

# SOCIAL SECURITY REPRESENTATIVE PAYEES

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON SOCIAL SECURITY  
OF THE  
COMMITTEE ON WAYS AND MEANS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTH CONGRESS  
SECOND SESSION

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MAY 4, 2000  
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## **SOCIAL SECURITY REPRESENTATIVE PAYEES**

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**THURSDAY, MAY 4, 2000**

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

The Subcommittee met, pursuant to call, at 10:10 a.m. in room B-318, Rayburn House Office Building, Hon. E. Clay Shaw (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

# **ADVISORY**

FROM THE COMMITTEE ON WAYS AND MEANS

## **SUBCOMMITTEE ON SOCIAL SECURITY**

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-3943

April 25, 2000

No. SS-16

### **Shaw Announces Hearing on Social Security Representative Payees**

Congressman E. Clay Shaw, Jr., (R-FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on Social Security representative payees. The hearing will take place on Thursday, May 4, 2000, in room B-318 of the Rayburn House Office Building, beginning at 10:00 a.m.

Oral testimony at this hearing will be from invited witnesses only. Witnesses will include representatives of the Social Security Administration (SSA), including Social Security's Inspector General, as well as organizations that serve as representative payees for beneficiaries. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

Social Security and Supplemental Security Income (SSI) benefits are distributed to more than 50 million Americans, including many determined to be unable to manage their own financial affairs. In such cases, SSA will work with the beneficiary and his or her family or other responsible individuals to locate a "representative payee," often called a "rep payee." Rep payees are individuals or organizations that have been approved and designated by SSA to receive a recipient's benefits directly from SSA on the recipient's behalf. The primary purpose of the rep payee is to safeguard a recipient's monthly benefits and ensure the money is spent on the beneficiary's needs. According to SSA, more than 6.5 million Social Security and SSI beneficiaries have rep payees.

SSA has a variety of systems in place to ensure the responsibility and trustworthiness of individuals and organizations that serve as rep payees. Despite such protections, in certain instances the systems have failed to prevent the misuse of benefit payments. Given the degree of responsibility and trust afforded rep payees, such breaches have resulted in significant harm to beneficiaries, and have led to concerted efforts to stem further abuse. Most recently, SSA submitted draft legislation to Congress on February 22, 2000, suggesting specific changes to improve the oversight and the effectiveness of the rep payee program.

In announcing the hearing, Chairman Shaw stated: "Social Security beneficiaries who depend on rep payees to handle their affairs are among the most vulnerable people Social Security serves. This hearing will help us assess Social Security's procedures to protect beneficiaries, how and why these procedures sometimes fall short, and ways to better protect beneficiaries in the future."

#### **FOCUS OF THE HEARING:**

The hearing will examine current eligibility requirements for rep payees, SSA's oversight systems, instances in which those systems failed to protect beneficiaries from fraud and abuse, and suggestions for improving beneficiary protections. Wit-

nesses will review legislative proposals, including those made by SSA, for improving the rep payee program and its protections for beneficiaries.

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, with their name, address, and hearing date noted on a label, by the close of business, Thursday, May 18, 2000, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Social Security office, room B-316 Rayburn House Office Building, by close of business the day before the hearing.

#### **FORMATTING REQUIREMENTS:**

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

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

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

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at [HTTP://WWW.HOUSE.GOV/WAYS\\_MEANS/](http://www.house.gov/ways_means/).

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.

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Chairman SHAW. Good morning and welcome to today's hearing. More than 50 million people receive Social Security and SSI benefits because they can not work due to age or disability. Despite those limitations, most beneficiaries are still able to handle their financial affairs for themselves.

Today's hearing is about the more than six million beneficiaries who can not. They are left in the especially vulnerable position of having to trust others to manage their affairs for them.

The Social Security Administration has called the people they turn to for help, representative payees, or rep payees, for short. In most cases, the rep payee is a family member; for example, a parent receiving a SSI check for their child.

There are about 45,000 organizations, including local government agencies and nonprofit groups, that serve as rep payees for more than 750,000 beneficiaries, when relatives or friends can not be found or can not be counted on.

Any allegation of abuse by someone in such a position of trust would be disturbing. But recent revelations of abuse involving organizations that serve as rep payees are especially troubling; in fact, they are sickening.

In one recent case in West Virginia, a rep payee for more than 100 beneficiaries stole their Social Security benefits and any other assets he could get his hands on. One beneficiary lost \$60,000 in his savings account, and ending up living in her car. Another elderly woman lost her home, and later was threatened with removal from her nursing home.

The man who did this is now headed for jail. We should throw the book at anyone who would abuse such a position of trust. But this case has raised a number of troubling questions about who can become a rep payee and how the Social Security Administration makes sure rep payees are doing their job.

This hearing is designed to answer these questions, so we can make some common sense changes to this program in the weeks ahead. In the process, we will work with the SSA and SSA's Inspector General, as well as responsible voices in the beneficiary and rep payee community. I am sure everyone here agrees that even one case of abuse is one too many.

But we also need to remember that examples of abuse are fortunately rare, especially compared with the millions of honest and trustworthy rep payees that are out there. We certainly do not want to scare off the millions of family members, friends, churches, and civil groups who voluntarily take on this tough but important duty. That would result in an even greater tragedy than some of the horror stories that we have seen in recent months.

Mr. Matsui.

Mr. MATSUI. Thank you very much, Mr. Chairman. I appreciate the fact that you are holding these hearings on certainly what you have stated is a very serious problem. The \$7.5 million may not seem like a lot of money from Congressional or executive branch standards. But it certainly is, when it is down to the individual level.

And we have to make sure that whatever legislation that we look to, that we make sure that we keep the beneficiary, that is, the Social Security recipient, whole because that person certainly has done nothing wrong and is totally blameless for whatever losses that he or she may sustain.

And, second, as the Chairman has said, we have to make sure that those that commit the act, that is the representative payee, are held accountable and responsible, and that we are in a position

to collect the money from that individual or group or entity or organization, when in fact an abuse actually occurs.

And so I look forward to working with the Chairman, and certainly the administration and others, to make sure that we address this very pressing problem.

And, again, Mr. Chairman, I would like to thank you for holding these hearings. I think it is critical that we really address this in the way that you are suggesting.

Thank you.

Chairman. Shaw. This morning we have our first panel, who is seated in front of us. Dr. Susan Daniels is an old friend of this Committee, who is the Deputy Commissioner of the Disability and Income Security Programs. She is accompanied by Larry Massanari, who is the Regional Commissioner, from Philadelphia, Pennsylvania.

Dr. Daniels.

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

Ms. DANIELS. Thank you.

Mr. Chairman, Mr. Matsui, thank you for inviting me here today to talk to you about the Social Security rep payee program, particularly as it relates to organizational payees.

Today, I will discuss a few general features of the program: Our recent changes that we have implemented to strengthen the payee program, legislation we have sent to Congress in order to improve the program; and of course, I will take your questions when I am done.

As you stated earlier, almost all the representative payees provided much needed help to our beneficiaries in a careful, compassionate and totally voluntary basis. Eighty-four percent of the payees are family members or friends. Only one in ten thousand representative payee cases each year results in some form of misuse.

I can truthfully tell you that millions of Americans are being assisted, mostly by family and friends, in a way that can make all of us proud. Nevertheless, it is no consolation to any beneficiary that may have lost his or her benefits; nor, is it acceptable to us.

In the early nineties and toward the middle of the nineties, we recognized that the representative payee population was changing. In 1995 and 1996, SSA chartered an advisory Committee to conduct research and hearings on representative payee issues. We also asked the Office of the Inspector General to review and make recommendations to improve our representative payee program.

Both the advisory Committee and the OIG made several recommendations: From how to select a representative payee to the kinds of monitoring program we ought to have. SSA evaluated these recommendations within the framework of our competing priorities and our financial limitations and resources.

We have implemented most of the recommendations: The development and distribution of a handbook for organizational payees; issuing instructions to our field office to tighten up on the screen-

ing of potential payees, conducting on-site reviews for fee-for-service and volume payees—volume meaning the payee is serving many beneficiaries—developing and distributing pamphlets to beneficiaries so they would know their rights under the payee program; and changing the focus of our current program from accounting to monitoring and compliance.

In addition, we have the following recommendations in process. We are not finished with these, but we are working on them: Developing an accounting form tailored to the organizational payee; expanding our automated system to keep track of representative payees and other issues; developing and distributing a handbook for individual payees, making sure they understand their responsibilities and roles; and instructing field offices to take better control of their documentation, so that we know and can find the history of our representative payees.

As a result of the recent criminal enterprises that were uncovered, SSA's oversight activities have been strengthened. Our new initiatives underway now are triennial on-site review of all fee-for-service payees and for volume payees serving more than 100 beneficiaries. In addition, all individual payees serving 20 or more beneficiaries will be part of the triennial on-site review. Three hundred of these triennial reviews have already been conducted.

Non-governmental fee-for-service organizational payees must either be licensed or bonded. Beginning in June, SSA will require them to annually update their file to show us that they continue to be eligible to be payees.

