were part of that.

So what are we doing to check to assure that any kind of information related to a background of somebody who has already been grandfathered in to the payee situation is kept current, so we don't find a circumstance where somebody is abusing an individual? Does anybody have a response to that?

Ms. LACANFORA. I can start. I think our strongest tool is our misuse predictive model. We have a predictive model that uses a lot of data and various characteristics. And in the Weston case, that was an individual serving, as you said, multiple individual

beneficiaries. And we look at characteristics like that in the misuse predictive model, people who are serving multiple beneficiaries, and a whole host of other factors to target individuals and organizations to do on-site reviews.

Mr. MEEHAN. When—a big part of this is the privacy issue, as well. To what extent, when there is oversight, is it done just to—how do you audit, to the extent that there is—or review the financial circumstances of somebody who is a—you know, who is having their affairs managed by a payee? Both with respect to what that person might be doing—but the thing that I saw so frequently would be where seniors would become victimized by things like telemarketers and others. And it wasn't necessarily that it was the payee who was taking advantage, but their negligence, so to speak. They would just sort of not watch the accounts.

And we saw savings that would just be drained because seniors wouldn't appreciate payments were made into their accounts and they were drained by periodic dunning, which would be done because somebody—a telemarketer got, purportedly—is there a way that there is a check to see that accounts and other kinds of things, which would be often times a Social Security check, is one of the things that goes into the assets that a senior has?

Anybody with respect to—my concern is that the—we don't have the federal Privacy Act as a detriment because the Social Security Administration finds that a representative payee has committed fraud and also is a conservator, the agency is barred from providing that information to the courts. Do we find that?

Ms. UEKERT. That is true, that right now the biggest complaint is that the state court orders are not recognized by Social Security, so it does mean that, if a court finds a conservator—removes a conservator for cause, that person can still stay on as the representative payee——

Mr. MEEHAN. That is stunning. Why? Is that our fault?

Ms. UEKERT. It is part of the Code of Federal Regulations, section——

Mr. MEEHAN. But why? Why is that put in there? What does it serve? And should it be changed?

Ms. LACANFORA. There are 2—I think 2 different issues. One is whether we recognize the conservator as the representative payee, and the other is whether we can disclose information back to the courts, 2 different issues.

On the first one, we do consider whether there is a legal guardian or a conservator. And we have a list, like a preference list, by which we choose who should be the payee. So it is not that we are completely dismissing the fact that there is a conservator, but we do reserve the right to explore all potentially, you know, viable candidates for the job, because you could have someone, for example, who lives in another state, while the better payee may be the custodial parent.

So we do make—we reserve the right to make a judgement call——

Mr. MEEHAN. Could you speak to the second, most important one, which is we have a court here. We have somebody who is in authority to overlook this. Why would there be a failure to——

Ms. LACANFORA. So, to the second issue about disclosing information, we are simply prohibited by the Privacy Act from disclosing information to state boards.

Mr. MEEHAN. Or could that be fixed?

Ms. LACANFORA. That would require a legislative change.

Mr. MEEHAN. I understand that. What would be the right fix? Could you, at some point in time, report back to us if anybody has ideas on how you would suggest it be fixed? Thank you.

Ms. LACANFORA. Yes, we will.

Mr. MEEHAN. Mr. Chairman, I yield back.

Chairman BUCHANAN. Thank you. I am going to ask a couple of questions.

One of the things—I did have the Commissioner down to Sarasota in Florida. Probably 30 percent of my district is 65 and older, in terms of the demographics, so I see what is taking place in Florida. But I am sure, throughout the country, people are living longer. My mother-in-law is in town, she is 97. She had a sister, 101, and another sister, 103.

So you see—you know, maybe you see more of it in Florida. But I do want to say, with these onsite inspections or reviews, whatever you are calling them, you are going from 2,500 to 5,000. Is that enough, or does that make sense? How did you come up with that number?

Ms. LACANFORA. Historically, we have done about 2,000 reviews. Last year I think we did 2,400. We do the ones that are required by statute—and there are approximately 1,600 of those—and the rest of them we have added on, simply because we believe it is the right thing to do.

Unfortunately, we are constrained in terms of how many we can do. So our 5,000 goal—which we haven't achieved yet, that is a multi-year, phase-in process—is just simply, on our part, an ambitious target to double the number of reviews.

Chairman BUCHANAN. And I touched on this earlier, but I was kind of blown away. I didn't look at the number, I thought it was—but I said collectively she mentioned $1 trillion, $993 billion, so it gives you some scope of it.

In general, I think you guys have done a heck of a job. There is always ways to improve it and get better.

I want to flip to the abuse side, Ms. Stone. What do you—how much—I would think mostly family would do a lot of this, but what is the percentage of family that becomes the payee, compared to third-party facilitators? Do you have—do you know that number offhand, Ms. Stone, or either of the ladies? Do you know that?

Ms. STONE. I would say Ms. LaCanfora may be better positioned to answer that question.

Ms. LACANFORA. About half of all individuals with a payee are minor children. And in most of those cases you have a custodial parent who would be the preferred payee.

Chairman BUCHANAN. I'm thinking of seniors. Do you have a sense, in terms of seniors, what percentage it is?

Ms. LACANFORA. That are served by a——

Chairman BUCHANAN. Their children actually managing it, compared to—well, let me just move on a little bit.

I mentioned earlier, Ms. Stone, that, in terms of Hillsborough County, which is Tampa, part of my district, there was—it went on for 10 years, $600,000 he got from the Social Security Administration. A third party, the television down there, had discovered that [sic]. How widespread do you think that—some kind of abuse, or that kind of abuse, goes on? Do you have any sense of that?

Ms. STONE. I do not.

Chairman BUCHANAN. It is scary to me to think that something could go on for 6 years and $60,000 a year—average, I guess—for 10 years, and nobody has any sense of that, that that is going on.

Ms. STONE. And I—the fact that you are asking this question speaks to, I guess, our fundamental concern in this area, as well. The population, when again you compare it to the total number of people that SSA serves, may be small. But when you do have a breakdown in a rep payee providing the service to the beneficiaries, it can be very daunting, and it can impact those people that we consider to be our most vulnerable citizens.

Chairman BUCHANAN. Okay. And let me get back to the point. You know, a lot of people at some point in their life end up with dementia or Alzheimer's. And who is taking care of—who is overseeing their financial affairs? So I am trying to say how much of it is their children or how much of it is outside facilitators that are overseeing that?

Ms. LACANFORA. Okay, so I will answer that question you had asked before: 85 percent of representative payees are family members, primarily parents.

Chairman BUCHANAN. Okay.

Ms. LACANFORA. And I did mention—it is worth mentioning, since you said dementia, that we are doing research in that area to examine the outcomes of individuals with and without payees who have dementia, to see what value the representative payee program is adding for those individuals, versus those who are more informally served by friends or family members without a formal payee.

Chairman BUCHANAN. And I just think, in terms of the agency looking—going forward, they have got to be thinking about that, you know, people are living longer, the demographics in the country where you have got more seniors. They say 10—12,000 a day turn 65 for the next 30 years, every day for the next 30 years.

So we really have to be thinking about the past 30, but in terms of going forward the next 30, and I think some of the gentlemen have raised that question. Are we doing enough to make sure people are being served properly?

With that, anybody that likes a second question, I am going to yield to the ranking member, Mr. Larson from Connecticut.

Mr. LARSON. Thank you, Mr. Chairman. And this has been very insightful. And I want to follow up with what both Mr. Kelly and Mr. Meehan were saying in their remarks.

I couldn't help but observe, Ms. Uekert, during this discussion and a number of times, you were wringing your hands like you wanted to respond. And here is my question, and it is—it would involve both the task force, Ms. Ford, the SSA, Ms. LaCanfora, and Ms. Uekert.

It seemed—obviously, there is this huge gap between what the courts see as a problem, and how, under current law, SSA can respond, as Mr. Meehan was pointing out, based on a number of the privacy concerns. And as you aptly pointed out, there is 2 separate issues that you are dealing with here.

A, has the task force looked into this? And is there a way for us to bridge this gap so that—as Mr. Meehan, I think, was driving for, how can we change the law to effectively make sure that the court function and the privacy functions are blended in a way that works and, I would hope, allows us to lower the case load, work, and coordinate.

If the 3 of you could try to respond to that, and we will start with you, Ms. Ford, and then Ms. Uekert, because of your very patience in this, and then Ms. LaCanfora, who we have been——

Ms. FORD. I think—excuse me—I think we definitely have to look at changing the law, if that is keeping SSA from reporting something that serious. I don't——

Mr. LARSON. Has the task force recommended anything?

Ms. FORD. We don't have that recommendation right yet, but we can certainly get that to you, and——

Mr. LARSON. That would be great, if you could.

Ms. FORD. And we talked a little bit earlier about getting together and looking at some of these issues and talking through some of the recommendations and seeing where there might be some joint work that could be done together. So I think that that is something that could come out of this hearing, too.

Mr. LARSON. Ms. Uekert, could you join with them in that, or is there——

Ms. UEKERT. We would be happy to. We also staff the Conference of Chief Justices and Conference of State Court Administrators. They have been concerned with this issue for quite some time, and I know that they would be happy to draft a resolution and join in any collaborative——

Mr. LARSON. And I think, very pragmatically, what Mr. Meehan was driving for, is there—could you give us the language that will allow us to do that? And so then it would fall, obviously, back to the Administration.

And would you be receptive to that? You have indicated in your testimony that it would need legislative change.

Ms. LACANFORA. Yes, we would be happy to provide technical assistance to the committee and work with you and your staffs.

Mr. LARSON. Do you have specific things that you would recommend to us? Because it seems like this is a huge gap here that becomes intuitively obvious as we discuss this. You are bound by what the law is and how to follow it.

You are being very courteous and polite. You—sometimes you have to say to the members up here, "Look, this is what you need to do," and it has got to be that blunt and that simple. That is how Mr. Johnson would handle it, right? And so, that would be very important to us, and we have heard great testimony from people that are working very hard to preserve a system.

We understand—and Mr. Buchanan points out—in looking at the system we know that people are performing to the best of their ability. We know that you are operating under a resource crunch.

But we also know, even if the numbers are small in terms of who is abusing the system, 1 percent of that large a number is a lot of money. And we have got to do everything to make sure that we protect the integrity of the program.

We all care about privacy issues, but there has got to be a way for us to draft this that would be sufficient with the courts, with the agencies, and with the task force that will make Ms. Stone's job easier, too, when you are doing the audits.

And with that, Mr. Chairman, I will yield back and look forward to getting your feedback. It would be vitally important to the committee. And perhaps we could work collaboratively, as I know both chairmen are inclined to do, to come up with model legislation that could help in this area.

Chairman BUCHANAN. Thank you. I now recognize our newest member, from Michigan, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman, and thank you for conducting this hearing. Thank you to the panel, as well, for your time and consideration of the issue.

I would like to follow up, if I could, with Ms. Stone's testimony, and ask you if—are all reports of misconduct or abuse—are they all investigated? And, if so, what is the timeline in which you conduct this investigation and close the file?

Ms. STONE. Well, the timeline is flexible, or it varies, based on the complexity of the case. I will start there.

In 2016 we had approximately 16,500 allegations that were somehow related to a representative payee issue. Of that, we opened roughly 450 cases. And we had approximately 180 convictions related to that.

And the way that our process works with the allegations is we worked hand in hand with the agency in that when some allegations come in we forward it to SSA to make a determination of misuse. At the end of the day, when we are actually getting convictions, a large percentage of that is as a result of the referrals and the work that SSA is providing to us.

Mr. BISHOP. So is there a backlog in the number of cases or investigations? Do you get to all of the cases?

Ms. STONE. There is not a backlog. All of them are at varying stages. Because I started out with the large number at the very beginning, when we send those over to the agency it may be determined at that point that no further action is needed. But some type of resolution takes place for every allegation that we get.

Now, I do have to admit that some of them are closed out because the case itself may not meet certain prosecutorial guidelines—i.e. a number of cases that were referred to us last year related to amounts less than $12,000. So it is difficult for us to get a criminal prosecution in some jurisdictions for amounts that are that small.

Mr. BISHOP. And a follow-up question, too, with a question that was asked earlier. I think it was from Representative Walorski. There would be, in my mind, a benefit to have a family member as the representative payee, and—given the fact they know the circumstances the best, and the beneficiary the best. Are you more or less likely to see abuse when the representative payee is a family member?

Ms. STONE. Based on——

Mr. BISHOP. Actually, if anybody would like to answer that question.

Ms. STONE. Based on the study that the National Academies did back in 2007, I believe, being a family member was not one of the factors that would lead one to believe that an individual is more likely to misuse the benefits.

In fact, to the contrary, if you are looking at the profile model, you would look for situations where the payee did not have a familial relationship with the beneficiary. Maybe the person did not have substantial income, or was self-employed, or did not have earnings for a substantial period of time. It is those kinds of factors that would lead you to believe that maybe this person needs a little more oversight than someone else.

Mr. BISHOP. Thank you very much. Mr. Chairman, I yield back.

Chairman BUCHANAN. Mr. Kelly, you are recognized.

Mr. KELLY. Thanks, Mr. Chairman. And I want to thank Chairman Johnson and you, Chairman Buchanan, for doing this. I think that this is like a Pandora's Box. We have opened this thing now; we have got to find out where it is going.

I got to tell you that you being here is so valuable to us. Because in this life that we are in right now, if you came to see us in our office, you get, like, 15 minutes and then somebody knocks on the door and says, you know, the ag people are here, and you have 15 minutes with them and somebody knocks on the door and says the manufacturing people are here. And so there is this great belief that we really understand every situation because you had 15 minutes to share it with us. I think in the Senate you probably don't even get to see Senators. At least in the House you actually get to see Reps.

But I am really concerned with this. And I think, as we open this up—because I do know where the revenue comes from, and I keep going back to that workforce participation and the fact that all of these wonderful programs are funded by hardworking American taxpayers. These are all wage taxes. And so where do wage taxes come from? People that are working.

And I keep worrying about are there some best practices—we could look at the private sector to how they handle fraud, how they handle abuse. Are there some things that we can use from the private sector and mesh in with what we are doing in the government?

I am always astounded that an entity that has great numbers of dollars that it spends is so far behind what the rest of the world is doing. And I think that—and please don't take this the wrong way—when it is your own money, you really start to worry about it, because you are the one that has got to replace it. And then you realize, wait a minute, that is my money. So I want to make sure that we are taking care of everybody the way we can.

But the other side of it is it is only you that can get that information to us. So I am going to just ask you something. Please don't give up or get frustrated and think there is nobody listening. And it really doesn't matter how we are registered, or how we vote. We are all trying to do what is in the best interest of the people we represent.

So, having said all that, is there anything in the private sector you look at and you say, if we could bring this into government, boy, would we be a lot more effective. Boy, we would be a lot more efficient. Just any of you.

Yes, Ms. Uekert? Please.