Number three is a 6 month review of all newly appointed fee-for-service payees. We will go on-site and visit these payees within the first 6 months, to make sure they have their accounting procedures in order, and they understand their duties and responsibilities.

Number four is a random review. In addition to the triennial reviews, of volume and fee-for-service payees, we will be choosing a random sample of about 30 percent of those not part of the triennial review.

In addition, SSA will continue to monitor any trigger events or allegations of misuse that come to our attention. We are working on tightening our screening of potential payees, consistent with the OIG's recommendation. And further, SSA attorneys are working in conjunction with U.S. attorneys to assist in prosecution of individuals who misuse the funds.

In February, we sent to Congress a legislative proposal for consideration that would provide additional safeguards for beneficiaries.

Currently, when any payee is determined to have mishandled individuals benefits, SSA can reissue those benefits under two conditions: One, we have received restitution from the payee; or second, when we declare ourselves negligent.

To facilitate restitution of misused funds, our legislative proposal would require SSA to reissue benefit payments, including any fees that were taken in any cases where the organizational payee is found to have misused the funds, whether or not negligence or restitution has occurred. Of course, we will continue to seek restitution as a deterrent and in order to replenish the funds—the trust funds or general revenues that were used to reissue benefits.

In addition to this change, our legislative proposal includes other provisions: requiring non-governmental fee-for-service organizations to be bonded and licensed, not “or licensed,” providing that when an organization has been found to misuse benefits, that they not be allowed to collect a fee for those months in which they misused benefits; and finally, counting as an overpayment to a payee, any funds of the beneficiary misused by the payee, on behalf of another beneficiary.

We urge Congress to give these proposals prompt attention, and we are delighted that Representative Wise has begun this process.

In conclusion, let me tell you that we are truly grateful to the millions of voluntary payees who assist our beneficiaries, and do so carefully and compassionately. We have a special concern for those beneficiaries who have no one to help them in their personal lives, and must be represented by organizations or fee-for-service payees. We will continue to monitor our representative payee program more carefully.

And finally, we are eager to work with you on strengthening the program, so that we have more tools in order to safeguard our beneficiaries.

I would be delighted to take your questions.

[The prepared statement follows:]

**Statement of Susan M. Daniels, Ph.D., Deputy Commissioner, Disability and Income Security Programs, Social Security Administration**

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

HISTORY OF REPRESENTATIVE PAYMENTS

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

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

The Social Security and SSI disability rolls typically include people with special needs, such as the mentally ill and homeless, many of whom are substance abusers. (However, individuals whose sole medical disability is drug or alcohol addiction, no longer qualify for benefits.) Many years ago, these same individuals might have been institutionalized, with the institution serving as their payee. Today, these individuals are not institutionalized and often have no close family willing or able to serve as payee. When such beneficiaries need help in the management of their fi-

nancial affairs, institutions and organizations, or sometimes acquaintances, have stepped in to act as payees. Many times, in addition to money management, these payees must address social service issues, such as finding shelter for the habitually homeless, dealing with medical decisions, and encouraging beneficiaries to seek treatment for substance abuse or mental illness.

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

#### ORGANIZATIONAL PAYEES

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

- 855 fee-for-service payees serving almost 60,000 SSA beneficiaries;
- 1,000 entities (excluding fee-for-service organizations), which we call "volume payees," serving 250,000 beneficiaries. (A "volume payee" is an organization that serves 100 or more beneficiaries.); and
- 360 State mental hospitals serving 80,000 beneficiaries.

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

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

#### DETERMINING THE NEED FOR REPRESENTATIVE PAYMENT

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

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

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

Once we determine that an individual needs a payee, SSA identifies persons who are willing and best able to serve in this capacity. Whenever possible, the preferred payee is a family member or friend who has shown interest in the well-being of the beneficiary. When such persons cannot be found, SSA turns to certain organizations that have agreed to perform the duties of a representative payee.

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

## REPRESENTATIVE PAYEE RESPONSIBILITIES

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

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

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

- determine the beneficiary's needs and use his/her payments to meet those needs;
- conserve any money left after meeting those needs;
- report any changes or events which could affect the beneficiary's eligibility for benefits;
- help the beneficiary get medical treatment when necessary;
- maintain records of the money received on behalf of the beneficiary and records of all expenditures; and
- complete written reports accounting for the use of the funds.

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

## SSA INITIATIVES TO DETER MISUSE OF BENEFITS BY ORGANIZATIONAL PAYEES

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

SSA is committed to protecting beneficiaries from benefit misuse. The recently televised representative payee misuse case, the Aurora Foundation, Inc., in Martinsburg, West Virginia, has resulted in the president of that organization pleading guilty to the embezzlement of Social Security and SSI beneficiary funds. As a result of our review of this criminal enterprise, SSA has strengthened our oversight process. To that end, we have several new initiatives underway that will help prevent misuse by organizational payees.

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

SSA has begun a review of the approximately 855 fee-for-service payees on a triennial cycle. SSA will also perform triennial reviews of all volume organizational payees—those serving 100 or more beneficiaries—and of all individual payees serving 20 or more beneficiaries. SSA's Office of the Inspector General will participate,

as necessary, in these reviews. This review will ensure payee compliance through a face-to-face meeting with the payee and examination of a sample of beneficiary records. The review includes an assessment of the payee's record keeping, and SSA will interview a sample of beneficiaries in order to assess whether their needs are being met. Expenses may be corroborated with providers of the services. In addition, we will contact vendors to ensure that bills are being paid. We believe that an added benefit of this initiative will be that the lines of communication between SSA and the payee will be improved. Over the last year, approximately 300 of these reviews have already been conducted as part of a pilot process, and a regular ongoing schedule will begin this summer.

*2. Annual Verification of Bonding or Licensing.*

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

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

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

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

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

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

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

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

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

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

#### LEGISLATION

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

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

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

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

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

- Require non-governmental fee-for-service organizational payees to be bonded *and* licensed, provided that licensing is available under State or local law. (The requirement under current law is bonding *or* licensing.) This proposed requirement would add further safeguards to a beneficiary's funds. State licensing provides some oversight by the state into the organization's business practices, and bonding provides some assurance that a surety company has investigated the organization and approved it for the level of risk associated with the bond. The proceeds from redeemed bonds would reduce the costs to the program when re-issuing benefits in cases of representative payee misuse.

- Provide that when an organization has been found to have misused an individual's benefits, the organization shall not qualify for the fee from that individual's benefits for months the payee misused the funds. Requiring payees to return the fees charged for periods of misuse is reasonable because the payee was clearly not properly performing the service for which the fee was paid. Permitting the organization to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's current and future needs.

- Provide that misused benefits (including any respective representative payee fees) would be treated as an overpayment to the representative payee and, therefore, subject to current SSA overpayment recovery authority. Although SSA has been given expanded authority in the recovery of overpayments (such as tax refund offset, referral to contract collection agencies, notifying credit bureaus, and administrative offset of future federal benefit/payments), these tools cannot be used to recoup benefits misused by a representative payee. Providing that benefits misused by any representative payee would be an overpayment to the payee would provide SSA with additional means for recouping the misused payments. This proposal would also permit re-issuance of the recovered amounts to the beneficiary (unless already re-issued by SSA). This change would improve the protection of all beneficiaries with payees, not just those with organizational payees.

Also, in September 1999, we sent a legislative proposal to Congress that, in addition to other provisions, would extend civil monetary penalty provisions to representative payees that misuse benefits. As it pertains to representative payees, this legislative proposal would allow SSA to impose administrative penalties and assessments against representative payees who make false statements to obtain or retain benefits. This would improve our ability to ensure that individuals who commit this type of fraud against SSA are penalized, even if such individuals are not prosecuted criminally. We urge Congress to give these proposals their prompt attention.

#### ADVISORY COMMITTEE & INSPECTOR GENERAL RECOMMENDATIONS IMPLEMENTED

To address the evolving needs of the beneficiaries and the payees that assist them, SSA chartered an advisory committee (AdCom)—a panel of external experts—to review the representative payee program. In 1995 and 1996, the committee held hearings and conducted research into key representative payment issues. SSA also requested its Office of the Inspector General (OIG) to review and make rec-

ommendations to improve the representative payee program. SSA requested these reviews in order to better meet the needs of the changing demographics of our representative payee population.

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

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

In addition, we have the following initiatives in process:

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

#### ADVISORY COMMITTEE & INSPECTOR GENERAL RECOMMENDATIONS NOT IMPLEMENTED

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

#### CONCLUSION

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

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Chairman SHAW. Thank you very much, Dr. Daniels.

Mr. Massanari, is that the correct pronunciation?

Mr. MASSANARI. I do not have a formal statement, Mr. Chairman. That is correct, Massanari. But I will be prepared to respond to any questions you might have.

Chairman SHAW. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

Dr. Daniels, how many referrals are there to, I would assume, the Justice Department, or maybe it is local law enforcement, on an annual basis? Do you happen to have that number?