Ms. UEKERT. Thank you so much. I mean this—there is a program that we have been working with, with Minnesota. I know that Social Security uses sort of their risk factors based on the characteristics of the person. And we have been working with Minnesota, they have got the only software system for conservators. It requires transaction-based data to be submitted. And with them we have been working on a predictive model based on those transactions, and we have succeeded in using 10 risk indicators that already predict 80 percent of the—what they call the level-4 cases.

The entire system needs to be modernized, and we believe that there are—there is the software, there is the technology. As long as you have got some auditing resources and you have got some statisticians who can develop some predictive analytics, that we are moving toward a system where we can take the resources and know in advance to push them towards those particular cases. But it does require that individual transactions be submitted through software.

And I know Mr. Slayton is also working on that same approach in Texas.

Mr. KELLY. Mr. Slayton, could you share what Texas is doing?

Mr. SLAYTON. We are basically doing the same thing that Ms. Uekert was talking about with regard to Minnesota. We are looking at—we are within months of rolling out similar predictive analytics. And what we will be doing is requiring transaction-based reporting. So, rather than—right now, many times, when folks file their annual accountings they just put beginning balance, ending balance, and the amount of spent expenses and revenue, and there is a requirement in law that it be very detailed and transaction-based. But right now many of those are filed on paper.

And so, the ability to truly review the volume is very difficult. So the system that we are implementing would require the guardians to file their information through the system. It would use its predictive model, looking at the transactions to say, "We know, by the research that has been done, that this type of transaction points to fraud," and that gives us an ability to target our resources towards those individuals, where we think there are problems.

And then, you know, use the remaining resources we had to review the rest of the cases, but specifically focusing on those where we can, because the predictive analytics see that there are potential issues.

Mr. KELLY. How often do you all get a chance to exchange best practices? When can you—you can go out of where you and to talk to somebody else? I know there is a lot of smart people out there, but sometimes smart people don't get to talk to other smart people. So when do you have that opportunity to actually have that exchange of ideas?

Ms. UEKERT. We do that regularly, through the Conference of Chief Justices and Conference of State Court Administrators, which meet at least twice—they have got a joint meeting in Au-

gust, I believe, and separate meetings in the year. I staff the elders and courts committee, so there is a frequent exchange of information on best practices.

Mr. KELLY. Thank you all for being here. It is critical. Thanks. Thank you, Chairman.

Chairman BUCHANAN. Chairman Johnson, you are recognized.

Chairman JOHNSON. Thank you. Ms. LaCanfora, how does someone report a problem with a payee to Social Security? And when a problem is found, what happens next? Can you describe the process?

Ms. LACANFORA. Sure. Anyone can report a problem to Social Security related to allegations of misuse, and we will undertake an investigation in all of those cases, and question both the beneficiary and the payee. In certain cases——

Chairman JOHNSON. Does that happen pretty quick?

Ms. LACANFORA. Yes. And in some cases, we will make a referral to the inspector general. As Ms. Stone said, the vast majority of the cases that they opened were SSA referrals. So we also do that.

And we will try to act swiftly to change the payee when necessary.

Chairman JOHNSON. So how does SSA decide whether to remove a payee or pursue another course of action, such as working with the payee to correct the problem?

Ms. LACANFORA. Well, we are looking to see whether the payee has the best interests of the beneficiary at heart. That is the primary criteria. And so, if someone is making allegations that the money is not being spent on them, on the beneficiary for their daily needs, such as food, shelter, and clothing, that is what we are looking to figure out.

And if we can substantiate those allegations, or if we even feel like the payee is not being forthcoming, or that there is suspicion there that we can't resolve, we can take action to change the payee.

Chairman JOHNSON. Thank you very much. Thank you, Mr. Chairman.

Chairman BUCHANAN. I would like to thank our witnesses for appearing before us today. Please be advised that members have 2 weeks to submit written questions to be answered later in writing. Those questions and your answers will be part of the formal hearing record.

With that, the subcommittee stands adjourned.

[Whereupon, at 11:41 a.m., the subcommittees were adjourned.]

[Questions for the Record follows:]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 11, 2017

Marianna LaCanfora
Acting Deputy Commissioner, Retirement and Disability Policy
Social Security Administration
6401 Security Boulevard
Woodlawn, MD 21207

Dear Ms. LaCanfora:

Thank you for your testimony before the Committee on Ways and Means at the March 22, 2017 Oversight and Social Security joint hearing entitled "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." In order to complete our hearing record, we would appreciate your responses to the following questions:

1. Can a new payee be assigned for reasons other than benefit misuse or a beneficiary's request for a new payee? If so, who makes the determination and how is it made? How is the decision communicated and who is informed?

2. What options, if any, has the Social Security Administration (SSA) considered to improve its process for reviewing the annual accounting forms to better identify potential cases of misuse?

3. If a representative payee misuses benefits, is the beneficiary always made whole? If not, why not?

4. How much has the SSA paid in reissued benefits over the last 10 years in cases where a payee has misused benefits? How many beneficiaries received such payments? Please provide this information by year and payee type for: individual payees serving fewer than 15 beneficiaries, individual payees serving at least 15 beneficiaries, organizational payees, and fee-for-service payees.

5. How does the SSA find new payees for a large number of beneficiaries when an organizational payee (such as Safety Net of Oregon or Hillsborough Achievement and Resource Centers) is shutdown due to concerns about benefit mismanagement? Are beneficiaries paid directly until new payees are found?

6. What is the approximate cost per review for the discretionary reviews conducted under the new contract with Information Systems & Networks Corporation, and how does this compare with costs in previous years?

7. According to the National Disability Rights Network, the Protection & Advocacy agencies found problems in about 65 percent of the SSA-assigned reviews and in about 84 percent of the "wild card" reviews. How do you explain these differences?

8. How long does it take to process representative payee applications? How has this processing time changed with the launch of the new electronic Representative Payee System? Please provide data going back five years.

Questions from Rep. Jim Renacci

1. Can you talk more about what goes into onsite reviews? What are the signs of potential mismanagement or abuse?

2. Further, as a CPA, I am curious to learn more about how representative payee organizations are audited under current SSA guidelines. Can you provide further detail on the SSA's procedures for record keeping and independent verification of financial information of organizations that serve as representative payees?

We would appreciate your responses to these questions by **April 25, 2017**. Please send your response to the attention of Rachel Kaldahl, Oversight Counsel, Subcommittee on Oversight, and Amy Shuart, Staff Director, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, 2018 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response in Microsoft Word format to Brighton.Haslett@mail.house.gov.

Thank you for taking the time to answer these questions for the record. If you have any questions concerning this request, you may reach Rachel or Amy at (202) 225-9263.

Sincerely,

Vern Buchanan
Chairman
Subcommittee on Oversight

Sam Johnson
Chairman
Subcommittee on Social Security

SOCIAL SECURITY
Office of Retirement and Disability Policy

August 21, 2017

The Honorable Sam Johnson
Chairman, Subcommittee on Social Security
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

The Honorable Vern Buchanan
Chairman, Subcommittee on Oversight
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Chairman Johnson and Chairman Buchanan:

Thank you for the opportunity to provide information to complete the record from the March 22, 2017 hearing entitled "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." Enclosed please find our answers to your and Congressman Renacci's questions.

I hope this information is helpful. If you or your staff have any further questions, please do not hesitate to contact me or Royce B. Min, our Acting Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Marianna LaCanfora

Marianna LaCanfora
Assistant Deputy Commissioner for
Retirement and Disability Policy

Enclosure

Questions for the Record
March 22, 2017 Hearing
Majority Staff

Questions from Reps. Sam Johnson and Vern Buchanan

1. **Can a new payee be assigned for reasons other than benefit misuse or a beneficiary's request for a new payee? If so, who makes the determination and how is it made? How is the decision communicated and who is informed?**

Yes, we may assign a new representative payee in instances other than benefit misuse or a beneficiary's request. For example, depending upon the individual circumstances of a case, a field office employee may decide to change the payee if the current payee:

- Dies;
- Becomes incarcerated, or a felon;
- Incapable of handling funds;
- No longer wishes to serve as payee;
- Fails to complete annual payee accounting, or otherwise fails to use or account for benefits properly;
- Is no longer responsible for the beneficiary's care or welfare, or no longer has custody of the beneficiary;
- Becomes geographically separated from the beneficiary;
- Has a payee of his or her own; or
- Is otherwise no longer suitable to act as payee.

We will also develop and determine if we should change the payee whenever we receive a new payee application from someone other than the current payee.

Our determination to appoint a new payee is similar to our determination to select an initial payee. Through development of needed information and discussions with the beneficiary, the payee applicant, and the current payee (if available), field office employees determine who would best serve the beneficiary's needs. That individual is then selected to become the new payee. In every case in which we propose changing the payee, the beneficiary receives advance notice that provides the opportunity to appeal the selection.

When we select a new payee, we send the former payee, the beneficiary, and the newly selected payee notices that inform them of our decision. We request that the former payee send us any money he or she may have saved for the beneficiary's needs. We also send courtesy notices to unsuccessful applicants to advise them of our decision.

We receive criminal information about a payee applicant or existing payee through a variety of sources. The electronic Representative Payee System (eRPS) is an internal Social Security application that processes representative payee applications and contains representative payee related information. This system serves as an investigative tool to help SSA field office employees make appropriate payee appointments and monitor current payees. Our field office employees receive information about the incarceration or fugitive felon status of

a payee applicant (or existing payee) through eRPS alerts generated from prisoner and fugitive felon data matches. With some exceptions (e.g. custodial parents or custodial spouses), we also conduct criminal background checks on individual payee applicants to determine whether the applicant has been convicted of a barred felony crime. Furthermore, SSA receives current criminal information from OIG and law enforcement agencies to monitor existing payees. When we receive this information, we investigate the person's suitability to remain a payee. Finally, we also receive information from sources such as first party reports (e.g. the representative payee informs us) or third party reports (e.g. media reports, a relative, or neighbor).

In addition, we learn that a current payee is incapable of handling a beneficiary's funds if we receive reports that benefits are not being handled properly. We may learn of this when we

- Receive a complaint from the beneficiary; from a third party, such as a vendor or a creditor claiming bills have not been paid on time; or
- Determine that a payee made evasive or contradictory statements about the use of benefits, including responses on the annual accounting reports.

We also learn that a current payee may be incapable of continuing to serve when:

- the payee fails to complete the report;
- from responses to questions during an Supplemental Security Income (SSI) redetermination suggest incapability; or
- we discover information to that effect while conducting a site review.

2. What options, if any, has the Social Security Administration (SSA) considered to improve its process for reviewing the annual accounting forms to better identify potential cases of misuse?

Over the years, we have taken numerous steps to improve the annual accounting program. Additionally, we are currently considering ways the program may be modernized to reduce the burden on families and improve our oversight of high-risk payees. Outlined below are improvements we have made and ideas we are considering to modernize the program.

- In 2005, we created a new version of the representative payee annual accounting report (SSA-6234) specifically tailored for organizational payees. This form improves our ability to effectively monitor organizational payees by identifying cases where the organization is charging unauthorized or excessive fees.
- In 2007, we implemented the electronic Representative Payee Accounting (eRPA) system. This web-based application improved data storage and controls for the annual accounting process (exceptions and non-responder cases).
- We developed an automated scanning process that analyzes payee responses on all returned annual accounting reports. This scanning system allows us to identify, investigate and control all accounting exceptions to make a determination of whether an issue should be addressed or the payee misused benefits.

- We are in the process of developing new procedures to allow field office technicians to work non-responder cases over the phone using attestation. This process would allow us to efficiently investigate cases where representative payees have not responded, allowing us to more quickly identify potential cases of misuse of benefits.
- Currently, we are considering revising the structure of the annual accounting forms to reduce the number of exception cases that have not proven to be useful in finding misuse. These revisions will improve our questions related to conserved funds.
- We are also exploring the following structural changes to our monitoring program. These changes would require legislation and relief from a court order:

  - Eliminate the representative payee annual accounting reporting burden when: (1) the representative payee is the parent or legal guardian of a minor child beneficiary and has custody of the beneficiary; (2) the representative payee is the beneficiary's spouse and resides with the beneficiary.
  - For all other cases, use the misuse predictive model to select which representative payees must complete an annual accounting report.
    In addition to requiring annual accounting reports from high-risk payees, we will conduct up to 5,000 (i.e., almost double the number completed in FY 2016) onsite reviews annually to ensure we protect our most vulnerable beneficiaries. We will continue to conduct those onsite reviews required by the Act, and will use a misuse predictive model to select additional representative payees for onsite reviews.

Under this proposal, we would eliminate the requirement for parents or legal guardians of a minor child in their custody, and for custodial spouses who serve as payee. We would use our predictive model to select high-risk payees and conduct annual accountings for the selected payees. Finally, we would double the number onsite reviews we currently do. We would not conduct any other type of accounting

3. **If a representative payee misuses benefits, is the beneficiary always made whole? If not, why not?**

A representative payee who misuses benefits is indebted to the beneficiary and has an obligation to make restitution to the beneficiary. SSA will take action on behalf of the beneficiary to obtain restitution of the misused benefits from the payee.

We reissue funds to beneficiaries or the legal representative of a deceased beneficiary estate immediately, without waiting for restitution, in cases of:

- organizational payees;
- individual payees who served 15 or more beneficiaries during any month in the misuse period; and
- individual payees who served 14 or fewer beneficiaries in the misuse period and we determined SSA was negligent in selecting and monitoring the payee.

We then recover the money from the misuser payee to reimburse the trust fund for Title II or general fund for Title XVI.

If the misuser payee is an individual who served fewer than 15 beneficiaries, we make a negligence determination to decide whether our failure to investigate or monitor the payee contributed to the misuse of benefits. If SSA's failure to investigate or monitor the payee contributed to the misuse, we reissue the misused benefits to the beneficiary immediately. If not, we pay the beneficiary the misused funds after we receive restitution from the misuser payee.

To summarize, in most cases SSA makes the beneficiary whole when we find that a payee has misused benefits. If the payee reimburses us for the misused funds, we will reimburse the beneficiary. If the payee has not reimbursed us, but we determine that our failure to investigate or monitor the payee contributed to the misuse, we will repay the beneficiary immediately. If the payee has not reimbursed us, and we did properly investigate or monitor, or that our failure to do so did not contribute to the misuse, we cannot repay the beneficiary until we are reimbursed by the payee.

4. **How much has the SSA paid in reissued benefits over the last 10 years in cases where a payee has misused benefits? How many beneficiaries received such payments? Please provide this information by year and payee type for: individual payees serving fewer than 15 beneficiaries, individual payees serving at least 15 beneficiaries, organizational payees, and fee-for-service payees.**

During the period from FY 2008 through FY 2017, SSA reissued $49,005,868.43 in benefits to 17,001 beneficiaries. It is important to note that prior to July 2011, the misuse documentation and determination process was largely paper-based. In an effort to ensure we effectively capture and document misuse allegations, the agency invested resources to develop the eRPS Misuse system. Released in July 2011, this robust web-based application allows technicians to create, develop, track, and store misuse allegations beginning with the first report through recovery and reimbursement. Users can store needed documents, transfer cases to other offices and make referrals to the Office of the Inspector General (OIG) all within one electronic system.