Ms. DANIELS. No, I do not. But you are going to be hearing from the IG in a few minutes, and I am sure he will be a good source of information on that issue.

Mr. MATSUI. Do you have standards in your department, as to when you actually make a referral to the local enforcement agencies, or the Justice Department, for possible criminal action, when you think there is a violation that is rather severe?

Ms. DANIELS. When we hear any allegation of representative payee misuse, or investigate any possible wrong doing, we try to determine if there is reason to call in the IG. And I think we have a very close relationship with the office of the Inspector General, and we plan to do many of our on-site monitoring or follow-up investigations jointly.

It is not so much of a referral as it is a team effort. If we see that something is going on that we need a more in depth look at, from an audit perspective or from a legal perspective, we certainly call them in immediately.

Mr. MATSUI. I am not suggesting that every matter that is investigated in which there is some kind of activity where the benefits do not go to the beneficiary be referred. But I think a few examples might help over time, and I do not mean to make examples out of people. But, you know, at least if there is a notion that there is criminal sanctions, that certainly could help.

I think Mr. Shaw is correct, on the other hand, that we do not want to discourage family members and others, that really are acting in good faith, from taking action.

Ms. DANIELS. And I agree with you. It is quite a balancing act to encourage volunteers to be part of the program, and not burden them with expensive or time-consuming routines, and at the same time, protect individuals who are very vulnerable, because they have no family or friends to help them.

So it is a balancing act. And I think our proposals help us get closer to protecting people, when they have no family and friends to look after them.

Mr. MATSUI. Did you have something to add, Mr. Massanari?

Mr. MASSANARI. Perhaps, Mr. Matsui, I ought to add that in the case of organizational payees, whenever there is any indication, or whenever there is any evidence of misuse, we would routinely make that referral to the Office of the Inspector General, and they would make the determination as to whether or not to undertake an investigation. But that is something that we would do routinely, particularly as it relates to organizational payees.

Ms. DANIELS. Mr. Matsui, staff behind me just handed me a few numbers, and maybe that will help. In the last two and-a-half years, 1,352 cases were opened, and 313 convictions were obtained.

Mr. MATSUI. Wow, that is pretty impressive. That is a good, impressive number. I am impressed with that.

I want to thank both of you for your help and testimony. I, frankly, think that the recommendations made by SSA in their referral in February, in terms of possible legislative changes, make a lot of sense. And, obviously, the Chairman and others and I will have to be working with you on that.

But I do think that it would probably be helpful in at least protecting the beneficiary and keeping some accountability. But I do

want to thank you for your help and your efforts and everything else you are doing with respect to this issue.

Ms. DANIELS. We look forward to working with you.

Chairman SHAW. Dr. Daniels, in my opening remarks, I made reference to the West Virginia case. This was the Aurora Foundation case. All of us are disturbed to hear about the situation involving the Aurora Foundation.

Ultimately, Gregory Gamble, who essentially operated a one person operation, pleaded guilty to embezzlement of Social Security benefits. The SSA's Office of Inspector General determined that 127 Aurora clients lost over \$223,000.

Garry Geffert, who is a staff attorney with the West Virginia Legal Services and a witness on our next panel, makes a number of statements in his testimony. And I would like you to react to them. I will read them; there are a series of them.

He indicates that the Social Security Administration routinely told beneficiaries that the Aurora Foundation would be their payee, and that they were not given a choice. Have you looked into that, and is there any truth to that?

Ms. DANIELS. Would you mind if I refer this question to Larry Massanari? That is in his region, and he has intimate knowledge of this situation.

Chairman SHAW. Not at all.

Mr. MASSANARI. Mr. Chairman, that is not quite accurate. The first preference for appointing a payee is always a family member or friend or an organization that has custody of the individual.

But in this case, there was only one fee-for-service or organizational payee in the Martinsburg, West Virginia area. So it is true that as a matter of routine, when there were not suitable payees available, Aurora, in effect, became the payee of last resort. So that is where we made our referrals.

Chairman SHAW. He also reports that complaints were made about the Aurora Foundation to SSA about the manner in which their funds were handled, but that these complaints were largely ignored. What record do you have of the complaints, and at what point were they looked at?

Mr. MASSANARI. We have record of one complaint, back in 1996, where a beneficiary had written to Aurora and had also sent a copy to us, indicating that when he received his first check, he felt that the amount of the fee was incorrect. And, in fact, it was. What Aurora had done was to compute the fee at 10 percent, rather than the cap of \$50.

At the time that that occurred, we contacted Aurora. We got their records. We also went back to this individual's file, a few months ago, and we actually have a copy of that letter in the file, which was dated July 31.

On August the 26th, less than a month later, we made contact with his representative at West Virginia Legal Services. That paralegal told our claims representative that the situation had been rectified, that he had gotten his money back.

The following day, August the 27th, the beneficiary came into the office. He, too, told us that the situation had been resolved, that it had been corrected, that he had received his money. But he was also interested in becoming his own payee.

At that point, we submitted medical evidence back to the state disability unit. They determined that he no longer needed the payee. And to Aurora's credit in this case, they did provide all the conserved funds that were owed him, when he became his own payee.

That is the only complaint that we are aware of, up until early 1999. We not only have no record of other complaints, we have also talked to the staff there in Martinsburg, and none of them have any recollection of any complaints regarding moneys not being used for the benefit of the beneficiaries.

We did begin to receive complaints in late 1998/early 1999—there were a couple of local merchants who called us. Among them was a local supermarket, who indicated that they had not been paid by Aurora. When we followed up, they had been paid, but they did receive payment late. Some of the bills were being paid late.

We got a specific complaint on April the 8th from a local attorney. Prior to that, we had no indication that beneficiaries' bills were not being paid. In fact, over that entire 4-year period, there was never a hint that there was any criminal activity underway.

Chairman SHAW. Perhaps Mr. Geffert would substantiate that comment when he testifies.

He also reports that one person sent a letter of complaint to Aurora and copied the local Social Security office. And perhaps that is the one you already referred to. This individual was allowed to discontinue using Aurora as a payee, although no investigation of the complaint was made.

Mr. MASSANARI. That is the letter that I was referring to. I suspect that Mr. Geffert is also referring to this letter from 1996. It is not that the individual was no longer using Aurora as a payee because of the quality of the service provided by Aurora in that instance, but rather because, as it turned out, he was capable of handling his own benefits.

Chairman SHAW. What is the criteria for removing a rep payee, and if a beneficiary complains and requests the removal of their rep payee, how does the SSA determine whether a rep payee should be removed?

Mr. MASSANARI. First of all, if there is any indication of misuse, we would immediately suspend payment to that payee and seek an alternative payee. So, that would happen as a matter of course.

When we appoint a payee, we notify the beneficiary who we have appointed and that is considered an initial determination that is appealable. So they do have the right to appeal our appointment of a payee.

Chairman SHAW. Was Aurora bonded?

Mr. MASSANARI. Yes, they were. They were bonded. The bond was taken out in 1995. They were also chartered or licensed by the State of West Virginia. That licensing took place in 1992.

Gregory Gamble let that bond expire in about 1996/1997, when he failed to submit the renewal fee, but he continued to be licensed. And he has to be either bonded or licensed, according to statute.

Chairman SHAW. Is it either/or?

Mr. MASSANARI. I am sorry, that was Aurora, yes. He had a couple of employees. But, essentially, Gregory Gamble was Aurora.

Chairman SHAW. No, I mean, it is either licensed or bonded?

Mr. MASSANARI. Yes, I am sorry, it is either/or.

As he began to provide payee services, he was both. And that is not uncommon. But we are proposing, of course, in the legislation that we require that fee-for-service payees be not either/or, but rather both, bonded and licensed.

Ms. DANIELS. And starting this year, Mr. Shaw, we are going to be requiring that annually they verify that they maintain this status of licensed or bonded. As you know, Mr. Gamble let his lapse.

Chairman SHAW. Can felons qualify?

Ms. DANIELS. Can felons qualify as payees? Our statute specifically says that if anyone has a felony conviction because they misused any funds under the Social Security statute, they are not available to be a payee. They are disqualified from being a payee.

We asked the question on our application. If an individual has been convicted of a felony, we certainly would do everything we could to find another payee.

In some very small circumstances, a family member may be the person who would be the payee, and may have been convicted of a felony, but we certainly look for others who are not. But anyone who has misused Social Security funds is not eligible to be a payee.

Chairman SHAW. How many people are denied becoming a payee because of that rule?

Ms. DANIELS. I certainly do not have that number. And if we have it, I will certainly supply it to you for the record.

[The information follows:]

Two hundred and eighty payee applicants were not selected due to felony convictions for the first calendar quarter of the current year (1/1/00–3/31/00), according to our management information report. The previous 3 quarters show 150,301, and 250 non-selections due to felony convictions, for a total of 981 non-selects for the 12-month period 4/1/99–3/31/00.

The non-select categories shown on the management information report are not all inclusive, i.e., other non-select categories could be used to describe the non-selection of a potential payee who was also a felon, e.g., the abatement category or selection of a more suitable person.