	Individual payees serving fewer than 15 beneficiaries	**Individual payees serving at least 15 beneficiaries**	**Organizational payees**	**Fee-for-Service payees**	**Total**
2008	$323,955.82 114 beneficiaries	$0 0 beneficiaries	$53,427.51 71 beneficiaries	$23,819.92 11 beneficiaries	**$401,203.25 196 beneficiaries**
2009	$308,380.23 92 beneficiaries	$7,609.56 19 beneficiaries	$724,206.99 894 beneficiaries	$271,835.79 170 beneficiaries	**$1,312,032.57 1,175 beneficiaries**
2010	$393,142.44 187 beneficiaries	$362.40 3 beneficiaries	$6,595,909.89 1,795 beneficiaries	$4,435,161.63 633 beneficiaries	**$11,424,576.36 2,618 beneficiaries**
2011	$432,198.22	$0	$3,186,481.19	$2,080,303.83	**$5,698,983.24**

	149 beneficiaries	0 beneficiaries	1,557 beneficiaries	97 beneficiaries	**1,803 beneficiaries**
2012	$361,799.85 169 beneficiaries	$0, 0 beneficiaries	$1,755,648.20 367 beneficiaries	$1,439,402.13 116 beneficiaries	**$3,556,850.18 652 beneficiaries**
2013	$879,488.78 479 beneficiaries	$0 0 beneficiaries	$1,355,164.12 773 beneficiaries	$765,441.77 297 beneficiaries	**$3,000,094.67 1,549 beneficiaries**
2014	$834,075.14 883 beneficiaries	$36,411.43 11 beneficiaries	$1,161,735.97 633 beneficiaries	$696,059.62 319 beneficiaries	**$2,728,282.16 1,846 beneficiaries**
2015	$989,918.87 1,585 beneficiaries	$19,005.69 17 beneficiaries	$8,527,931.38 933 beneficiaries	$8,074,426.15 632 beneficiaries	**$17,611,282.09 3,167 beneficiaries**
2016	$801,475.57 1793 beneficiaries	$34,642.38 119 beneficiaries	$1,103,968.85 540 beneficiaries	$750,414.17 376 beneficiaries	**$2,690,500.97 2,828 beneficiaries**
2017	$381,466.65 966 beneficiaries	$9,025.69 5 beneficiaries	$169,481.53 146 beneficiaries	$22,089.07 50 beneficiaries	**$582,062.94 1,167 beneficiaries**
Total	**$5,705,901.57 6,417 beneficiaries**	**$107,057.15 174 beneficiaries**	**$24,633,955.63 7,709 beneficiaries**	**$18,558,954.08 2,701 beneficiaries**	**$49,005,868.43 17,001 beneficiaries**

5. **How does the SSA find new payees for a large number of beneficiaries when an organizational payee (such as Safety Net of Oregon or Hillsborough Achievement and Resource Centers) is shutdown due to concerns about benefit mismanagement? Are beneficiaries paid directly until new payees are found?**

If an organizational payee is shut down due to concerns about benefit mismanagement, field office employees will find a person or an organization that is best suited to be a payee for the beneficiary. Field office employees develop and maintain ongoing, cooperative relationships with community social service providers who can often provide new payee contacts. Agency policy requires each field office to maintain a list of available payees (including voluntary payees) located in their local service area. In addition, the field employees will look to the beneficiary to determine if there is an individual—someone he or she trusts to manage his or her money. This could be, for example, a family member or close friend; anyone who acts on behalf of the beneficiary for other payments he or she may be receiving; a social worker; advocacy groups; other governmental organizations providing social services; or social agencies.

If we cannot find a new payee immediately, we will generally pay an adult beneficiary who is not legally incompetent directly until we find a new payee. However, if we determine that paying an adult beneficiary directly would cause substantial harm, we may suspend benefits for one month while we search for a new payee.[1] We will suspend benefits pending a payee selection for beneficiaries who are under age 15 or legally incompetent adults.

In the misuse example of the organizational payee known as Safety Net of Oregon, our Seattle Regional office quickly revoked Safety Net's authorization to serve as an organizational and fee-for-service representative payee as soon as it learned about its mismanagement of benefits, and our Office of Inspector general conducted an investigation.

[1] Suspensions based on "substantial harm" are not applicable to residents in California, unless the beneficiary receives disability benefits and drug addiction and/or alcoholism is material to the disability determination.

We completed the necessary actions to find new payees, and reissued the misused funds. We are happy to report that all required actions for this former payee misuse case are complete.

6. **What is the approximate cost per review for the discretionary reviews conducted under the new contract with Information Systems & Networks Corporation, and how does this compare with costs in previous years?**

The cost under the existing contract with Information Systems and Networks (ISN) Corporation is around $2,500 per review. During FY 2013 through FY 2016, the National Disability Rights Network (NDRN) cost ranged between $4,690 and $5,016 per review.

7. **According to the National Disability Rights Network, the Protection & Advocacy agencies found problems in about 65 percent of the SSA-assigned reviews and in about 84 percent of the "wild card" reviews. How do you explain these differences?**

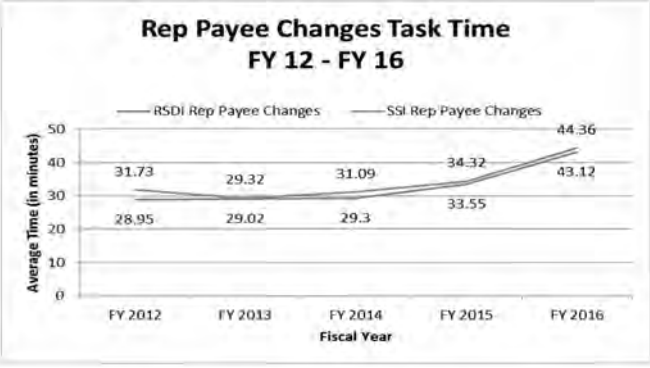
NDRN and Protection & Advocacy (P&A) agencies may define "problems" differently than we do. We recognize and appreciate that P&A agencies seek to identify issues regarding beneficiaries' well-being; we also care greatly about our beneficiaries' welfare, and have policies in place to ensure that we report any instances of neglect or abuse to the appropriate agencies. That said, when it comes to our representative payee program and its associated reviews, our focus is defined under the Social Security Act. Under the Social Security Act, our reviews should identify cases of benefit misuse. We also look for signs of beneficiary abuse.

If a beneficiary's living space is dirty, for instance, a P&A agency may identify that as a "problem." While such conditions may be less than optimal, a dirty living space does not necessarily equate to misuse or abuse. For this reason, cases that P&A agencies have determined have problems may not necessarily require us to change a beneficiary's payee or complete any other representative payee action.

It is important to point out that SSA's responsibility is to ensure that benefits paid via a representative payee are used for the beneficiary's basic needs. As noted above, while dirty living conditions may not be optimal, SSA is not in a position to take action on such an issue; it could only do so if the P&A's report showed that the payee was not using benefits in the best interest of the beneficiary. For SSA to be able to act on such a report, it must be clear that funds are not being used properly. So although P&As reported problems in a number of cases, we found that misuse occurred in only about 1% of "wild card" cases reviewed by NDRN. The rate of misuse found in "wild card reviews" is commensurate with SSA assigned-reviews. Historically, we find misuse in about 1% of our SSA-assigned reviews.

8. **How long does it take to process representative payee applications? How has this processing time changed with the launch of the new electronic Representative Payee System? Please provide data going back five years.**

Our data shows that the representative payee application processing time averaged 30 minutes before we implemented eRPS in April 2016. The FY 2016 processing time is now at 40 minutes, which is an increase of 10 minutes from the prior years when the former RPS was in use. We contribute the increase to field offices acclimating to the new eRPS, which now enforces compliance with policy. The chart below shows the processing time for the last five years (FY 2012 through FY 2016) for both programs – processing times have increased from FY 2012 from a low of about 30 minutes for both programs to the FY 2016 level of just over 40 minutes.



Questions from Rep. Jim Renacci

1. **Can you talk more about what goes into onsite reviews?**

Our site reviews currently consist of three components. First, we interview the representative payee to understand how the beneficiary is being served and how funds are managed. During this interview, we remind the payee of his or her responsibilities to report when certain things change. We also review the representative payee's financial records. For organizational representative payees and individual representative payees, we review records concerning the benefits received for five to ten of the beneficiaries. For some individual payees, we review the representative payee's financial records concerning one or two beneficiaries.

Finally, we interview the beneficiary. We ask whether the payee is meeting the beneficiary's needs, whether the beneficiary is satisfied with the payee's service, and if the beneficiary is experiencing any issues. We also confirm information provided by the payee and verify any large or unusual purchases noted during the financial records review.

Through our ISN monitoring contract, we have developed new onsite review procedures, with a goal of being more strategic in who we review, what we review, and how we do

reviews. For example, to ensure beneficiaries' needs are met and to help prevent misuse of benefits, we will conduct home visits with beneficiaries who may be at higher risk, which will help us better identify abuse or neglect. Additionally, ISN is completing a financial records review and reconciliation as well as developing and implementing corrective action plans to ensure payees have corrected fiduciary deficiencies.

What are the signs of potential mismanagement or abuse?

A representative payee has the responsibility to use the benefits received on behalf of a beneficiary only for the use and benefit of the beneficiary. He or she must use the benefits to provide for the beneficiary's current needs such as food, clothing, housing, medical care and personal comfort items, or for reasonably foreseeable needs.

In our onsite reviews, we look for signs of abuse, signs that the representative payee may have converted the benefits for a use other than for the use and benefit of the beneficiary (which we call "misuse"), and signs the representative payee may have spent the funds unwisely or failed to properly conserve them. An example of misuse is when an organizational payee has an incident of employee theft. In this scenario, the organizational payee may remove the employee and reimburse all affected beneficiaries.

Specific examples include one case where the payee alleged meeting beneficiaries' needs each month, but the payee did not provide evidence to support these allegations. The monthly bank statements revealed funds transferred on a monthly basis to payee's personal, business, and several unknown accounts. The FO is investigating for possible misuse. OIG will review the allegation for appropriate action.

In another case, we retained an organization as payee since, while we determined that there was misuse, the misuse was due to an isolated employee theft incident and the payee is in the process of reimbursing all beneficiaries. The employee who misused the funds is no longer part of the payee organization. The amount of misused funds was $8,735, affecting nine beneficiaries. OIG closed the allegation because it did not meet case opening guidelines.

Please see our Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews[2] for other examples.

We refer cases of suspected misuse to our Office of the Inspector General, and we refer cases of abuse to appropriate agencies.

2. **Further, as a CPA, I am curious to learn more about how representative payee organizations are audited under current SSA guidelines. Can you provide further detail on the SSA's procedures for record keeping and independent verification of financial information of organizations that serve as representative payees?**

[2] https://www.ba.ssa.gov/legislation/2016RepPayeeReport.pdf

We provide organizational payees with our website link—www.socialsecurity.gov/payee—as an educational tool for payees on what types of records it must keep for each beneficiary it serves. These records include ledgers showing receipts of income, expenditures (e.g., bills for food and clothing, rental agreements, contracts), account balances, receipts for purchases, bank records, and ledger and bank account reconciliations.

We developed and implemented a "Representative Payee Site Visit Worksheet," which assists us in our review of the organizational payees' records. The worksheet has two sections, receipts and disbursements. The receipts section includes an accounting of what we paid the beneficiary and any income (e.g., wages) the beneficiary earned while under the care of the organizational payee. The disbursement section includes any expenses (e.g., clothing, food) incurred under the care of the organizational payee. We use information gathered from the worksheet to complete our Client Account Reconciliation (CAR) form. The CAR form includes both the receipts and disbursement sections from the worksheet along with bank balances from the payees' records. The CAR allows us to determine if there are any discrepancies between the bank balance of a beneficiary provided by the payee and the account balance from the worksheet. We have provided exhibits of these forms as attachments.

Attachments

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

May 12, 2017

Ms. Marianna LaCanfora
Acting Deputy Commissioner, Retirement and Disability Policy
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21207

Dear Ms. LaCanfora:

Thank you for your testimony before the Subcommittees on March 22nd at the hearing on "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." In order to complete the record for the hearing, please respond to the following questions:

1) It was brought up during the hearing that there are privacy concerns that prohibit information sharing between SSA and state court systems – information sharing that could help avoid abuse or fraud committed by representative payees and guardians against those that have been entrusted to their care. How would you propose addressing or modifying the restrictions that prohibit SSA from sharing information with state court systems, and vice versa, while protecting the privacy of beneficiaries? Which laws or practices are implicated in current barriers to information sharing?

2) *Question asked on behalf of Rep. Davis*: Do you know whether states in their capacity as representative payees for foster youth are truly using the benefits to which the youths are entitled to the youths' advantage – for example, to provide additional supports, such as therapy or educational supports, or saving the benefits to help meet the youth's needs when he or she ages out of foster care -- or whether, as I understand to be the case, most states are simply putting the money into their own general funds? What is SSA's process for monitoring representative payees for youth in foster care? How do states demonstrate to SSA that the funds are being used for the benefit of the youths? How does SSA keep track of which funds states deposit for the youths' benefits?

I would appreciate receiving your response to these questions by June 2, 2017. Please send your response to the attention of Kathryn Olson, Democratic Staff Director, Subcommittee on Social Security, Committee on Ways and Means, 2017 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response to Kathryn.Olson@mail.house.gov and to the Social Security Subcommittee clerk at MM.Russell@mail.house.gov.

Thank you again for your testimony and your attention to these questions.

Sincerely,

John B. Larson
Ranking Member
Subcommittee on Social Security

Cc: Rep. Sam Johnson
Rep. Vern Buchanan
Rep. John Lewis
Rep. Danny Davis

SOCIAL SECURITY
Office of Retirement and Disability Policy

May 11, 2017

The Honorable John B. Larson
Ranking Member, Subcommittee on Social Security
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Mr. Larson:

Thank you for the opportunity to provide information to complete the record from the February 7, 2017 hearing entitled "Examining the Social Security Administration's Representative Payee Program: Determining Who Needs Help." Enclosed please find our answers to your questions.

I hope this information is helpful. If you or your staff have any further questions, please do not hesitate to contact me or Royce B. Min, our Acting Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Marianna LaCanfora
Acting Deputy Commissioner for
Retirement and Disability Policy

Enclosure

QUESTIONS FOR THE RECORD

Ranking Member John B. Larson

To Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy, U.S. Social Security Administration (Baltimore, MD,)

1) Over the last decade, SSA has seen a 10 million increase in beneficiaries due to the aging of the baby boomers. Yet since 2010, its basic operating budget has been reduced by 10%, adjusted for inflation. What have been the consequences of this squeeze between more people relying on SSA's services, and less money to deliver them?