Chairman SHAW. Mr. Geffert also addresses the reporting requirement for the rep payees. Is it true that while individual account records may be reviewed, that no one checks the overall picture to ensure that all the accounts overseen by the rep payee add up?

Ms. DANIELS. I am not sure I understand the question. Let me try this. I will tell you what we do, and let us see if that answers the question.

Annually, every payee is required to file a form that tells what the money was used for. That form is checked in one of our processing centers. And if anything is untoward about the form or anything is unusual about the form, then an alert is sent for a follow-up and for investigation, and so forth. So we do have an annual accounting for each beneficiary that has a payee.

Chairman SHAW. Are these accounts audited?

Ms. DANIELS. These are reviewed.

Chairman SHAW. But there is no verification. Do you go and actually check the banks accounts?

Ms. DANIELS. We look at receipts.

Chairman SHAW. Do you get direct verification from the bank?

Ms. DANIELS. Only if we do an on-site review. We do not follow-up on each one of the six million annual reports that we get.

Chairman SHAW. The rep payee, though, I assume they put the money into one bank account, like a trust account, and that they then have individual accounts from which these disbursements are made. Do we check the total amounts that are coming in, just like a regular accounting, the funds received and how they are all paid out, and you come up with some totals?

Ms. DANIELS. Well, that would be done in an on-site review, and the full financial records would be reviewed. But that is not done on an annual basis.

Chairman SHAW. But you do not have on-site reviews every year.

Ms. DANIELS. That is correct.

Chairman SHAW. So nothing is submitted that would do that.

Ms. DANIELS. Not that I know of, Mr. Shaw.

Chairman SHAW. I would suggest that we ought to impose that, either by regulation or statute.

Mr. MASSANARI. We are, Mr. Chairman, though, undertaking a whole review effort, where we will be on-site in each of these payee organizations, at least every 3 years. And we will also be doing random checks of 30 percent of them, each year, as this is a part of a new initiative, in order to tighten and strengthen the protection and safeguards as a part of the payee process.

When we go on site, though, what we are looking at are the individual payee accounts. We are not undertaking formal financial audits to assess the financial health of the organization. But we would be looking to see the amount of income going into each account, as well as disbursements from the accounts.

Many of the payees set up individual bank accounts. More of them do have collective accounts. But we need to be able to track moneys into and out of the accounts. And in the case of Mr. Gamble, he had co-mingled the funds. That is why it is very difficult for us now to allocate the misused funds to individual beneficiaries.

But it is a requirement that we be able to track the movement of funds, even where those funds are set up in collective accounts.

Chairman SHAW. Well, even if you were to do this by sampling, just under general accounting rules, it would be helpful for your auditors. Are these qualified auditors that are out in the field?

Mr. MASSANARI. No, what we are doing, typically, when we go in and do an on-site review, we are using our field office employees, unless they just happen to coincidentally have an accounting background.

But the Office of the Inspector General is working very closely with us, as we embark upon this new initiative. We are working in partnership, so that we do gain some understanding from them. And part of their role is to educate our field people, so that they are better equipped to do these reviews.

But they will really not constitute audits, as such. They are really not prepared to do audits. They do not have that background.

Chairman SHAW. Are these high school graduates, colleges graduates; what are their qualifications?

Mr. MASSANARI. Most of them would be high school graduates. Some would be college graduates. But, certainly, they have enough knowledge to track the flow of money in and out. But I think it

would overstate it to say that they are there to do a true financial audit.

Chairman SHAW. Are there any audits that are made with auditors?

Mr. MASSANARI. There will be some. As I say, that is why we are working with the Office of the Inspector General. The Inspector General's auditors will be going in with us. And in those cases, they will be doing actual audits. I suspect that is a question that ought to be raised with the Inspector General.

Ms. DANIELS. Mr. Shaw, I would like to add something here, as well. I think that we were using the bonding and licensing as a proxy for financial accountability; that those agencies that are licensed by the state are licensed to do whatever kinds of services support that they do.

And we believed that we could rely upon the state mechanisms to assure the basic financial health of organizations, either through licensing or bonding. Of course, now we are asking for both licensing and bonding in our legislative proposal. But we realize that that is not enough. And that is the reason we have undertaken the reviews, as well.

So we have several different tiers of oversight here. One is just to get in the licensing and, we hope, bonding. And those require certain evidence of financial responsibility, and then our triennial reviews, and then our spot checking. Of course, any target situation where somebody complains is a special situation outside of that.

So we are building here layers of accountability and monitoring. We hope that this number of layers will be sufficient to provide the kind of oversight that is necessary.

Chairman SHAW. What type of regulations do the various states have for licensing? Have we done a review of all of the states, and have some type of minimum requirements for us to recognize their licensing authority? I mean, it could be they just send in an application, and that is it.

Ms. DANIELS. That is true. There is a wide variety of ways in which a state can issue a license, and the various standards they use in order to issue those licenses.

As we go through the review process, the triennial, over the next few years, we will gather more information about the licenses that people have. And I think we can give you more information then, because we will be on site for every fee-for-service organizational payee in the next 3 years.

I think at this point, I have to admit, there is a wide variety. Some are very tight, and others are probably not as tight as we would like them to be. But our proposal is that they be both licensed and bonded, and those two layers together, we hope, will knit together a good base.

Chairman SHAW. If the rep payee is bonded, does the bonding company do a regular audit of the books?

Ms. DANIELS. I am not really certain if they do, but they certainly take risk of the default on the bonding, if they do not. And I am pretty sure they are shrewd enough, for whatever the bond is for, to know that they have to have some reasonable expectation that the person is able to conduct their business in an evenhanded way.

Mr. MASSANARI. It depends a little bit on the surety company, as to what their requirements are. And as Dr. Daniels indicated, it depends a little bit on the amount of the bond.

But our hope is that, at least, there was some level of investigation, and that they do some background checks on the organization, in order to protect their own financial interests.

Chairman SHAW. In the Aurora case, is there going to be any recovery for the beneficiaries that were lost \$200,000-plus dollars?

Mr. MASSANARI. It does not appear so. The only way that we could reissue payment to the beneficiaries who have lost money is if now we can recover moneys from Mr. Gamble. Mr. Gamble has filed for bankruptcy. And we do not believe that he has any funds available.

Chairman SHAW. Has he been sentenced?

Mr. MASSANARI. He plead guilty in early March to embezzling \$303,000. He will be sentenced on June the 5th.

Ms. DANIELS. If we could get restitution, of course, we could begin that process. The reason we are asking for this legislation is because we would like to be able to make whole the beneficiaries that were harmed, without necessarily first collecting it from Mr. Gamble.

Chairman SHAW. Is embezzlement a debt that is removed in bankruptcy?

Mr. MASSANARI. I can not answer that. I am not an attorney. I do not know. I would suspect not. I think that he will have a continuing responsibility, but it would be over a very, very long period of time.

And that, of course, as Dr. Daniels said, is why this legislation is important, and why we are so pleased that Congressman Wise has submitted his proposal. Our legislation would permit us, and in fact we have structured our proposal in a way that we would assure that we can cover the beneficiaries who were victimized in Aurora.

To date, as such, we have not made the formal misuse determinations, so that we would be able to reissue the amount of the benefits, plus the amount of the fees, to the 123 beneficiaries who have lost money.

Chairman SHAW. Does anybody else have any other questions for the witnesses?

Mr. MATSUI. Yes, I just wanted to follow-up on the Chairman's line of questioning here. Let me say this, I want to preface my remarks by not suggesting that there were any problems with your office and the administration of your responsibilities.

But I am mindful of the fact that under current law, you cannot reimburse unless there is a finding of negligence. It is a very complex situation. It puts you in a conflict of interest. You want to help the beneficiaries. But on the other hand, you know, you do not want an allegation of negligence to hold against your office and the employees of your office.

And so I can understand why this is a very difficult situation for those that really want to be helpful to the beneficiaries.

On the other hand, and again, I do not want to do this for embarrassment sake or anything of that nature, but we had a situation in Sacramento that I mentioned at the last hearing, in which a

woman, Dortha Puente, who you undoubtedly have heard of, in the mideighties, was collecting benefits as a representative payee.

And she was murdering the beneficiaries. I do not think she even got up to \$200,000. And obviously, the beneficiaries were in no position to complain. They were dead. They were buried in her back yard.

And it seems to me that this is an awful large sum of money to have gone on for the period of time that it has, without raising red flags.

And, again, I would like some explanation. I know you have tried to explain it to the Chairman. But it is difficult for me to understand how a quarter of a million dollars could have been taken, with no complaints from the beneficiaries, or no action taken.

Mr. MASSANARI. I think that is a very fair question. And let me take you back to the point at which the initial investigation and screening was done.

At the time that Mr. Gamble came in to apply to be a representative payee, the staff and the office did, in fact, investigate him. He was the Vice President of a local bank. He sat on the Board of Directors of a local senior center. He was active in his local church. And some of the employees in the office actually knew of him and his family.