We are closely examining how we deliver services and the infrastructure, including information technology (IT), we need to deliver them presently and into the future. We continue to focus on what our mission critical needs are, to better ensure that our administrative budget is used on direct services to the public or to develop new or more efficient ways to provide such services in the future. For example, we continue to enhance or add new online services each year, which has helped us to keep up with key workloads and mitigate backlog growth in other areas. In FY 2016, our online services helped us process over 120 million transactions, such as applying for benefits, change of address, and accessing Social Security Statements.

We have taken measures to be as lean and efficient as possible, reducing overtime, IT expenditures, purchases, and travel. Given the size and scope of our operations and programs, our administrative expenses are less than 1.3 percent of the Social Security and SSI benefits we pay. Recent performance data shows:

- As of January 2017, our wait times were about 17 minutes, and the busy signal rate was over 13 percent – an increase from about 15 minutes and 9 percent at the end of 2016.
- In our field offices, visitors without an appointment are waiting nearly 30 minutes for service, and nearly half of those seeking an appointment are waiting over three weeks to get one.
- In FY 2017, our Processing Centers have more than twice as many actions pending than the typical pending action count of about 1.7 to 2.3 million. As of the end of February, there were 4.4 million actions pending in our PCs. To help address this backlog, we have approved 100 critical exception hires for our PCs.

2). Improving information technology systems requires money. In light of SSA's reduced administrative budget, is there a way SSA could undertake an agency-wide improvement and modernization of its information technology systems to deal with the increasing number of beneficiaries it will be serving over the next several years and into the next decade? Can this be accomplished simply by "prioritizing projects and initiatives"?

We agree that we must improve business processes and modernize our IT infrastructure so that in the future, we will be able to manage ever-increasing workloads. We are currently developing a comprehensive IT Modernization Plan, which details how we will undertake modernization of our information technology systems including our data and databases, applications and 62 million lines of dated code, and infrastructure. The scale, system interdependencies, and complexity of modernization is a multi-year effort.

3). Dr. Appelbaum suggested that some of the individuals who were being designated as representative payees could instead be designated as part of a supportive-decision making team, without requiring any additional personnel or processes at SSA. Do you agree? Why or why not?

We have looked at this recommendation. We believe that the supported decision-making model is interesting in concept. Currently, we are aware that the Department of Veterans Affairs (VA) uses a variation of this supportive-decision making model, and they find it works well for them. However, their program is much smaller than ours; we could not provide the support and oversight of the program that would be necessary for its success. Without an investment in additional staff and resources, this oversight would require us to shift limited resources from other critical workloads.

To understand the difference in scope, consider that the VA, in FY 2016, had nearly 197,000 beneficiaries in its fiduciary program. Approximately 2.8 percent or 4,900 VA beneficiaries participate in their Supervised Direct Pay program. By comparison, we pay about 8 million beneficiaries through our representative payee program. If a similar proportion of our beneficiaries participated in a Supervised Direct Pay program, it would result in almost 225,000 program participants.

Under the VA program, a VA field examiner makes periodic visits (at least once annually) to the beneficiary's residence to conduct a face-to-face meeting to evaluate their well-being and ability to handle their finances. Even though we understand that VA's program is not intended to be a long-term arrangement—their beneficiaries are not on the program for more than 24 months—this level of labor-intensive oversight for nearly a quarter million SSA beneficiaries would be cost prohibitive. However, we are aware that there may be other supportive decision-making models, and we will be open to further analysis of such models.

Questions for the Record
March 22, 2017
Minority Staff

Questions from Rep. John Lewis

1. **It was brought up during the hearing that there are privacy concerns that prohibit information sharing between SSA and state court systems – information sharing that could help avoid abuse or fraud committed by representative payees and guardians against those who have been entrusted to their care. How would you propose addressing or modifying the restrictions that prohibit SSA from sharing information with state court systems and vice versa, while protecting the privacy of beneficiaries? Which laws or processes are implicated in current barriers to information sharing?**

We have explored the possibility of sharing representative payee and guardianship data with the States in the past. For example, in December 2014, we asked the Administrative Conference of the United States to study State adult guardianship laws and court practices to help suggest potential opportunities for information sharing. We agree that exchanging this information with State courts could be mutually beneficial. Our existing systems of records and routine uses provide authority for us to collect certain data from State courts to administer Social Security programs, but do not provide authority for us to share data with the courts for their program purposes.[1] Thus far, we have not pursued exchanges with State court due to non-statutory challenges.

Summary of Current Authority

In accordance with the Privacy Act and Social Security Act, we can share certain information with States courts for purposes related to our determination about the necessity or appropriateness of a payee for a beneficiary or recipient. For example, routine use #2 in the Master Beneficiary Record authorizes us to disclose information about a beneficiary to a third party where the third party is expected to have information about the individual's capability to manage his/her affairs.[2] Similarly, routine use #12 in the Master Representative Payee File, which contains payee records, authorizes us to disclose information about a payee to third parties to determine the appropriateness of the payee for a beneficiary or recipient.[3]

Although we could collect and share specific data with State courts for our determinations about the necessity or appropriateness of a payee for a beneficiary or

[1] The Privacy Act, 5 U.S.C. § 552a(e)(1) requires Federal agencies to "maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President."
[2] https://mwww.ba.ssa.gov/foia/bluebook/60-0090.htm.
[3] https://mwww.ba.ssa.gov/foia/bluebook/60-0222.htm.

recipient, we are not authorized to collect information about individuals for non-programmatic purposes. This means that we could not collect and maintain data regarding all individuals that a State court has appointed as a guardian. Rather, we would have to limit the collection and maintenance of such information only to individuals who are currently payees for our beneficiaries or recipients, or who are applying to be a representative payee.

Under current law, we are not authorized to disclose information about a beneficiary, recipient, or payee to a State court for the State court's guardian determinations. Accordingly, the best way to ensure we have legal authority to collect, maintain, and share representative payee and guardianship data with State courts would be to provide explicit authority within the Social Security Act. In addition, to ensure the cost of providing data to the States is not borne by the Trust Funds, we would need legislation specifying that our costs to provide States such data for non-programmatic purposes would be reimbursable.

Non-Statutory Challenges

- *Data Reliability and Consistency.* Individual courts of jurisdiction collect different data sets; there is no nation-wide uniformity in the information States require to assign or select a guardian. Moreover, not all States and jurisdictions maintain the reason for terminating a guardian in their records, or maintain historical, person-centric data for individual guardians.

- *Lack of Infrastructure Issues.* There is no centralized mechanism or organization, such as the National Association of Public Health Statistics and Information Systems (NAPHSIS) or the American Association of Motor Vehicle Administrators (AAMVA) to help facilitate such a data exchange. At present, we would likely have to establish individual exchanges and/or a manual process.

- *Funding.* States would need IT funding to build and maintain a system to collect, store, and share the data.

- *Variances in State Policies and SSA Policies.* States' criteria for guardian determinations and selections may differ from our criteria for capability determinations and payee selections.
-

Question asked on behalf of Rep. Davis: Do you know whether states in their capacity as representative payees for foster youth are truly using the benefits to which the youths are entitled to the youths' advantage – for example, to provide additional supports, such as therapy or educational supports, or saving the benefits to help meet the youths' needs when he or she ages out of foster care – or whether, as I understand to be the case, most states are simply putting the money into their own general funds? What is SSA's process for

monitoring youth in foster care? How do states demonstrate to SSA that the funds are being used for the benefit of the youths? How does SSA keep track of which funds the states deposit for the youths' benefits?

All payees, including State agencies that serve as payees for youth in foster care, have the responsibility to use the benefits received for the use and benefit of the beneficiary. The payee receives the benefit with the full right and duty to spend it, in the best interests of the beneficiary, according to their best judgment. A payee must use benefits to provide for the beneficiary's needs such as food, clothing, housing, medical care and personal comfort items. Pursuant to *Washington State Dept. of Social and Health Services v. Guardianship Estate of Keffeler,* foster care agencies may use the benefits for the cost expended in providing care to the child (e.g. food, shelter, clothing). If the benefits are not needed for these purposes, the payee must conserve or invest the benefits. Any representative payee may be reimbursed for reasonable actual out-of-pocket expenses incurred on behalf of the beneficiary. Out-of-pocket expenses are actual expenses for food, housing, medical items, clothing, transportation, and personal needs items incurred on behalf of a particular beneficiary. The payee must keep records and receipts of the beneficiary's expenses.

We allow representative payees to "collect" benefit payments for any number of beneficiaries and recipients in one deposit account. Generally, the collective account title must show that the payee holds the account in a fiduciary capacity on behalf of the beneficiaries. The beneficiaries must own the account without having access to it. The payee manages the funds, but cannot have a personal interest in the account. However, there are two policy exceptions to the general account titling requirements for state or local government agencies:

1) The state or local government agency has the option of using a general depository account (that includes funds other than SSA benefits). The foster care agency payee may use a state/local general depository account provided:
   - The State/local government requires the use of the general depository account;
   - The State/local government promptly routes beneficiary's funds from the general depository account to a payee's fiduciary sub-account set up for the beneficiary;
   - The sub-account protects beneficiary's funds from any State/local government use; and
   - The payee complies with the payee responsibilities set out in our general collective account policies.

2) A State or local government may have a current childcare fund, foster care account, or similar account to receive funds and pay expenses. The foster care agency payee may use this account provided:
   - The State/local government uses this fund to receive the Social Security and SSI benefits;
   - The State/local government uses this fund to pay routine cost-of-care expenses;

- The State/local government maintains sub account ledgers detailing cost of care and the Social Security and SSI deposits for each child beneficiary;
- The sub-account protects beneficiary funds from any State/local government use; and
- The payee complies with the payee responsibilities set out in our general collective account policies.

With the exception of State mental institutions that participate in our site review program, we require all payees to submit an annual payee accounting report. We use the accounting report to monitor how the payee spent or saved the benefits on behalf of the beneficiary; identify situations where representative payments may no longer be appropriate; or determine if the payee is no longer suitable. Furthermore, the Social Security Act requires us to conduct site reviews for organizational payees serving 50 or more beneficiaries, individual payees serving 15 or more beneficiaries, and fee for service payees. We also conduct additional site reviews of organizational and individual payees beyond those required in the Act by selecting these payees for review using a misuse predictive model. The model selects cases based on payee and beneficiary characteristics that indicate a higher likelihood of potential misuse.

Our site reviews currently consist of three components. First, we interview the representative payee to understand how the beneficiary is being served and how funds are managed. During this interview, we remind the payee of his or her responsibilities to report when certain things change. Second, we review the representative payee's financial records and supporting documentation. During the financial review, we verify the amount of benefits received and how they were spent or saved. We review the records for at least five beneficiaries with a maximum of 10 beneficiaries, for the past twelve months. Finally, we interview the beneficiary. This interview gives the beneficiaries the opportunity to tell us if he or she believes the payee is meeting his or her needs; are satisfied with the payee's service; or are experiencing any problems. If the beneficiary is a minor, we will interview someone (e.g. a concerned relative) who knows the beneficiary and can tell us if the payee is meeting the beneficiary's needs. To close out the site review, we conduct a closeout meeting to go over our preliminary findings with the payee. We make a determination of the payee's performance and send a letter to the payee with our findings. Finally, we establish any necessary follow-ups and, if necessary, we schedule another review to verify the payee has taken corrective action.

The site reviews help us determine whether payees are performing their duties and responsibilities satisfactorily, and complying with our rules. When we uncover problems during the reviews, we resolve the problems with the payee and reeducate the payee about their duties and responsibilities. When we are unable to resolve a major performance issue with a payee, we remove them and find a new payee for the affected beneficiaries.

In fact, in 2016, we began to test a change in our foster care policy and evaluate the changes we made in the fall of 2017.[4] [5]Foster care agencies have traditionally been among SSA's most dependable payees; however, we review each case individually in our selection of a payee and the monitoring oversight of our payee selection.

[4] SSA - POMS: SI 00601.011 - Filing Supplemental Security Income (SSI) Applications for Disabled Youth Transitioning out of Foster Care (https://secure.ssa.gov/poms.nsf/lnx/0500601011).

[5] Prior to July 2016, children who were ineligible for SSI due to receipt of Title IV-E Foster Care payment could apply for SSI 90 days prior to those payments stopping. At that point, we changed our policy to allow 180 days.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 11, 2017

Gale Stallworth Stone
Acting Inspector General
Office of the Inspector General
Social Security Administration
6401 Security Boulevard
Woodlawn, MD 21207

Dear Acting Inspector General Stone:

Thank you for your testimony before the Committee on Ways and Means at the March 22, 2017 Oversight and Social Security joint hearing entitled "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." In order to complete our hearing record, we would appreciate your responses to the following questions:

1. What are the prosecutorial guidelines for a representative payee case to be referred for prosecution? How many cases were not prosecuted because they fell below a state's specific dollar threshold? What administrative actions are available to the agency if a misuse case is not accepted for prosecution?

We would appreciate your responses to these questions by **April 25, 2017**. Please send your response to the attention of Rachel Kaldahl, Oversight Counsel, Subcommittee on Oversight, and Amy Shuart, Staff Director, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, 2018 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response in Microsoft Word format to Brighton.Haslett@mail.house.gov.

Thank you for taking the time to answer these questions for the record. If you have any questions concerning this request, you may reach Rachel or Amy at (202) 225-9263.

Sincerely,

Vern Buchanan
Chairman
Subcommittee on Oversight

Sam Johnson
Chairman
Subcommittee on Social Security

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

April 25, 2017

The Honorable Vern Buchanan
Chairman, Subcommittee on Oversight
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

The Honorable Sam Johnson
Chairman, Subcommittee on Social Security
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Chairman Buchanan and Chairman Johnson:

Thank you for the opportunity to testify on March 22, 2017, before the Committee on Ways and Means, Subcommittees on Oversight and Social Security, at the joint hearing entitled *"Examining the Social Security Administration's Representative Payee Program: Who Provides Help."* I appreciate the opportunity to provide you additional information on the issues discussed at the hearing. Please see responses to your specific questions below.

1. **What are the prosecutorial guidelines for a representative payee case to be referred for prosecution?**

   Prosecution guidelines are established in some Federal judicial districts by the U.S. Attorney's Office. Where established, the guidelines vary greatly between judicial districts and often include monetary thresholds that, absent aggravating factors, grant the investigating authority the option to seek alternative remedies without a formal presentation to a prosecutor. Aggravating factors may include the criminal history or notoriety of the subject, the susceptibility of the victim, or the availability of a Special Prosecutor assigned within that district. Prosecution guidelines are often fluid and are subject to the discretion of each U.S. Attorney.