So based upon everything that they knew, that we knew, we certainly had every reason to believe that he would be an honest and reputable payee.

We, too, are shocked, frankly, that there were not some indications earlier. Even the 1996 letter was not a red flag. And in retrospect, as I look at the letter, I would not have reached the conclusion that there was misuse. I think in this case, there may have been—and I am reluctant to say—an honest mistake. But it may simply have been a mistake by the bookkeeper.

In talking to the folks and the staff, which I have done personally, they all assured me, and most of them have been in that office for a number of years. They certainly knew of Gregory Gamble and the Aurora Organization. But they have assured me that they never got any complaints until, as I mentioned, in late 1998, early 1999, when some bills were not paid.

We also had accounting reports coming in, on a regular basis. And based upon what we have seen now in our automated system, as well as accounting forms that we have been able to retrieve, there is nothing in those forms that would suggest that there is an inconsistency or any unacceptable information.

Some of the instances in which folks began to have problems, and some of those were documented on television, I think, began to occur in early 1999. And that is the point at which the accounting forms were not being submitted, that the local office began to get alerts that they were not responding. And I think everything sort of came to a head at the point that we got that complaint in early April from a local attorney.

But beyond that, I really cannot explain it, except to say that I have every confidence that we have no record of any reports of bills not being paid. In fact, we have every indication that up until early 1999 that the needs of the beneficiaries were being met.

Ms. DANIELS. I know it is hard to defend yourself in a situation like this when something so horrible like this has happened to our beneficiaries.

But I think one of the things that was consoling to me was that as soon as there was an even small body of evidence that things were not going right with our beneficiaries, the field office made calls saying that they were going to come in for review. And the very next day, Mr. Gamble turned himself into the FBI.

So in a sense, our system did work. The complaints triggered an action on the part of the field office to go in and look. And that precipitated his turning himself in.

Mr. MATSUI. Well, I know the purpose is not specifically the Aurora situation. You know, what is troubling to me, and I was not planning on talking about this when we walked in today, but perhaps the agency gave too much credence to somebody who happened to be an outstanding citizen, instead of those that were actually complaining.

And that is certainly not the way government should operate. It should not operate on the basis that I know this person, and I trust them. It should operate on the basis of every individual, whether rich or poor, handicapped or disabled, should have that right to an equal hearing. And perhaps that was not done.

In that case, there was, I would say, close to misfeasance, if not negligence, on behalf of your office, there. And, again, I do not mean to throw stones. But, certainly, it sounds to me like negligence.

Mr. MASSANARI. Well, I am comfortable that the screening was done appropriately, and that there was an adequate investigation.

But, clearly, this particular instance, as well as the recommendations that have come from our Office of Inspector General, that we be more aggressive, that we tighten up our monitoring responsibility is something we have taken very seriously. And that is why we have instituted this whole series of on-site reviews.

And if somebody is unscrupulous and wants to cook the books, it may be difficult to even identify problems at that point. But we are going beyond looking at the books. We are actually going out and talking to beneficiaries to make sure that their current needs are being met.

So we think that by tightening up the process as we have, we will not only deter and detect fraud earlier, but in many cases, we will prevent it.

Mr. MATSUI. Well, thank you.

Chairman SHAW. I would beg to differ with one thing. Dr. Daniels, you said that the system worked. Well, no it did not work; not until you got up to about a quarter of a million dollars misappropriated. I think that Mr. Matsui has been very vocal in that position, and I certainly agree with him.

Where were these checks deposited? Were they deposited in the proper trust account, and then disbursements made out of it; or did he start depositing them into his own personal bank account? I mean, these things are traceable.

It has been a long time since I was an auditor. But I can tell you, as rusty as I am, I bet you I could trace every dime. It has to go

into a bank. It has to come out of a bank. So this should not be that difficult.

Mr. MASSANARI. Well, it varies. One of the things about Aurora, which also led us to continue to refer people to Aurora, was that Gamble was also a representative payee for state benefits, and was also a court-appointed conservator. He has been appointed conservator by the West Virginia courts.

Many of the accounts and, in fact, large sums of money, were in these conserved accounts which did not relate to Social Security benefits.

Gamble did have individual accounts for some individuals. But for most of them, he had co-mingled the moneys. And so you could not really trace the flow of moneys. And as I said, that is why we are having some difficulty in allocating the amount of misuse to individuals.

I suspect you are right; had we looked at the accounts, we probably would have gotten suspicious. And that is precisely the reason that we have instituted—

Chairman SHAW. Where were your checks being deposited?

Mr. MASSANARI. Where were they? They were being deposited in the local bank. I am not sure which one.

Chairman SHAW. I mean, when your bank statement comes in, do you keep an eye on what account they went into?

Mr. MASSANARI. No, that is not something that we would do. When we go in on site, we are looking at the records.

Chairman SHAW. Well, I mean, why would you not do that from your office, or from where the checks are sent, just to be sure that they were properly deposited? There has got to be some guidelines.

Mr. MASSANARI. I believe in this case, as in the case of most payees, we do encourage, and in some cases, require that there be direct deposit. So that we could determine it, but not necessarily the account. I think we would have to go on site to do that.

Chairman SHAW. Do you wire transfer some of this?

Mr. MASSANARI. Most of it.

Chairman SHAW. So you know, you can just look back at your records and know where these moneys were deposited and what bank account.

Mr. MASSANARI. You could look at the inscription on the account, but I am not sure we could tell from that whether it was appropriately allocated to the individual. I am really not sure we could provide an answer to that.

Chairman SHAW. Well, no, you could not. But you could then come back and get his bank statements and his bank records, and find out where the money went.

Mr. MASSANARI. Yes.

Chairman SHAW. But we are talking about the co-mingling of funds. We can at least be sure that it gets into the right account, initially. And then you might have to go on-site to decide where the funds went, from that particular account.

Mr. MASSANARI. There is another step in the process that we have now instituted. We are going in after an organizational payee is set up, initially.

We are going to go in after six months. We go on-site to meet with the folks in that organization to look at the accounts to assure

that the accounts are set up properly; that the proper inscription is on the accounts; and that moneys are not being co-mingled.

So a part of this is an educational process that we are undertaking, as well.

Chairman SHAW. Do we have CPAs in your employ?

Mr. MASSANARI. No, we do not within the larger Social Security Administration, but certainly the Inspector General has CPAs on his staff.

Chairman SHAW. I would strongly suggest that you either do this in-house or out-of-house, that you have auditing standards that are set up, that any field representative would have to adhere to, in going into any of these places.

I mean, this one has popped up out of the ground. It is kind of like you are plowing a field, and all of a sudden, you hook onto some relic that jumps up.

We all know there are a bunch more of these out here that we have not caught yet. And the fact that this guy was so blatant that as soon as you said you are going to come look at the books, he goes and turns himself in, I mean, he did not even think he had a sporting chance of getting away with it. [Laughter.]

Mr. MASSANARI. Well, there are guidelines for the folks who are undertaking these reviews.

Ms. DANIELS. Yes.

Mr. MASSANARI. Dr. Daniels' staff has developed a set of standards and requirements and guidelines, which are part of an instruction that our field staff are now following, as they go out to do the on-site reviews. So, there are standards.

Chairman SHAW. Who wrote these?

Ms. DANIELS. The Office of Program Benefits, inside the agency.

Chairman SHAW. Are they CPAs?

Ms. DANIELS. No, they are not. These are not, in the technical sense financial audits. They are reviews of the accounting of the individual funds for the use of the beneficiary.

Chairman SHAW. I would suggest either in-house, or you get an accounting firm to review those standards and set up minimum standards, and make suggestions as to what it can do.

I remember when I was studying accounting. They said when you go into an audit, the first thing you do, like if you are going to do an automobile agency, the first thing you do is to figure out how you can get one of the automobiles off the showroom without anybody knowing about it. And once you figure that out, then you know that they have got some problems, and you can go back and make suggestions to management.

And it seems to me that you really need top level, professional advice. Obviously, you can not hire that type of expertise to go out into the field. But at least they should be the ones that set up the standards.

And it is a form of audit, even though it is not, in the technical sense. But tracing these funds and doing a positive verification from the banks as to bank balances and a few things like this, those are sort of no-brainers. You can figure those things out.

Ms. DANIELS. We will certainly take a look at the review standards and get back with you on that.

[The information follows:]

In developing the review standards for the "Guide for Conducting Site Reviews", SSA staff requested and received input from the Office of Inspector General's Office of Audit. In the event that a site review uncovers what appears to be fraudulent financial practices, the guide directs reviews to immediately request assistance from the Office of the Inspector General.

Chairman SHAW. I look forward to working with you both on this. Thank you very much.

Ms. DANIELS. It is our pleasure. Thank you.

Chairman SHAW. I have one other question, Dr. Daniels. You were talking about bonding requirements. Now those bonding requirements that you are suggesting for legislation apply only to fee-for-service type of people. What about charitable organizations, non-family members that are not fee-for-service?