2. **How many cases were not prosecuted because they fell below a state's specific dollar threshold?**

   During Fiscal Year 2016, we closed 456 cases related to representative payees, of which 287 were declined by the U.S. Attorney's Office of jurisdiction. Of the declined cases, 188 were declined due to guidelines within the respective U.S. Attorney's Office.

3. **What administrative actions are available to the agency if a misuse case is not accepted for prosecution?**

When an investigation is declined for criminal prosecution, additional civil and administrative remedies are available to SSA. Where a representative payee wrongfully converted benefit payments, or where the subject provided a false statement to or withheld a material fact from SSA, the agency has the authority under Section 1129 of the *Social Security Act* (the Act) to impose a civil monetary penalty (CMP). SSA has delegated administration of its CMP authority to the OIG's Office of Counsel. The Act also authorizes SSA to impose administrative sanctions when a person made, or caused to be made, a false statement or representation of a material fact for use in determining any initial or continued right to, or the amount of, monthly insurance benefits under Title II or payments under Title XVI. Additionally, when SSA determines that benefits were overpaid, it may initiate the administrative recovery of funds through mandatory withholdings from any future benefit payment. In matters of representative payee misuse, SSA may also prohibit an individual from serving as representative payee.

I trust this is responsive to your request. Should you have additional questions, your staff may contact Walt Bayer, OIG Congressional and Intragovernmental Liaison, at (202) 358-6319.

Sincerely,

Gale Stallworth Stone
Acting Inspector General

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

May 12, 2017

Ms. Gale Stallworth Stone
Acting Inspector General
Office of the Inspector General
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21207

Dear Ms. Stone:

Thank you for your testimony before the Subcommittees on March 22nd at the hearing on "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." In order to complete the record for the hearing, please respond to the following questions:

1) *Question asked on behalf of Rep. Sanchez*: Do you expect ISN to meet their goal of completing 1,300 representative payee reviews by the end of the year despite having only completed eleven reviews as of February 2017?

2) *Question asked on behalf of Rep. Sanchez*: How do you think ISN will be able to reach the goal of completing 5,000 representative payee reviews annually while maintaining the same level of quality as the reviews conducted previously by the Protection and Advocacy agencies?

3) *Question asked on behalf of Rep. Sanchez*: Do you think that ISN will do more comprehensive and accurate reviews than the Protection and Advocacy agencies despite having no discernable experience working with disabled and vulnerable populations?

4) *Question asked on behalf of Rep. Davis*: Do you know whether states in their capacity as representative payees for foster youth are truly using the benefits to which the youths are entitled to the youths' advantage – for example, to provide additional supports, such as therapy or educational supports, or saving the benefits to help meet the youth's needs when he or she ages out of foster care – or whether, as I understand to be the case, most states are simply putting the money into their own general funds? Has the OIG ever looked into how SSA monitors payees for youth in foster care and whether states are using funds for the benefit of the youth who receive benefits from SSA? If so, what have you found?

I would appreciate receiving your response to these questions by June 2, 2017. Please send your response to the attention of Kathryn Olson, Democratic Staff Director, Subcommittee on Social Security, Committee on Ways and Means, 2017 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response to Kathryn.Olson@mail.house.gov and to the Social Security Subcommittee clerk at MM.Russell@mail.house.gov.

Thank you again for your testimony and your attention to these questions.

Sincerely,

John B. Larson
Ranking Member
Subcommittee on Social Security

Cc: Rep. Sam Johnson
Rep. Vern Buchanan
Rep. John Lewis
Rep. Linda Sanchez
Rep. Danny Davis

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

June 2, 2017

The Honorable John B. Larson
Ranking Member, Subcommittee on
Social Security
Committee on Ways and Means
House of Representatives
Washington, DC 20515

Dear Mr. Larson:

I am writing in response to the questions in your May 12, 2017 letter concerning the March 22 hearing on "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." Thank you for the opportunity to respond. We contacted the Social Security Administration (SSA) to obtain its input on your questions concerning Information Systems & Networks Corporation (ISN). In addition, we have a planned audit that will evaluate SSA's oversight of ISN and the effectiveness of its representative payee site reviews. Your questions and our responses are as follows. I am also enclosing a copy of SSA's response to your questions concerning ISN.

1. **Do you expect ISN to meet their goal of completing 1,300 representative payee reviews by the end of the year despite having only completed 11 reviews as of February 2017?**

   Despite only completing 11 reviews as of February 2017, SSA expects ISN to complete the 1,300 reviews. According to SSA, there were initial delays in conducting the reviews because it needed to complete suitability and credentialing of ISN employees, and ISN was assessing and obtaining approval for equipment and logistics, refining its business process, and establishing quality control standards. In addition, when ISN began scheduling reviews in January 2017, it found several discrepancies with SSA's data that added delays to the startup process. As of May 18, 2017, SSA informed us that ISN initiated 1,179 reviews, and conducted and is finalizing 199 reviews.

2. **How do you think ISN will be able to reach the goal of completing 5,000 representative payee reviews annually while maintaining the same level of quality as the reviews conducted previously by the Protection and Advocacy agencies?**

   According to SSA, it is evaluating ISN's productivity and quality, and to date, SSA indicated that ISN is providing clear, quality reports that have identified actionable fiduciary and SSA programmatic issues. SSA also noted that ISN has significantly more duties than the Protection and Advocacy agencies did under the prior contract.

3. Do you think that ISN will do more comprehensive and accurate reviews than the Protection and Advocacy agencies despite having no discernable experience working with disabled and vulnerable populations?

SSA indicated that the contract with ISN requires it to conduct reviews that are more comprehensive than the reviews conducted by the Protection and Advocacy agencies. This includes completing corrective actions with representative payees for fiduciary discrepancies. SSA also established a Centralized Monitoring Team that performs quality reviews on each case ISN submits to ensure ISN properly identified and documented representative payee deficiencies. SSA stated that ISN has been properly identifying and providing suspected cases of misuse and SSA programmatic deficiencies to it for further action.

4. Do you know whether states in their capacity as representative payees for foster youth are truly using the benefits to which the youths are entitled to the youths' advantage – for example, to provide additional supports, such as therapy or educational supports, or saving the benefits to help meet the youth's needs when he or she ages out of foster care – or whether as I understand to be the case, most states are simply putting the money into their own general funds? Has OIG ever looked into how SSA monitors payees for youth in foster care and whether states are using funds for the benefit of the youth who receive benefits from SSA? If so, what have you found?

During its site reviews of representative payees for children in foster care, SSA requires that individuals who conduct these reviews evaluate whether representative payees:

- set aside some of the children's own funds or provide funds for children when they attain age 18 to help them transition into adulthood;
- report to SSA the adoption of a child in foster care; and,
- disburse conserved funds and assets of a child directly to the child to facilitate transition into adult life.

During the last few years, we have reviewed state foster agencies to determine whether SSA had selected them as representative payee for children entitled to Social Security benefits. Our recent reviews in California, Florida, Indiana, Michigan, and Pennsylvania[1] found that these foster care agencies were not always, but should have been representative payees for some children in foster care. We identified this problem by matching the states' foster care data to SSA's payment records to determine if children were receiving benefits, and if so, who was serving as their representative payee. Because of our reviews, SSA found that children's current representative payees did not always report to SSA when their children were placed into foster care. SSA subsequently removed many of the representative payees,

[1] SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in California's Foster Care Program*, A-13-13-23029, (2014); SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in the Florida State Foster Care Program*, A-13-11-11173, (2012); SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Foster Care in the Social Security Administration's Chicago Region*, A-13-11-21105, (2012); SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Pennsylvania's State Foster Care Programs*, A-13-12-11245, (2012).

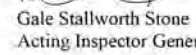
selected the foster care agencies as representative payee, and oftentimes found that the former representative payees had committed misuse.

We have also reviewed state foster care agencies serving as representative payees to determine whether they use and account for Social Security benefits in accordance with SSA policies and procedures. While these representative payees generally meet the needs of the beneficiaries in their care, we have identified that some needed improvement. For example, at SSA's request, in 2008 we conducted an audit of the Hawaii Department of Human Services[2]. During our review, we found that the Department:

- did not always timely notify SSA about children who were no longer in its care;
- did not always pay for the cost of the children's care during their time in the foster homes;
- improperly reimbursed itself for the state's share of foster care costs (authorized under Title IV-E of the *Social Security Act*) from children's benefits;
- did not always return conserved funds for children no longer in its care;
- had not established a dedicated account for large past-due payments for Supplemental Security Income recipients; and,
- did not always obtain SSA approval to reimburse itself for prior foster care expenses.

Thank you for your continued interest in SSA's management and oversight of the representative payee program. If you have additional questions, your staff may contact Walt Bayer, Congressional and Intragovernmental Liaison, at (202) 358-6319.

Sincerely,



Gale Stallworth Stone
Acting Inspector General

Enclosure

[2] SSA, OIG, Hawaii Department of Human Services – An Organizational Representative Payee for the Social Security Administration, A-09-08-28045, (2008).

CONSORTIUM FOR CITIZENS WITH DISABILITIES

June 16, 2016

The Honorable John B. Larson
Ranking Member, Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
2017 Rayburn House Office Building
Washington, DC 20515

ATTN: Kathryn Olson, Democratic Staff Director

RE: Additional Questions for the Record, Hearing March 22, 2017, "Examining the Social Security Administration's Representative Payee Program: Who Provides Help?"

Dear Ranking Member Larson,

Thank you for the opportunity to testify on behalf of the Social Security Task Force, Consortium for Citizens with Disabilities before the Subcommittee on March 22nd at the hearing on "Examining the Social Security Administration's Representative Payee Program: Who Provides Help?"

Below please find my responses to your questions to complete the record for the hearing.

1. **I am concerned about the potential issues that may arise from representative payees who are also creditors. What recommendations do you have for the Social Security Administration (SSA) regarding the use of creditors as representative payees?**

I recommend that the Social Security Administration (SSA) investigate and identify more clearly which institutions, facilities, or organizations serving as payees are also creditors for beneficiaries. Currently, 12.2% of all adult beneficiaries with a payee have a "non-psychiatric facility" serving in that role, and 7.7% have some "other" entity serving as their payee.[1] These categories cover a wide range of institutions or facilities, such as skilled nursing facilities, assisted living facilities, and board and care homes. Although it is not always the case that these facilities are also a creditor of the resident/beneficiary, it is most likely that they are both payee and creditor.

When such an institution that would be both payee and creditor applies to SSA to become the beneficiary's payee, SSA should do a thorough search, to determine if there is another potential

[1] Social Security Advisory Board, *Charts on the Social Security Representative Payee Program*, December 2015, Chart 6: "Most representative payees are related to the beneficiary," http://ssab.gov/FORUM2017-Rep-Payee-Home/FORUM2017-Charts.

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payee available that is higher on the payee preference list, as given in SSA's Program Operations Manual System (POMS) at GN 00502.105.C, such as a relative who shows strong concern for the beneficiary, or a public or nonprofit agency or institution.[2] Appointing an institution as payee which is also the beneficiary's creditor should always be a last resort, and they should only be appointed when no other suitable alternative is available. SSA employees in local offices considering payee applications from creditors must fully follow the agency's policies laid out in the POMS, for example in GN 00502.135, Payee Applicant is a Creditor.[3]

SSA should carefully study existing payees, and distinguish among the various facilities that are currently serving to identify clearly which are both payee and creditor. In this way, SSA can identify which payees have this inherent conflict of interest with the beneficiaries they are serving as payee, and processes can be developed to protect the interests of the beneficiaries.

For example, SSA could develop an additional, more frequent and in-depth audit for those institutions serving as payee that are also the beneficiary's creditor. These audits should be done to look carefully for evidence that the payee is not acting in the beneficiary's best interest, such as paying itself first at the expense of the beneficiary's quality of life, including refusing to pay for therapy or treatment by specialists that the facility is not providing to the beneficiary.

These additional audit requirements for SSA require additional administrative funding. Imposing these additional obligations without providing additional resources will erode the overall quality of service SSA is able to provide.

2. **It was brought up during the hearing that there are privacy concerns that prohibit information sharing between SSA and state court systems – information sharing that could help avoid abuse or fraud committed by representative payees and guardians against those that have been entrusted to their care. How would you propose addressing or modifying the restrictions that prohibit SSA from sharing information with state court systems, and vice versa, while protecting the privacy of beneficiaries?**

My focus in this response is on how SSA should communicate with state courts in specific cases involving the misuse of benefits and the involuntary removal of a payee when that payee is also serving as the court appointed legal guardian/conservator for the beneficiary, and not on how state courts should communicate about the removal of conservators to SSA.

I do not think that the language of the Federal Privacy Act of 1974 should be further amended to facilitate SSA's communication with state courts in specific cases involving the misuse of benefits. Within the Consortium for Citizens with Disabilities Social Security Task Force, our highest priority is to be a "watch dog" for protecting the rights of beneficiaries. Our Task Force is preparing more general principles and recommendations to strengthen SSA's representative payee program to advance this goal that we will be sharing with the Subcommittee. With regard to proposals to amend the Federal Privacy Act, I have concerns about the privacy rights of beneficiaries being sacrificed in the name of protecting them from financial abuse.

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[2] GN 00502.105 Payee Preference Lists, paragraph C. Procedure – Payee Preference List for Adults https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502105

[3] https://secure.ssa.gov/poms.nsf/lnx/0200502135

While payees may be able to give their consent to waive their privacy rights by signing a statement authorizing SSA to share information regarding the misuse of funds to the appropriate state court authorities in cases where a representative payee is also a court-appointed guardian or conservator, it is less likely that beneficiaries would be able to give their consent to the waiver of their privacy rights in these circumstances.

In cases where SSA does communicate with state courts regarding specific cases regarding the involuntary removal of a payee that is also serving as a legal guardian/conservator, this information should not necessarily result in the removal of the conservator, but rather should trigger an investigation by the state court to determine if the conservator is still able to carry out their duties as conservator.

I recommend that a study be undertaken by an entity such as the Administrative Conference of the United States (ACUS) to determine how best to facilitate communication between SSA and state courts without compromising the privacy rights of beneficiaries. This study should include participants from a broad group of stakeholders, including SSA, state courts, organizational payees, members of the guardianship bar, and beneficiary advocates.

3. ***Question asked on behalf of Rep. Sanchez*: Do you think ISN will do more thorough and accurate reviews of representative payees than the Protection and Advocacy agencies? Why or why not?**

I do not have a way to measure the accuracy and thoroughness of ISN's reviews as compared to reviews conducted by the Protection and Advocacy agencies. As noted in my written testimony, quality implementation of the current representative payee model demands robust and rigorous monitoring. Based on extensive past experience advocating for people with disabilities – including people who are nonverbal or face other barriers to advocating for themselves – the CCD Social Security Task Force believes any reviewing agency must possess the following expertise in order to have the greatest degree of confidence that the reviews will be able to detect problems and uncover hidden abuse:

- Have on-the-ground presence in all 50 states, and familiarity with a range of local service providers and government agencies;
- Have experience with the full range of settings where a beneficiary may receive housing, treatment, services, supports, and other assistance, and across persons with different types of disabilities;
- Have demonstrable experience monitoring community facilities and representative payees, and identifying fraud and abuse;
- Be able to integrate a cross-disability focus and understanding of disability rights, not limited to representative payee financial responsibilities; and
- Have partnerships with national and state coalitions, including with self-advocacy groups.