Ms. DANIELS. Our proposal does not include at this time the non-fee-for-service volunteer organizations.

Chairman SHAW. Should it?

Ms. DANIELS. I would really need to talk with the staff about what the implications would be, especially the cost.

Chairman SHAW. Give us your recommendation on that, because the non-profits, they can steal, too.

Ms. DANIELS. They certainly can. Again, we are trying to seek that balance of encouraging the non-profits that have contact with the beneficiaries for other reasons, maybe case management or whatever, to be organizational payees when they can, and not burden them with any additional costs. And at the same time, you are right, we have to be sure that they are responsible and acting responsibly.

Chairman SHAW. Even in family situations, is there any interview that takes place, before the decision is made?

Ms. DANIELS. Yes, absolutely. The face-to-face interview in the office, and quite a lengthy procedure of verifying who they are and their earnings, et cetera.

Chairman SHAW. Thank you.

Ms. DANIELS. You are welcome.

[Questions submitted by Chairman Shaw, and Ms. Daniels' responses, follow:]

#### **Susan Daniels, SSA Questions and Answers**

*1.A. Regarding annual accounting requirements, the IG testified that SSA could initially produce only 12 of the more than 100 accounting reports the Aurora Foundation was required to submit annually for the beneficiaries for which it served as rep payee.*

#### **SSA Response**

In the Aurora Foundation case, our computer records indicate that required accountings were filed timely. In May of 2000, our search indicated that Aurora was a representative payee for 121 beneficiaries at the time it closed. Seventy-four (74) accounting forms should have been filed with SSA; the remaining 47 beneficiaries had not been represented by Aurora long enough to require that accounting forms be filed, i.e., more than 12 months. In response to an Office of the Inspector General's (OIG) early request to locate accounting forms, 12 forms were located initially. The search for those forms was quick but cursory, based on the immediacy of SSA's need to respond to the investigation. (As indicated below, additional forms have since been located.)

Congressional testimony regarding Aurora indicated that 15 uncompleted accounting forms were located at the Foundation's office by investigators. We found that 8 of these were current requests for the accounting period ending March 1999 and would not have been considered late until after June 30, 1999 (at which point Aurora was not in business).

The other 7 requests were for the period ending October 1998 and were actually 'second requests' that must have crossed in the mail with the initial completed forms. Our physical search, which is not yet completed, located 5 of the 7 completed forms. In light of the above facts, it would be inaccurate to assume that our accounting requests to the Aurora Foundation were going unanswered.

*B. How many accounting reports did you receive from Aurora in each of the years during which Aurora was a rep payee for Social Security/SSI beneficiaries? How does that compare with the number of beneficiaries for which Aurora was rep payee during each of those years?*

**SSA Response**

The exact number is unknown. An annual account form for each beneficiary is sent to *all* representative payees (except State institutions participating in the triennial onsite review program) to return to SSA showing how benefits were used during the preceding 12-month period. Aurora was payee for many individuals for varying lengths of times. Therefore, they would have had varied reporting times for each SSA beneficiary and for some, Aurora would not have been required to complete an accounting form because they were payee for less than a full year. Our computer records show that Aurora returned its accounting reports timely except for one March 1999 report. (Discussed below.)

*C. Why did Aurora's failure to submit so many accounting forms not result in a closer examination of its operations by SSA?*

**SSA Response**

We reviewed the non-responder activity for Aurora within the confines of our systems structure. In looking at the non-responder list for November 1999, which covered the accounting period ending March 1999, we found only one name on that list for which Aurora was representative payee. Interviews with local office employees revealed that Aurora filed its accounting reports on time. The forms we have retrieved to date also indicate that, with the exception of the last month of business, accounting reports were filed.

*D. Do you agree or disagree with the IG "belief" that "adequate monitoring" would have detected problems with Aurora sooner, better protecting at least some of the benefits that were lost?*

**SSA Response**

Because the owner of Aurora was essentially running a criminal enterprise and diligently trying to deceive SSA, it would have been extremely difficult for SSA to detect problems early, especially since no complaints were received. However, given the unfortunate outcome of this case, we believe more oversight is needed to ensure that beneficiaries are provided the requisite protection. While SSA does monitor representative payee performance in a number of ways, including accounting for benefits, timely reporting of changes, and resolution of complaints from beneficiaries, increasing our monitoring capacity will enable us to strengthen our oversight of the program. Therefore, we have implemented an expanded monitoring program (described in our response to question 4) and we are continuing to look at other improvements through our representative payee task force.

*E. Are you still searching for files from Aurora? Have you found any additional files? If so, how many?*

**SSA Response**

In May 2000, SSA undertook on its own motion to search for all of the Aurora accounting forms. Aurora was representative payee for 121 beneficiaries at the time of its closure. After reviewing our beneficiary records, we determined that 74 forms should have been filed and been retained. Accountings would not be available on the remaining client population because the 12-month anniversary for the accounting had not yet arrived or the request was made when Aurora closed its operation. Of the 74 forms that were filed (according to our computer records), we have located 40 forms to date. We were unable to find 12 forms in storage though our computer records showed that they had been filed. Our search for the remaining forms continues. As of this date, we have not completed our search of the 6 million forms returned yearly. We believe this manual search will locate an additional 15–22 forms. The volume of forms we receive and the method of storage hampers our retrieval efforts. We are exploring ways to store these forms so that they are more easily retrieved.

*F. What other examples are there of rep payees that fail to submit accounting forms as required? What has been SSA's response in other cases in the past? Do you expect that response to change?*

#### **SSA Response**

A December 1996 IG report, Monitoring Representative Payee Performance: Nonresponding Payees, showed approximately 76 percent of non responding representative payees were parents and other relatives with custody. Mothers with custody composed the single largest group; agencies and institutions were the most common high-volume nonresponding representative payees.

SSA's policy requires the field offices to consider paying the beneficiary directly, or changing a payee when the current representative payee will not cooperate after repeated attempts to obtain the required accounting form. This policy is difficult to administer when the majority of nonresponders are parents with custody of minor children and other concerned relatives (e.g., spouse, child for parent, grandparent, etc.). When an organization does not respond, it is considered a "triggering event" for a review of such payees. (See 4.A.) However, we are reviewing the nonresponder process to determine other alternatives that would assist us to obtain the required accounting form from all individual and organizational representative payees.

*2. Why has it taken so long to implement the IGs recommendation about non-responding payees? In December 1996 the Inspector General made specific recommendations regarding monitoring non-responding payees, specifically on following up non-receipt of reports and verifying local office action. SSA is now proposing to conduct these checks. But why wasn't action taken in the last 4 years? Obviously you think this step will help reduce fraud and abuse or you wouldn't be moving forward now. How many abuses might have been prevented if you had followed the IG's advice three and a half years ago? What amount of benefits would have been protected in the Aurora case if the first instance of non-response had resulted in the selection of a new payee? The second? Third?*

#### **SSA Response**

In the December 1996 report, Monitoring Representative Payee Performance: Nonresponding Payees, the IG identified the number of representative payees who did not respond to requests for annual accounting after 1 year and recommended an improved system for tracking nonresponding payees.

We agreed that SSA should retain historical data on nonresponding payees and indicated that a future enhancement to the Master Representative Payee File systems plan would include the control and tracking of the annual accounting process. These activities have yet to be assigned implementation dates due to competing high priority Agency initiatives, such as the Title II Redesign. However, we did put in place procedures which require field offices to input data in the Master Representative Payee File, via the Representative Payee System (RPS), that documents the pertinent facts surrounding a payee change, including nonresponse for annual accounting. This documentation is considered when determining a representative payee's suitability for future appointments.

The recommendation to develop a more immediate and appropriate method (e.g., suspension of benefits, immediate change of payee with final accounting from former payee) to be used in conjunction with tracking to obtain accountings from nonresponding representative payees was delayed pending the results of additional IG work as described in the September 1999 report, Nonresponder Representative Payee Alerts for SSI Recipients.

In response to that report, we convened a workgroup to identify which representative payees do not return the accounting forms, their relationship to the beneficiary, and compliance history; and to research what legal/statutory authority the Agency could use to put any revised procedures in place. The focus of the workgroup was to examine the feasibility and advisability of changing our procedures to allow for redirecting benefit checks to the field office address in an attempt to obtain the required accounting form. The workgroup's findings and recommendation are being reviewed.

Separate from the December 1996 IG report, in March 1998 we developed guidelines and began conducting in-depth reviews of fee-for-service organizations. It was the notification of a site visit which caused Mr. Gamble of the Aurora Foundation to turn himself in to the FBI. We are unable to determine the amount of benefits that would have been protected had Mr. Gamble received the notice prior to April 1999.

*3. Where is the documentation? The IG believes that retention of supporting documentation for the failure to timely complete rep payee accountability forms and the*

*ability to easily retrieve these forms is essential to the identification and ultimate prosecution of rep payees for fraud or misuse. According to the IG, your own procedures say that rep payee accounting reports must be retrievable in the event the form must be reviewed for misuse or fraud allegation. Yet your offices are required to send these documents to an outside storage facility. Where are local offices storing these documents today? What instructions are your local offices following?*

**SSA Response**

We process over 6 million annual accounting forms each year. Monthly, we send out approximately 1/12 of the total annual accounting forms. When returned by the representative payee, the forms are stored together by accounting month or in a box by SSN and have a 2-year retention period; the 8 processing centers are responsible for storing the completed forms. The majority of forms are stored onsite (or in rented space in close proximity to the processing center), or at SSA's Security Records Center in Boyers, PA.

*4.A. Should organizational rep payees be subject to audits? More specifically, should any organization be allowed to serve as a rep payee without being able to submit to SSA an annual audit of its operations?*

**SSA Response**

With rare exceptions, it has been our experience that organizational representative payees perform their duties satisfactorily. An OIG report on representative payee performance (September 1996) found that organizational representative payees as a group are among our best representative payees, with a low incidence of poor performance. We believe requiring an annual audit of an organization's operations may not be warranted, but we are assessing the impact such a requirement would have on organizational representative payees.

We recognize that even though the incidence of misuse by organizational representative payees is infrequent, that is no consolation to a beneficiary who has lost his or her much needed benefits. We have several new initiatives underway that will help prevent misuse by organizational representative payees. During one of these initiatives, site reviews described below, we will obtain and review copies of any external audit conducted.

*Triennial Site Reviews*—SSA has begun a review of all fee-for-service representative payees and all volume representative payees serving 100 or more beneficiaries on a triennial cycle. In addition, we will review individuals who serve as representative payee for 20 or more beneficiaries. These reviews will ensure representative payee compliance through a face-to-face meeting and examination of a sample of beneficiary records; expenses may be corroborated with providers of the services they provide to the beneficiary. An added benefit of this initiative will be improved lines of communication between SSA and the representative payee.

*Annual Verification of Bonding or Licensing*—Non-governmental fee-for-service representative payees will be required annually to show that they continue to meet the bonding or licensing requirements for charging a fee for their representative payee services.

*6-Month Site Visits*—SSA will visit fee-for-service representative payees 6 months after their appointment to ensure that they fully understand their duties and responsibilities, and are on the right track with respect to accounting for the funds, record keeping and reporting.

*Random Reviews*—SSA will conduct reviews of a random sample of 30 percent of volume representative payees and all fee-for-service representative payees that are not reviewed (in the current year) as part of the triennial cycle. We will review a sample of beneficiaries the payees serve for compliance with our policies and procedures.

*Quick Response Checks*—SSA will continue to conduct reviews of representative payees as needed in response to certain "trigger" events such as third party reports of misuse or complaints from vendors of failure to receive payment.

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

*B. How many organizational rep payees currently have their own operations audited?*

**SSA Response**

Some organizational representative payees currently are subject to audits because they are State or local agencies, or because of IRS regulations. Because this is not

a requirement for appointment as a representative payee, we do not have this information.

*C. How many organizations might no longer be eligible to serve as rep payees if this requirement were made and enforced?*

**SSA Response**

While we do not know how many, we believe that it is reasonable to assume that some portion of our organizational representative payee population (particularly the smaller, volunteer representative payees), would choose not to serve as a representative payee if they had to absorb the added expense of an annual audit.

*D. Could other payees be found in those cases?*

**SSA Response**

Considering that the beneficiary population served by these organizational representative payees includes those who have no family members willing or able to serve as representative payee, we believe our field offices (FOs) would have difficulty in finding alternate representative payee sources if the pool of payee candidates was reduced.

*5. Are SSA screening procedures adequate? In his testimony, the IG points out that in terms of the screening and selection of rep payees, SSA essentially conducts a records verification of certain documents such as drivers licenses, state identification cards, credit cards, and bank books. However, SSA does not verify the accuracy of this information. Nor does it provide credit or security checks to determine if the potential payee has financial problems, credit problems, or may have been convicted of any other felony. In March 1997, the IG made specific recommendations to SSA to conduct a more thorough screening of potential rep payees. Why weren't these suggestions adopted? Are you currently implementing any of the IG recommendations regarding the conduct of a more thorough screening of potential rep payees? If so, what is the status?*

**SSA Response**

Before selecting any representative payee applicant, SSA is required by law to conduct an investigation of that applicant's suitability. The Social Security Act, at section 205(j)(2)(A) and (B) and section 1631(a)(2)(B)(i) and (ii), requires SSA to conduct a face-to-face interview with the applicant for the purpose of verifying:

- The applicant's identity,
- The applicant's SSN (or Employer Identification Number (EIN)),
- Whether the applicant was convicted of a violation of section 208 or 1632, and
- Whether the applicant had ever been determined to have misused benefits.

SSA does not perform credit or security checks. In conjunction with the December 1994 Report to Congress on the feasibility of conducting criminal background checks, preliminary research indicated that background investigations would be prohibitively expensive. However, we are currently exploring whether criminal background or credit checks are now economically feasible.

Following are the IG's March 1997 recommendations and SSA's responses:

**IG:** During custody checks, verify payees' statements made on the application and during the interview.

**SSA:** We have revised our operating instructions to indicate that FOs should use whatever means available to verify an applicant's statements, particularly an allegation of custody, including contact with a reliable third party. Offices are expected to exercise judgement in deciding when verification is needed.

**IG:** For agencies, institutions, or other volume payees, determine whether the potential payees' record keeping systems are sufficient to ensure that beneficiaries' needs will be adequately met.

**SSA:** We agree that volume representative payees' record keeping systems should be sufficient to ensure all beneficiaries' needs are met. At the initial interview, volume representative payees are asked to provide SSA with information regarding their systems. We have augmented our operating instructions to reflect that volume representative payees must provide a description on how beneficiaries' monies are recorded and disbursed. Additionally, in June 2000, we began visiting fee-for-service payees 6 months after their appointment as payees to ensure they fully understand their duties and responsibilities. (See answer to 4.A.)

**IG:** Conduct suitability checks only for payees intended for selection. We do not believe that SSA needs to conduct checks for all payee applicants.

**SSA:** We believe that to ensure the selection of the best possible representative payee, the suitability of all applicants must be investigated. Who the payee should

be cannot always be predetermined. A suitability check is one way to decide which representative payee is preferable.

*6.A. What licensing or bonding requirements should organizational rep payees have to satisfy? SSA's proposal would require only organization payees who perform this service for a fee to be licensed and bonded. Other witnesses supported requiring licensing and bonding of all organizational payees and you indicated openness to considering expanding your proposal in this direction. What arguments can you think of against requiring licensing and bonding in all cases? Do you support those arguments?*

**SSA Response**

SSA requires organizational representative payees who are filing to be fee-for-service representative payees to be bonded or licensed. The bonding requirement is an insurance contract guaranteeing payment to a third party on behalf of the organization in the event of unforeseen financial loss by the action or inaction of an employee. For the purpose of payment for services, the licensing document must be issued in the State in which the agency serves as representative payee and permit the agency to:

- conduct business or operate in the State (generally referred to as an operating license), or
- provide a specialized service to residents of the State (e.g., licensed to provide Medicaid services).

Certainly the best argument against requiring licensing and bonding of all organizational representative payees may be the expense to the payee and the resulting loss of available payees. Recently, a task force has been appointed to consider the extension of bonding to non fee-for-service organizational representative payees and to individual representative payees who serve a significant number of beneficiaries. We need additional information about bonding requirements and the effect required bonding would have on volunteer nonprofit organizations that serve SSA beneficiaries. We need to evaluate the extent to which mandatory bonding or licensing on these organizations would burden them with additional cost and how it would effect our ability to recruit representative payees.

*B. Your original proposal implies that higher standards should be applied to organizations that serve as rep payees under fee-for-service arrangements? Is that justified? Do more allegations of abuse result from fee or non-fee organizational rep payees? How about convictions?*

**SSA Response**

Higher standards may be applied to fee-for-service organizational representative payees because they are approved to collect a fee for their services from the beneficiaries' funds. Therefore, we believe it is reasonable to require higher standards.

SSA has no evidence that abuse of funds is more (or less) likely to occur with a fee-for-service organization than with a non fee-for-service organization. We are also unaware of any conviction statistics because the U. S. Attorney determines which cases to prosecute.

*C. What proof does an organization applying to be a rep payee have to provide SSA regarding whether it is licensed or bonded? Does SSA check this information annually to ensure that the organization remains licensed or bonded? How? Should an organization lose its licensing or bonding, how quickly will SSA know of it? What response will SSA take?*

**SSA Response**

The organization is responsible for submitting all evidence required proving it qualifies to become a fee-for-service representative payee. The bonding or licensing documents are part of this evidence; if it cannot be determined that the organization is bonded or licensed, the FO will contact a representative of the company or State agency which issued the agreement or license. Additionally, the FO will obtain the necessary information, such as the protection given under the bonding agreement or the purpose of the license.