Given the scope of the monitoring that we believe is necessary and appropriate, the CCD Social Security Task Force believes that Congress should designate one or more statutorily authorized government entities to conduct this type of robust monitoring of large organizational payees (not including payees who must be directly monitored by SSA under the Social Security Act) and additional "wild card" monitoring. Given the recent reductions in SSA's LAE funding, such designation should be accompanied by appropriations sufficient to provide reviews that

beneficiaries, families, and Congress can have a high degree of confidence are complete and thorough.

Conclusion

Thank you for the opportunity to submit these questions to complete the hearing record, on behalf of the Social Security Task Force, Consortium for Citizens with Disabilities.

Sincerely,

Marty Ford
Senior Executive Officer, Public Policy
The Arc of the United States

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 11, 2017

Brenda Uekert
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

Dear Ms. Uekert:

Thank you for your testimony before the Committee on Ways and Means at the March 22, 2017 Oversight and Social Security joint hearing entitled "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." In order to complete our hearing record, we would appreciate your responses to the following questions:

1. How does Minnesota's Conservator Account Auditing Program (CAAP) use conservators' annual accountings to identify cases of financial abuse? What steps do CAAP staff go through when conducting an audit?

2. What are some best practices of risk-based modeling used by states that could be useful to the Social Security Administration (SSA)?

3. How could improved coordination with the SSA help improve states and the SSA's efforts to monitor guardians and representative payees, respectively?

4. How are states improving the training for those serving as guardians? What training topics have been most helpful?

We would appreciate your responses to these questions by **April 25, 2017**. Please send your response to the attention of Rachel Kaldahl, Oversight Counsel, Subcommittee on Oversight, and Amy Shuart, Staff Director, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, 2018 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response in Microsoft Word format to Brighton.Haslett@mail.house.gov.

Thank you for taking the time to answer these questions for the record. If you have any questions concerning this request, you may reach Rachel or Amy at (202) 225-9263.

Sincerely,

Vern Buchanan
Chairman
Subcommittee on Oversight

Sam Johnson
Chairman
Subcommittee on Social Security

33365A.087

A nonprofit organization improving justice through leadership and service to courts

Mary Campbell McQueen
President

Tom M. Clarke, Ph.D.
Vice President of Research and Technology
Williamsburg Office

April 19, 2017

Chair Vern Buchanan, Subcommittee on Oversight
Chair Sam Johnson, Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

RE: Response to QFR from March 22, 2017 Testimony
Hearing: *Examining the Social Security Administration's Representative Payee Program: Who Provides Help*

Dear Chairs Buchanan and Johnson,

Thank you for the opportunity to testify at the hearing examining the Social Security Administration's Representative Payee Program. Below are responses to the questions you posed in your letter of April 11, 2017.

1. **How does Minnesota's Conservator Account Auditing Program (CAAP) use conservators' annual accountings to identify cases of financial abuse? What steps do CAAP staff go through when conducting an audit?**[i]

The CAAP auditors currently use the risk indicators that were identified through the National Center for State Courts (NCSC)'s analysis of Minnesota data and audit results to prioritize assignment of cases. Once Minnesota has sufficient data using these indicators in place, NCSC will analyze the audit results, determine the validity of the indicators in predicting cases of potential loss, and refine the risk indicators as needed. The NCSC-Minnesota project team anticipate the validation component of the project to proceed in summer and fall of 2017. The project is supported through a grant from the State Justice Institute.

The MyMNConservator (MMC) application, which the conservators use to file their accounts, contains logic that places the annual accounting into the audit queue. The logic is based on the bondable asset value and the annual account number. Auditors self-assign cases from the queue based on risk indicator, referrals from the court, and first in first out. The auditor mails the conservator an audit engagement letter requesting all third party supporting documentation. Conservators do have the ability to upload third party documentation (financial statements, invoices, receipts, etc.) into MMC. Auditors will determine if there is uploaded information

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prior to sending the letter to determine what additional documentation is needed. Once the information is received the auditor reconciles the annual account filed in MMC with the financial statements. Auditors look for missing transactions, missing accounts, miss categorized transactions and transactions outside the accounting period. The auditor reviews the receipts and invoices provided to determine if the spending is consistent with the protected person's station in life and for the benefit of the protected person. The auditor determines if the case is bonded. The auditor also reviews statements for any fees paid, including guardian, conservator and attorney fees. Upon completion of the audit, an audit report is written and filed with the court. The court then may: 1) schedule a hearing to address the issues presented in the audit, 2) issue a notice for the conservator to amend the accounting based on the audit, 3) issue an order based on the audit.

2. What are some best practices of risk-based modeling used by states that could be useful to the Social Security Administration (SSA)?

Risk-based modeling in conservatorship cases is a recent development. The National Center for State Courts (NCSC) is the only entity that has, to date, proceeded with empirically based analysis that uses predictive analytics to best determine accountings in which there is a "serious concern of loss." While some state and local courts have relied on anecdotal information to select accountings for follow-up, the NCSC project is the first of its kind to use actual transaction-level data from Minnesota (the only state that requires conservators to electronically submit transaction data). Through our analytics, we have developed a set of ten risk indicators, which are currently being tested in Minnesota and will be validated later this year. This effort, funded through the State Justice Institute, is part of our Conservatorship Accountability Project (CAP) and has enormous potential for modernizing the system and smartly allocating resources to those cases that are more likely to include elements of misappropriation or exploitation.

Under the CAP project, NCSC is working with several states (Indiana, Nevada, Texas) to adapt the Minnesota software for their conservatorship cases. Among these states, the Texas Office of Court Administration is engaged in the most comprehensive set of reforms and has devoted resources to the hiring and training of compliance specialists, who will review case files and audit accountings. Texas will be using the risk indicators developed by NCSC and continues to strive toward the use of empirically based risk factor systems.

A similar process could be applied by the Social Security Administration for their representative payees. It requires three elements: (1) transaction-level data; (2) electronic submission of data; and (3) auditing of accountings. Auditors would be assigned to audit accountings, including a review of supporting documentation (receipts, invoices). Auditors would be trained using criteria to create consistent findings, with audit findings assigned a well-defined score. For example, in Minnesota, audit findings are assigned a level of 1 (no problems) to 4 (concern of loss). This coding allows statisticians to develop models that examine the characteristics of the conservatorship and specific transactions to predict accountings in which auditors have found a concern of loss (level 4). Initially, this would require SSA to audit accountings from a random and relatively large pool of representative payees. This data would then be subjected to a sophisticated series of statistical tests to identify and test indicators that predict high levels of risk. Over time, the risk indicators would allow SSA to divert valuable resources toward those cases in which there was a higher probability of wrong-doing.

The entire process can be summed up by one concept: Modernization. The ability of SSA or any court or organization to adequately monitor conservators or representative payees without transaction-level data is miniscule and will depend on individual follow-up and luck. The software, technology, auditing, and statistical tools exist today and can be used to develop a robust model that steers resources to the most problematic cases. Additionally, NCSC envisions a future in which real-time transactions could be automatically transmitted via mobile devices to the appropriate court or agency and "flagged" when certain triggers, based on predictive analytics, are reached. Ideally, the court/agency would then be able to develop a timely response to further investigate single transactions and identify patterns of misappropriation. The transition to electronic reporting and evidence-based risk factors is well within reach using current technologies and statistical methods. Without these types of improvements, the income and assets of social security beneficiaries will continue to be at risk from unscrupulous representative payees.

3. How could improved coordination with the SSA help improve states and the SSA's efforts to monitor guardians and representative payees, respectively?

According to the Code of Federal Regulations § 401.180. *Disclosure under court order or other legal process*, SSA does not recognize state court orders.

> (b) *Court.* For purposes of this section, a court is an institution of the judicial branch of the U.S. Federal government consisting of one or more judges who seek to adjudicate disputes and administer justice. (See 404.2(c)(6) of this chapter). **Entities not in the judicial branch of the Federal government are not courts for purposes of this section**.
>
> (d) *Court of competent jurisdiction.* It is the view of SSA that under the Privacy Act the Federal Government has not waived sovereign immunity, which precludes state court jurisdiction over a Federal agency or official. **Therefore, SSA will not honor state court orders as a basis for disclosure.** State court orders will be treated in accordance with the other provisions of this part.

For state courts, SSA's failure to recognize state court orders is a frustrating fact that results in two primary consequences that further jeopardize the economic security of the social security beneficiary.

1. The state court-appointed conservator may not have oversight over the protected person's social security funds, either because SSA has not designated a representative payee or the representative payee is a different person. For example, in some cases the social security beneficiary has a gambling addiction, which may be a background factor in the designation of a conservator. If SSA does not recognize the standing of the state court order and continues to send funds directly to the social security beneficiary, or to another entity, the conservator cannot do his/her job in ensuring that the individual's assets and income are preserved and protected.

2. In the most egregious cases, a court will remove a conservator for cause. This occurs when there is evidence of misappropriation of funds and in rare instances, can result in criminal charges. SSA does not recognize a state court order to remove a conservator for cause and thus, may continue to designate the removed conservator as the social security representative payee, thus sending payments directly to an individual or organization that has already been shown to misappropriate funds and/or exploit protected persons.

Additionally, SSA's interpretation of the Federal Privacy Act of 1974 results in SSA's inability to disclose information about exploitative social security representative payees to state courts who have jurisdiction over the conservatorship case. Essentially, the state courts are "blind" to any malfeasance that SSA may have documented, which only works to the detriment of vulnerable adults who are supposed to be protected through the conservatorship system.

Improved coordination is essential and can be accomplished in several ways:

- The Code of Federal Regulations should be amended so that SSA will recognize state court orders and take those orders into account when designating social security representative payees.
- The Federal Privacy Act of 1974 should be examined and revised to accommodate SSA's sharing of information on social security representative payees who abuse the system to the appropriate state court.
- A study of strategies to securely transmit information and/or orders between state courts and SSA offices should be explored. A pilot program should be created, evaluated and refined to determine an effective means for communication between state courts and SSA.

4. How are states improving the training for those serving as guardians? What training topics have been most helpful?

The National Center for State Courts' Creative Services Learning (CSL) Team leads the nation on the development of online interactive courses for lay guardians. The first of such courses was developed by CSL for the Supreme Court of North Dakota.[ii] Minnesota, Texas and Washington currently are contracted with CSL to develop similar online interactive courses for their lay guardians. In addition, NCSC, partnering with the American Bar Association Commission on Law and Aging and Washington Courts, with funding from the US DOJ's Elder Justice Initiative, has recently begun a project called *Enhancing Choice and Fulfilling Duties: National Training Resource on Decision Support and Guardianship*.

> The *National Training Resource* will help people avoid unnecessary or overbroad guardianship, consider less restrictive options, and assist family and other lay guardians to serve in what is one of society's most difficult roles. The online course will provide training and resources to individuals who are considering petitioning for a court order, as well as those who have already been appointed by a court. The course will include the range of options for decision support—both practical and legal—as well as guardianship processes and duties.

Thank you for this opportunity to provide this information. Please contact me at buekert@ncsc.org or 757-259-1861 if you have any additional questions or comments.

Respectfully,

Brenda K. Uekert, PhD
Principal Court Research Consultant

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[i] Cate Boyko, Manager, Conservator Account Auditing Program (CAAP), Minnesota Judicial Branch, contributed to the response for question one.
[ii] See http://ndtraining.org/course/guardianship-training/

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

May 12, 2017

Ms. Brenda Uekert
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

Dear Ms. Uekert:

Thank you for your testimony before the Subcommittees on March 22nd at the hearing on "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." In order to complete the record for the hearing, please respond to the following question:

> It was brought up during the hearing that there are privacy concerns that prohibit information sharing between SSA and state court systems – information sharing that could help avoid abuse or fraud committed by representative payees and guardians against those that have been entrusted to their care. How would you propose addressing or modifying the restrictions that prohibit SSA and state court systems from sharing information with each other, while protecting the privacy of beneficiaries?

I would appreciate receiving your response to this question by June 2, 2017. Please send your response to the attention of Kathryn Olson, Democratic Staff Director, Subcommittee on Social Security, Committee on Ways and Means, 2017 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response to Kathryn.Olson@mail.house.gov and to the Social Security Subcommittee clerk at MM.Russell@mail.house.gov.

Thank you again for your testimony and your attention to these questions.

Sincerely,

John B. Larson
Ranking Member
Subcommittee on Social Security

Cc: Rep. Sam Johnson
Rep. Vern Buchanan
Rep. John Lewis

A nonprofit organization improving justice through leadership and service to courts

Mary Campbell McQueen
President

Tom M. Clarke, Ph.D.
Vice President of Research and Technology
Williamsburg Office

May 23, 2017

Ranking Member John. B. Larson
Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
2017 Rayburn House Office Building
Washington, DC 20515

RE: Response to additional question from Ranking Member Larson (May 12, 2017)
Testimony Hearing: *Examining the Social Security Administration's Representative Payee Program: Who Provides Help* (March 22, 2017)

Dear Ranking Member Larson,

I am writing in response to your question posed in the May 12, 2017 letter in regard to strategies to improve information sharing between SSA and state courts.

> **Question: It was brought up during the hearing that there are privacy concerns that prohibit information sharing between SSA and state court systems – information sharing that could help avoid abuse or fraud committed by representative payees and guardians against those that have been entrusted to their care. How would you propose addressing or modifying the restrictions that prohibit SSA and state court systems from sharing information with each other, while protecting the privacy of beneficiaries?**

Information sharing between state courts and SSA can be improved. In most states, conservatorships and guardianships remain the domain of individual state and local courts which have their own forms, practices and expertise. For this reason, information-sharing solutions must be localized and considered when crafting strategies. My response addresses three issues: (1) type of information to be shared; (2) state court information sharing strategies; and (3) SSA information sharing strategies. The term "conservatorship" is used to refer to cases in which a court appoints a family, professional or public conservator to handle the financial matters of an individual.

What type of information should be shared?
The majority of court-appointed conservators and SSA representative payees perform their duties responsibly. There is no need to build a system or registry that includes all conservators and

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representative payees. Rather, the need is to create a mechanism in which the following information is shared:

- State court information for SSA:
  - Court-ordered appointment of a conservator for a social security beneficiary
  - Termination of a conservatorship in which there is a SS representative payee
  - Resignation or removal of a conservator who serves as SS representative payee
  - Misuse of funds by a conservator who serves as SS representative payee.

- SSA information for State Courts:
  - Appointment of a SS representative payee for a person under a conservatorship
  - Termination of representative payee arrangement in cases in which there is a conservatorship
  - Resignation or removal of a SS representative payee in cases in which there is a conservatorship
  - Misuse of funds by SSA representative payees in cases in which there is a conservatorship.

Timing can be critical, as delays in either the state court or SSA can result in the continuation of misappropriation or theft of funds. While practices vary from one locality to the next, NCSC suggests that a joint State Court—SSA Coordination Committee be created to better understand our respective processes and to develop a guide that specifies the types and timing of information to be shared.

How can state courts share information on conservators who have been removed with SSA?

The removal of a court-appointed guardian or conservator may be a result of the restoration of the protected person, in which case the conservatorship is terminated, or as a result of the resignation of the conservator or removal for cause. In each of these circumstances, the judge/judicial officer overseeing the case should issue an order and appoint a successor conservator when there is an ongoing need. Generally, it is the responsibility of the restored individual or the successor conservator to share the court order with SSA and to request a change in representative payee, if necessary.

The stumbling block for state courts, restored persons, and successor conservators is that SSA is under no obligation to honor state court orders. There is one significant change that would greatly benefit individuals who are under a conservatorship: a revision of the Code of Federal Regulations § 401.180 to recognize state court orders in regard to guardianship and conservatorship appointments and findings. Ideally, there would be consistency between state courts and SSA to prohibit unscrupulous actors. A well-coordinated state-Federal partnership would include the following elements:

- The court-appointed conservator oversees the entire estate of the individual, including social security payments. There should be consistency so that the representative payee is the same individual/organization appointed as the conservator.
- SSA should honor a state court order presented by a restored individual, successor conservator, or court representative that declares the termination of the case, the resignation of the conservator, or the removal of the conservator for cause (e.g.,

incompetence, misappropriation of funds). The state court order should be sufficient to launch an SSA investigation and take appropriate action.

- Court-appointed conservatorships should be considered an action of last resort. In some cases, the individual may be restored to capacity or a less restrictive option is more appropriate, in which case the conservatorship is terminated. SSA should recognize the court order in which rights have been restored and take this into account when determining the ongoing need for a representative payee.

The localized nature of state court oversight of conservatorships may result in gaps in communication in some jurisdictions. However, these gaps can be addressed through the provision of training for judges/judicial officers and the development of forms and guides specific to the issue of joint conservator/representative payee appointments.

How can SSA share information with state courts on representative payees who misuse benefits?

SSA is in the best position to strategize information sharing with state courts as they have the expertise on processes and federal regulations. In the past, SSA has referred to the Federal Privacy Act of 1974 as an inhibitor to sharing information. SSA and federal authorities should re-examine the Act and if necessary, amend the language to permit SSA communication with state courts in specific cases involving the misuse of social security funds. When SSA has the authority to release information to state courts, we recommend some logistical changes that will improve communication.

- The SSA form SSA-11 includes item #5: the status and identification of a claimant's court appointed legal guardian/conservator. In cases where there is a court-appointed guardian/conservator, the form should request contact information on the court that has jurisdiction over the guardianship/conservatorship case. This information will enable SSA staff to easily contact the appropriate court.
- SSA representatives are required to complete an accounting annually. The accounting should include changes in background information over the course of the year, including the appointment of a guardian or conservator, the termination of a guardianship or conservatorship, or a change in appointment or court of jurisdiction.
- Information on the SSA application and accounting forms are self-reported. In cases where SSA has contrary information in the form of a state court order, SSA should confirm the order and take actions as warranted.
- SSA findings that terminate organizational or individual representative payees should be sent to the court that has jurisdiction over the corresponding conservatorship case. Form SSA-11 includes a number of statements that the representative payee applicant must read before signing, such as the promise to reimburse SSA the amount of any loss suffered by any claimant due to misuse of funds. If possible, the form should include a statement that authorizes SSA to share information regarding the misuse of funds to the appropriate state court authorities in cases where representative payee is also a court-appointed guardian or conservator.

In conclusion, a state court-SSA coordination committee comprised of subject matter experts and practitioners could develop logistical solutions to the information sharing issue, but their ability to act will be predicated on a change in federal regulations and the SSA interpretation of the Federal Privacy Act.

Thank you for this opportunity to provide this information. Please contact me at buekert@ncsc.org or 757-259-1861 if you have any additional questions or comments.

Respectfully,

Brenda K. Uekert, PhD
Principal Court Research Consultant

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 11, 2017

David Slayton
Administrative Director
Office of Court Administration
PO Box 12066
Austin, TX 78711-2066

Dear Mr. Slayton:

Thank you for your testimony before the Committee on Ways and Means at the March 22, 2017 Oversight and Social Security joint hearing entitled "Examining the Social Security Administration's Representative Payee Program: Who Provides Help." In order to complete our hearing record, we would appreciate your responses to the following questions:

1. What are the differences between personal and professional guardians in Texas? How do your expectations and oversight differ for these two types of guardians? Are organizations serving as guardians treated like professional guardians or do different rules apply?

We would appreciate your responses to these questions by **April 25, 2017**. Please send your response to the attention of Rachel Kaldahl, Oversight Counsel, Subcommittee on Oversight, and Amy Shuart, Staff Director, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, 2018 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response in Microsoft Word format to Brighton.Haslett@mail.house.gov.

Thank you for taking the time to answer these questions for the record. If you have any questions concerning this request, you may reach Rachel or Amy at (202) 225-9263.

Sincerely,

Vern Buchanan
Chairman
Subcommittee on Oversight

Sam Johnson
Chairman
Subcommittee on Social Security

33365A.097

OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

April 13, 2017

Representative Vern Buchanan, Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Washington D.C. 20515

Representative Sam Johnson, Chairman
Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
Washington D.C. 20515

Dear Mr. Chairmen:

Thank you for your invitation to testify before the Committee on Ways and Means. We are always pleased to share our experiences in addressing the growing challenge of protecting persons under guardianship. I hope to address the questions raised in your letter dated April 11, 2017.

In Texas, a private professional guardian is defined as "a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services." Generally, a private professional guardian must be certified by the Texas Judicial Branch Certification Commission in order to be appointed as guardian, or to render guardianship services through a guardianship program or through the Texas Health and Human Services Commission.

There is an exception from certification requirements for family and friends of the ward – generally referred to as "personal guardians." By statutory definition, attorneys and corporate fiduciaries (banks and financial institutions who may manage the assets of a ward) are not professional guardians and therefore are also not required to be certified by the Commission.

Professional guardians who are certified by the Commission are subject to disciplinary sanctions, continuing education requirements, and must annually report the number of wards they serve to the Commission. Personal guardians, as well as attorneys and corporate fiduciaries - who are not certified by the Commission - are not subject to discipline, oversight and other requirements enforced by the Commission. However, all guardians, whether certified or not, are subject to court oversight, including the court's contempt powers and authority to remove the guardian.

Organizations that serve as guardians, referred to as "guardianship programs" in Texas, are registered with the Commission and must provide services through certified guardians. They are treated as professional certified guardians, subject to Commission oversight. As noted above, corporate fiduciaries are not professional guardians and thus not subject to regulation by the Commission.

I hope you find this information helpful in completing your hearing record. If you have any further questions or concerns, please feel free to contact me. I look forward to hearing from you.

Sincerely,

David Slayton
Administrative Director

[Member Submissions for the Record follows:]

Congresswoman Linda Sanchez (CA-38) Opening Statement
Oversight/Social Security Hearing on Social Security's Representative Payee Program
March 22, 2017

Thank you Mr. Chairman, and to all the witnesses for joining us this morning.

Social Security is an indispensable, earned benefit that lifts 22 million Americans out of poverty, including over 1 million children.

The representative payee program serves 8 million of the most vulnerable in our country. These people lack the ability to care and advocate for themselves and manage their finances. This includes minor children, adults with a severe disability, and the elderly with dementia.

While a majority of representative payees are doing their jobs appropriately, I worry about the ones who are not, and the vulnerable people they purport to represent who slip through the cracks.

It is truly horrifying to read stories such as what happened at Henry's Turkey Service, and with Linda Weston in Philadelphia. These are examples of representative payees taking advantage of, and abusing the vulnerable people they are entrusted to protect, while pocketing their Social Security benefits.

Despite these stories, SSA has made progress in reforming their monitoring program. The Protection and Advocacy (P&A) system did a wonderful job conducting reviews.

However, despite this success, SSA decided to rebid the contract to a small business with no experience in this area.

While it may feel like we don't agree on much of anything around here, on this we do agree: SSA should be contracting with entities that have actual experience and success in addressing these problems. Entities like the P&A, which was basically built to serve this function.

When it comes to protecting the most vulnerable populations, less is not more, and this is not a situation in which we should cut corners.

[Public Submissions for the Record follows:]

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Bread for the City Representative Payee Program

Testimony to the Joint Hearing on
Social Security's Representative Payee Program

Susanne U. Horn, MSW
Representative Payee Program Manager

April 5, 2017

Thank you for this opportunity to provide testimony on the Social Security Representative Payee Program. As an Organizational Payee serving over 800 beneficiaries in Washington, DC, I would like to take this opportunity to share our unique model for providing payee services in collaboration with the DC Department of Behavioral Health and to discuss some of the challenges faced by programs like ours.

Who We Are

Bread for the City is a private, non-profit supporting residents of Washington, DC with comprehensive services, including food, clothing, medical care, and legal and social services, in an atmosphere of dignity and respect. Bread for the City started in the 1970s as a medical clinic & food pantry which soon added legal and social services to help client access public benefits. The Social Services Program developed an expertise in assisting with Supplemental Security Income and Social Security Disability applications after being awarded a federal grant to operate outreach activities to help elderly and disabled individuals apply for these benefits in 1990. Upon completing successful applications with these clients, it was soon apparent that there were beneficiaries among those we served who were being found unable to manage their benefits independently and who did not have family or friends to take on the role of Representative Payee. Thus our work as an Organizational Representative Payee began.

After becoming an Organizational Payee in the 1990s the Bread for the City Social Services Program developed a partnership with a single mental health treatment team in the late 90s to collaborate to provide payee services to consumers with chronic mental illnesses. This work formed the basis for our response to a Request for Proposals from the Washington, DC Commission on Mental Health Services (now the DC Department of Behavioral Health) for a private provider to take on payee services that were previously provided by the city agency. Bread for the City was awarded a contract by the Commission in October 2002 to be the Organizational Representative Payee for the agency and began to transfer the payeeship for their consumers to our agency shortly thereafter. This contract has been renewed annually and has grown in size with a current maximum of 867 consumers. During this time no other agencies have been contracted to provide payee services by DC Department of Behavioral

Health and a number of other mental health agencies who were providing payee services have ceased these operations.

The DC Department of Behavioral Health pays Bread for the City per client per month to provide payee services. These fees cover staffing and overhead as well as banking and administrative costs of the program, and they allow Bread for the City to provide payee services free of charge to consumers. As a payee who is able to support consumers throughout the city's mental health system, this service gives consumers the ability to maintain continuity in their payee services even as they switch between mental health providers and move between levels of care both in terms of outpatient and inpatient treatment. Since Bread for the City is also independent of any residential providers our consumers move easily between various types and providers of housing including among group homes, supported independent living, apartments, and living with family.

After initially taking on clients for whom the city was the payee, we now receive referrals to provide payee services to new consumers from mental health provider agencies around the city. This includes referrals for individuals newly approved for benefits by the Social Security Administration who are found to need a payee in order to begin receiving their benefits, but who do not have family members or friends whom they trust. Other referrals are for consumers who already have a payee, but who is not meeting their needs – this may include family members or others mismanaging funds and situations in which the money management leads to excessive conflict with the current payee. We also regularly receive referrals for the adult children of elderly parents who feel that they can no longer handle the responsibility due to their own advanced age. Finally, we also enroll individuals who have been being paid directly, but are now having difficulty managing their benefits independently – these referrals may be made in order to prevent eviction or address chronic non-payment of bills, address problematic spending habits often associated with substance abuse, increase stability among homeless consumers to allow for a housing search, or to support placements in licensed group homes or subsidized housing. Overall the consumers referred to our program find that since we are independent of family members, mental health providers, and housing providers and because we have clear budgeting and accounting policies and are able to produce detailed financial statements; our program provides a clearly structured, objective, and impartial service that the consumers can appreciate.

Who We Serve

Since Bread for the City's contract is with the DC Department of Behavioral Health, by definition all of our more than 800 clients have been diagnosed with severe and chronic mental illnesses, including schizophrenia, bipolar disorder, schizoaffective disorder. Many also experience co-occurring intellectual disabilities or substance use disorders. Most of our consumers are single, unmarried adults who do not live with family, and they range in age from 20 to over 90, but 65% of our consumers are in their 50s and 60s. We are also seeing some increase in referrals of young adult consumers as they age out of the foster care system. Our consumers find themselves in a wide variety of living situations including individuals in care at Saint Elizabeths Hospital (Washington, DC's public mental hospital) (4%), homeless individuals (including those residing in shelters and on the street – 8%), residents of Licensed Group Homes (37%), and those otherwise living in the community (51%). However, the latter is also not a homogeneous group, as it includes individuals in a variety of other housing such as subsidized apartments, rooming houses, supported independent living, etc. Most importantly, these numbers are not static – due to frequent changes in health and the up and down cycles of mental illness and substance use, our consumers experience many transitions between living situations and frequent temporary institutionalizations (both medical and psychiatric hospitalizations as well as incarcerations) that are not captured in these statistics.

The 37% of our consumers who live in Licensed Group Homes (also known as Adult Foster Care, Assisted Living Facilities, or mental health Community Residence Facilities) is also quite significant, because this has a substantial impact on our program. In Washington, DC there is State Supplementation that increases Supplemental Security Income from $735 per month in federal SSI by an additional $640 per month to $1375. This drives our consumers' average monthly income to just over $1000 for all beneficiaries, while it is only $776 among those who do not reside in Group Homes. It also increases the number of dually eligible beneficiaries (those eligible for SSI in addition to Social Security Disability only when they live in the group home) by about 7%. There is a very complicated process involving multiple application steps and approvals by various parties at the mental health agencies and two different city agencies before Social Security can approve beneficiaries for the DC State Supplement. The District government also adjusts the State Supplement annually and has frequently implemented retroactive increases, which have a dramatic impact on our workload in terms of helping consumers understand the changes and administering the additional funds properly.

When we look at our beneficiaries' income source more closely we find that 79% of our beneficiaries receive Supplemental Security Income – of these, 50% are receiving SSI only and 28% are dually eligible for SSDI and SSI. This means nearly 80% of our case load needs to observe the SSI program's very complicated eligibility rules and reporting requirements. But also not insignificant is that 49% of our consumers receive Social Security Disability Benefits. While the reporting requirements for these benefits are not as complicated, SSDI benefits require us to negotiate other related issues like Medicare eligibility and withholding of premiums, follow-up on QMB Medicaid applications, and garnishments (such as for child support or education loan repayment). For over 800 beneficiaries this translates into piles and piles of mail from Social Security and Medicare and many, many follow-up questions to confusing notices.

How We Serve

Our consumers not only have complex financial obligations as a result of a great variety of individual obligations and circumstances, but they experience frequent changes in living situation and other life events that impact their benefit eligibility and which must be reported to Social Security. We address this by having a team of four Representative Payee Coordinators who act as a point of contact for the beneficiaries, the 20 different mental health agencies, and the over 300 case workers that support our consumers. These coordinators field inquiries from consumers and Community Support Workers, assist with monthly budgeting, and process one-time requests for funds sent in by the mental health providers. While they do this, they are always on the lookout for information that signals a potential change in benefit eligibility and collect information and documentation about these changes. This includes change of address forms, hospital discharge paperwork, incarceration release documents, and pay stubs from work activity.

All of the gathered information is forwarded to our full-time Benefit Coordinator who organizes the information to be reported to the Social Security Administration. The Benefits Coordinator not only responds to SSA's requests to complete forms for Continuing Disability Reviews, Recertification for Eligibility for SSI, and to provide other documentation and applications, but also compiles an ongoing list of issues to be reported and queried. This list ranges from 30 – 50 items per week or about 140 items per month, and can include 15-20 address changes and 10-12 requests for benefits verification and replacement Medicare cards each month. Unfortunately the same issue must often be queried or brought to SSA's attention multiple times before it can be fully resolved.

Thankfully, with this large volume of work we have long benefited from a very strong working relationship with our local SSA field office. Most of our work with SSA is accomplished during almost weekly in person appointments. For the last couple of years this has included separate meetings

with an SSI and an SSDI Technical Expert at each visit. We have also been able to set up SSA approved, encrypted email communications that facilitate our work by allowing us to send issues and documents in advance of and in between our appointments when needed.

Challenges We Face

However, fulfilling the reporting requirements has become increasingly more challenging over the years as we have witnessed the decrease in staffing and strain on services at our local SSA field office as a result of budget cuts, hiring freezes, and the inability to fill vacant positions quickly, if at all. During the time we have worked with SSA on the Representative Payee Program contract, four Washington, DC field offices were consolidated into three field offices. Yet it seems clear that with very high number of applicants and beneficiaries in the city and an increase in the retirement age population, the pressure on our local offices can only have increased during this time.

As such we have been under continuous pressure to reduce the time committed to face-to-face visits. Whereas we used to spend four to six hours per week in our local office, the available time has gradually been decreased until, in October 2016, were asked to reduce to one hour of contact with each Technical Expert (SSI/SSDI) per week. Particularly in reference to our time with the SSI Technical Expert – with over 600 SSI beneficiaries on our case load – one hour per week is not sufficient to address the high volume and complexity of issues presented by our consumers.

Furthermore, it has always been apparent that the high workload for SSA staff limits their ability to address our issues between our visits. As we have been encouraged to reduce the need to meet face-to-face by emailing items in preparation for visits, this has not proven to be an effective alternative. Complex questions often must often be discussed in person to be fully understood and to be processed completely and correctly. There is a high proportion of issues that need to be revisited multiple times because it is not clear whether they have been resolved or because it appears after the fact that there are still errors (including incorrect payment amounts, overpayments that were to have been corrected or reduced, and resource amounts that were incorrectly entered on the record).

Our working relationship with SSA is also complicated by the fact that highly skilled staff move on to new positions quickly – often as soon as a strong working relationship has been established. As such, in 2016 we worked with four different SSI Technical Experts or representatives throughout the year. During staff transition times meetings may be limited and work often piles up. Issues left unresolved by one staff person require longer for a new staffer to understand and resolve, and there is a loss of understanding of organizational history that complicates matters. Finally, the fact that different SSA representatives have different priorities and approaches to the verification of reported information means that new or different documentation is often requested, thereby furthering delays.

These processing delays often lead to under- and overpayments that then make working out correct benefit payments even more complicated. Especially with the DC State Supplement bringing monthly income to $1375 per month and the resource limit set at only $2000, processing delays can quickly lead to large overpayments and push beneficiaries over resources. Having to return overpaid funds further increases the workload at both the payee agency and at SSA. Reporting beneficiaries over and under the $2000 limit is time consuming and seems to be one of the areas most prone to errors in processing. In the worst case scenario, delays and errors can lead to consumers being unable to pay rent in full and on time, thus threatening the stability of their housing.

Especially as we have been asked to reduce our face-to-face contact with SSA, there have been several suggestions that we should find alternative ways to interact with SSA, such as by using online resources. Unfortunately, SSA field office staff does not understand limitations of SSA online systems

for Organizational Payees. Some previously available online services have been eliminated, such as for requesting replacement Medicare cards. Furthermore, payees are specifically barred from using My Social Security for accessing or reporting information for beneficiaries.

While the SSA Business Services Online Internet Representative Payee Accounting submission has been a welcome improvement over the submission of paper reports by mail, its function is also quite limited. The availability of online reporting is highly time limited and some reports, such as Final Accountings, cannot be completed online at all. Certain answers – such as those about the use of collective accounts and reporting moves – create exception records that then need additional follow-up from SSA. There is also no system for tracking missing reports – if the Representative Payee Accounting does not arrive in the mail to the payee it cannot be completed on line at all. Recently SSA repeatedly requested that we complete missing "non-responder" reports online. We had to demonstrate – by logging into the Business Services Online Internet Representative Payee Accounting system while at the local field office – that this was not possible. Finally, we have also been receiving reports of missing accountings even though we have printout confirmations from the online system indicating that they were submitted successfully.

Hope for the Future

At Bread for the City it is our hope that our local field offices, Social Security Administration executives, and those in government setting policies and priorities for SSA will recognize the large contribution that Organizational Payees like Bread for the City make in service to beneficiaries of Social Security's disability insurance programs. We hope that you will recognize the advantage of committing dedicated SSA staff to supporting the work of Organizational Payees. Working efficiently and effectively with organizations like Bread for the City can lower the burden of individual beneficiaries visiting field offices on their own. Taking the time to process information provided by payees competently and in a timely manner eliminates the time consuming work of multiple follow-ups on the same issue, reduces over- and underpayments, and supports the ability of our beneficiaries to live in the community thereby also reducing the incidence of hospitalization and other institutionalizations with all of their accompanying costs.

We particularly urge the development of new online resources for Representative Payees – and specifically for Organizational Payees who represent multiple consumers. These resources will not only be able to reduce the burden on SSA staff and field offices, but will also increase capacity among Organizational Payees so that we will be able to serve more beneficiaries as demand for our services increases. SSA should move quickly to establish online portals that would allow Organizational Payees to:

- Request replacement Medicare cards
- Request benefits verification letters
- View all mailed notices electronically or opt for secure email notification of changes
- Look up benefit status for beneficiaries (this could help payees understand why benefit amounts are not as expected or benefits have not been received)
- Improve the Business Service Online Payee Accounting feature to include the tracking of Representative Payee Accountings per organization (so that we could see all requested or outstanding reports or respond to the need of further clarification)
- Initiate (if not finalize) the reporting of other post-entitlement changes (address changes, work activity and wages)
- Complete Continuing Disability Reviews and Redeterminations of Eligibility for SSI

It is our sincere hope that we can work with SSA and others in government and in the community to advocate for changes in policies and procedures that will support Organizational Payees and improve the SSA Representative Payee system. Especially in a future when Organizational Payees will only be more needed, these supports will allow more beneficiaries to experience more stability and successfully remain living in our communities.

Susanne Horn, MSW
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April 5, 2017

To The Ways and Means Committee:

This letter is a follow-up to the Joining Forces to Improve the Representative Payee Program forum held in Washington D.C. on March 27th, 2017. Consultants in Educational and Personal Skills (CEPS) attended this forum, represented by CEPS' Executive Director and Founder, Patricia Vollenweider, and other CEPS staff. After a lot of thought about various issues that CEPS has encountered as a representative payee, of particular concern is that of overpayments and communication with Social Security field offices. The details of the issue of overpayments and communication with Social Security field offices, along with recommendations, will be provided below.

Consultants in Educational and Personal Skills (CEPS) is a non-profit 501(c)3, fee for service organizational payee agency. CEPS currently has 3 locations in California and a staff of 25, providing services for over 3,000 beneficiaries.

After over 25 years of working as a payee, and starting the CEPS agency, the Founder and Executive Director, is an expert in the representative payee arena for beneficiaries of Social Security. The recommendations outlined below are based on the many years of experience she possesses.

OVERPAYMENTS

One of the fundamental differences for a fee for service organizational payee is reporting. We do not live with the beneficiary, take them shopping, or to doctor appointments. This would require a fee much higher than $41 per month. As a result, we are required (per SSA-11) to be self reporting. This means we rely on the beneficiary to report when they move, when they start or stop working, what their monthly earnings are, if they start receiving other benefits, if they enter a hospital or jail, if they marry or die, and many other reporting requirements, just as SSA does.

Given that we rely on this information to be presented to us by the beneficiary, holding an agency payee responsible for overpayment funds that were issued in good faith and received by the beneficiary, is unfair practice. There is no misuse when we have received the funds for the beneficiary, and used them to the beneficiary's benefit. Holding an agency to a higher standard than Social Security has for itself, is an unfair practice.

EXAMPLE: Beneficiary is informed he is no longer disabled and has a right to payment continuation during the appeal. Receives benefits and agency disburses in good faith for the claimants basic needs and is told they have to pay an overpayment of over $13,000 back. This position could have Representative Payee Agencies deny a beneficiary's right to payment continuation because of fear of being held responsible for the debt.

EXAMPLE: When a beneficiary passes away, CEPS makes every effort to retrieve their funds. In some cases, it is just not possible. Specifically, if the date of death is on the 30th of the month, rent and other expenses have gone out in the mail, just as their checks from SSA would if they were their own payee. Having to use an agency should not be punitive. Agencies have told us they wait to send out checks, however, our position is beneficiaries should receive payment the same day all beneficiaries receive theirs.

EXAMPLE: Beneficiary goes to jail, either unreported to CEPS, or no sentencing has occurred, and rent is paid using the beneficiary's benefits in good faith. There was no way to know that the beneficiary would not get out of jail or was ever in jail when rent was paid. CEPS is asked to pay those funds back. If the beneficiary does get out of jail and is put in "ism", they do have enough funds to continue rent.

EXAMPLE: The 1st of the month is on a Sunday. We issue funds on a Friday, just as Social Security does when the 1st falls on a weekend. Claimant receives their check on Saturday, cashes the check, has an asthma attack, and died in the parking lot. CEPS was told it is our responsibility to pay those funds back because he died before the 1st.

EXAMPLE: Check was mailed the night before delivery on payday to the beneficiary's landlord. The beneficiary passed away that same night prior to midnight. CEPS contacted the landlord and requested those funds to be returned, but the landlord was told that she did not have to pay those funds back. This case actually was tried in small claims court where the judge did in fact call Social Security and it was confirmed that the landlord did not have to pay back the funds. Social Security asked CEPS to pay these funds back.

Right now, CEPS is being asked to repay funds that were issued in good faith and used for the beneficiary. We are being threatened with the blockage of processing future payee applications, essentially shutting down our agency from receiving additional clients. This is an unfair practice. It is also punitive to the beneficiaries waiting to be put into pay until their payee application is processed. The new ERPS blocks new applications until overpayment is paid. This could potentially close smaller fee for service payee agencies. This also is a deterrent to anyone considering starting a fee for service payee agency, despite the growing need for these agencies, which is detrimental for areas where the only option is a fee for service payee.

An additional situation that occurs with overpayments, is after we return the funds we do have, the SSA payment center keeps our checks and does not cash them. This causes a delay in the beneficiary having those funds posted to their account.

EXAMPLE: A particular beneficiary's funds were returned in August of 2016, but the check was not cashed and the beneficiary's record not updated until March of 2017. Due to this lack of expediency of cashing the check and updating the records, funds continued to be withheld from the beneficiary's monthly benefits. Furthermore, the field office has asked us, in these situations, to stop payment on those checks that were not cashed, possibly causing a double check negotiation. This also causes unnecessary additional bank fees to

CEPS, imposing an additional hardship on our already limited budget. We currently have over 147 checks outstanding that have been submitted to Social Security, 43 of which are from 2016, and of those 43, 30 are over the 6 month mark. These total $151,760.53. Additionally, we have changed banks and 137 of those 147 checks are with the previous bank, keeping us from closing our account with that bank.

CEPS recommendations:

1) Remove the block in the new ERPS system, allowing applications to move forward regardless of overpayment on record.
2) When no misuse has been found, overpayments should be collected from the beneficiary, not the payee agency.
3) When a beneficiary passes away, any funds used in good faith should be deemed uncollectable.
4) All checks should be negotiated within 30 days of receipt.

COMMUNICATION

By all accounts, the need for representative payees is increasing, thereby the need to develop and maintain individual and organizational payees, both fee for service and those under another organization. We currently have three locations which cause us to have regular communication with more than 5 field offices. We believe having a standard for communication will streamline reporting and information sharing for all parties. There are often many issues that can arise and have been handled differently by different field offices. These inconsistencies have a negative impact on the beneficiaries, CEPS Staff, and our agency as a hole.

EXAMPLE: A client with a severe mental illness, who is also symptomatic, is in the lobby and we can't call the field office to find out why we didn't get a deposit. We are told to wait until our next agency appointment.

EXAMPLE: CEPS has had to turn in the same Change of Address 2-3 times after being told it was not received or it was lost. Even after turning it in multiple times, at redetermination it is not updated at Social Security and we are required to submit again.

EXAMPLE: When a beneficiary changes payees, often there is no notification of this change until after we realize we did not receive their deposit. As a representative payee, we negotiate reduced rates for repayments, rent, etc. To change the payee without notification puts these relationships at risk. A landlord that finds out rent will not be paid after the fact is less likely to rent to other beneficiaries.

EXAMPLE: Some field offices allow agencies to send encrypted e-mail and others tell us it is not allowed. The use of technology would benefit all involved.

Recommendations:

1) Payees need the same immediate access to the general line in the field office, which any beneficiary would have access to, rather than wait for a future appointment.
2) Currently CEPS Control Sheets which had been suggested by a district manager to hold his staff and our staff accountable to what had been received. These control sheets should be implemented across every field office and payee agency for accountability. These can be provided upon request.
3) Social Security needs to have more oversight and consistency over processes by field agencies, especially in the area of overpayment collection, payee change notification and secure email requirements.

CEPS welcomes the opportunity to assist with streamlining the processes between Social Security and fee for services organizational payees, including training procedures. Any additional questions, concerns, comments, or needed clarifications by the committee are encouraged. The issue of overpayments has been provided in detailed examples, and recommendations provided. The issue of communication with field offices has been specified through examples, and recommendations listed.

On behalf of CEPS, thank you for this opportunity to share with the committee our most pressing concerns.

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