Recently, we implemented new procedures for fee-for-service and volume representative payees which will increase our monitoring of these payees (see our response to Question 4). One of the new features (beginning this year) will require fee-for-services representative payees to annually prove they continue to meet SSA requirements that allow an organization to collect a fee. This certification will require the payee to present proof of current licensing and/or bonding. If an organization no longer meets all qualifying factors (including licensing or bonding), we will

revoke their authorization beginning with the first day of the month after the month in which the decision is made.

The organization is supposed to notify SSA of any events that would effect benefits including loss of licensing or bonding. Information of this nature may also be passed on to SSA from a third party. There is no national, State or local system that has such information. And, because bonding would be through a private company of the organizations' choosing and licensing could be through any one of the thousands of State or local governmental licensing bureaus, such a computer link on an individual basis would not be feasible.

*D. One recent case of rep payee abuse involves an individual who took over the operation of a non-profit group that previously did not provide payee services. What can SSA do to prevent fraud in such cases?*

#### **SSA Response**

The task force appointed by the Commissioner is reviewing different approaches to screening representative payees, especially the possibility of doing credit and criminal background checks. By increasing SSA's screening and monitoring activities we hope to increase our capacity to improve selection of representative payees that serve some of our most vulnerable of our beneficiaries.

*E. Section 2 of your proposed legislation states that a non-governmental organizational representative payee must be licensed in each State in which it serves as a representative payee (provided that licensing is available in such State). It is our understanding that in some States, while the State does not require licensing, a county or locality might. Under your bill, would a representative payee still be required to be licensed in these circumstances? If so, should it be required?*

#### **SSA Response**

Currently, the law requires that a fee-for-service organizational representative payee be licensed or bonded. If our bill were enacted, organizations that file to be fee-for-service representative payees would have to meet the licensing requirement as well as a bonding requirement. FOs are expected to be aware of their State, county and local laws in their service areas when it comes to businesses requiring operating licenses. This draft bill would not change this requirement.

*7. Should credit checks be done on all potential rep payees? You can't buy a car, much less be put in charge of another person's finances, without a credit check. Does SSA perform a credit check on potential rep payees, including individual rep payees? Has a sample ever been performed to determine what SSA would find if it did so? Especially if non-fee organizational representative payees are not required to be licensed and bonded, should such organizations at least be required to pass a credit check? What would that cost? Would that otherwise happen in the course of bonding?*

#### **SSA Response**

SSA does not perform credit or background checks. In conjunction with the December 1994 Report to Congress on the feasibility of conducting criminal background checks, preliminary research indicated that background investigations would be prohibitively expensive. Our task force is going to revisit this issue again to see if criminal background checks can be incorporated into the program.

Conducting credit checks on all new representative payee applicants would require an initial outlay of \$162,500 for hardware and a yearly cost of approximately \$10 million. We are in the process of examining various levels of bonding to determine at what point the underwriter would perform credit checks and background checks on those individuals in the organization who are in positions that allow them to determine the flow of funds. We believe that the bonding requirement in some cases may be used in place of SSA performing these types of checks.

*8.A. What other standards are there for rep payee services? I understand that a witness before the Senate Aging Committee testified that she became a rep payee for a number of beneficiaries after applying over the phone. Is that true? Can that still occur?*

**SSA Response**

When the witness, representing her organization, first applied to become a representative payee, and subsequently applied to be a fee-for-service payee, she appeared in the local field office and filed in person. She visited the field office on numerous occasions and was known to them. It is SSA policy that after a representative payee has been screened and approved it is possible (and permissible) to execute subsequent representative payee applications over the phone when additional beneficiaries are assigned to that approved payee.

When applying to be a representative payee, the representative of that organization must provide: the name of the organization and its Employer Identification Number, identify any debts that the beneficiary has to the organization, and identify other beneficiaries for whom the organization is representative payee.

The witness referenced here was an organizational fee-for-service payee. The additional standards for a fee-for-service payee are that they must serve at least 5 beneficiaries and be a:

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

*B. Is there a minimum age requirement for a person to be a rep payee? How old are the youngest payees? How many are there this age?*

**SSA Response**

The law requires that a beneficiary under the age of 15 must have a representative payee and, therefore, someone under that age, who is receiving benefits, could not serve as a payee. Further, rarely would we appoint someone under the age of 18 to be payee; however, on a case-by-case basis, it can occur, for example a mother under age 18 whose child is on our rolls could serve as representative payee. Provisions for direct payment under age 18 are provided in 20 CFR 404.2010(b) for title II and 20 CFR 416.610(b) for title XVI. We do not know the number of representative payees under age 18 because we do not maintain data on the ages of our representative payees.

*C. Most rep payees are individuals and not organizations. Do you have any concerns about fraud involving individuals who serve as payees, as opposed to organizations, which is the thrust of SSA's legislative proposal? What are some recent examples of fraud involving individual rep payees? Why did you not include suggestions to address these cases?*

**SSA Response**

As you stated, most representative payees are individuals and most of those are relatives with custody. We are concerned about the potential for abuse and have built numerous protections into the representative payee systems to guard against unknowingly assigning someone who poses a risk. Currently, we capture data about misuse, representative payee related fraud convictions, self-reported felony convictions, etc. In recognition of the fact that such individuals may pose a problem, we will conduct site reviews of individual representative payees who serve 20 or more beneficiaries. We also believe it would be useful to include individual representative payees serving 20 or more beneficiaries in the legislative proposal and permit issuance of misused benefits. We will continue to explore other alternatives for minimizing the potential for fraud.

Recent examples of individual representative payee fraud involve non-reporting of death or loss of custody of the beneficiary in order to continue receiving checks, fraudulent applications and forgery of checks.

*9.A. Can felons serve as rep payees? Under what conditions may convicted felons serve as rep payees, whether as organizations or as individuals?*

**SSA Response**

Under current law, the only criminal convictions prohibiting a person's appointment as representative payee are felony convictions of sections 208 or 1632 of the Social Security Act. However, our representative payee application does ask if the applicant to be an individual representative payee has been convicted of any felony, and, if so, the specifics of that conviction (see B. below).

A representative payee applicant convicted of a violation (other than sections 208 or 1632 of the Social Security Act) is generally not a suitable payee. It is in the beneficiary's best interest for SSA to find an alternative representative payee or

make direct payment rather than appoint a convicted felon as a payee. If there are no alternative payees and direct payment is prohibited, we evaluate the impact of the felony on the applicant's ability to serve as payee. We consider the nature of the crime, the applicant's relationship to the beneficiary, how recently the crime was committed, and any indications of a recurrence of criminal behavior. If it is determined that the payee applicant remains suitable, we document the decision on the RPS and establish diaries to closely monitor the payee's performance. With respect to organizational representative payees, we do not ask whether the applicant (on behalf of the organization) has been convicted of a felony because an organization cannot be convicted of a felony. However, our taskforce is also looking at the possibility of background checks for organizational representatives.

*B. How does SSA enforce current restrictions on convicted felons serving as rep payees? Does SSA actually check its records or other databases or does it rely on the word of the individual applying to be a rep payee? How many people are denied becoming rep payees each year because of current restrictions?*

**SSA Response**

SSA screens representative payee applicants against agency records of such violations. Quarterly reports from OIG identify individuals convicted of violating sections 208/1632 of the Social Security Act and also individuals convicted under other statutes when the violator was a representative payee. This information is stored on the RPS and is displayed to the technician to aid in making a representative payee selection. The RPS systematically blocks the selection of any individual convicted of a violation under sections 208/1632 of the Social Security Act.

In addition, during the application process we ask whether the applicant to be an individual representative payee has ever been convicted of any felony. If yes, we ask what was the crime, date of conviction, sentence, if imprisoned when released and, if on probation, when it will end.

Last year, 981 individuals were not selected due to felony convictions.

*C. Based on your records, how many convicted felons serve as rep payees today? Is that number expected to grow in the future?*

**SSA Response**

Our records indicate that about 92,000 or two percent of representative payees have self-reported felony convictions but field office investigation has shown that almost one half of the 92,000 representative payees reporting themselves as convicted felons actually reported the information in error. Reasons for the inaccurate reporting are varied; representative payees sometime misunderstand the question or think it refers to the beneficiary; others report misdemeanors as felonies. In addition, payees with a felony conviction who are selected are usually parents or relatives with custody of the beneficiary. We expect this number will increase in conjunction with the expected overall increase in the representative payee population.

*D. Of cases involving allegations of abuse by rep payees, how many involve previously-convicted felons? How many cases involving convictions for abuse by rep payees involve previously-convicted felons?*

**SSA Response**

We do not know the number of allegations of/convictions for abuse that involve previously convicted felons. However, a study of previously convicted felons serving as representative payees found the vast majority (97.4%) of payees who reported that they were convicted felons properly discharged their payee duties.

We do fully investigate allegations of abuse by a representative payee and document any findings on the RPS. If a representative payee is convicted under statutes other than sections 208/1632, we display this on the RPS and if any details of the conviction are available we describe it in the text area of the RPS. This information will aid the technician in making a payee selection. Also, as noted previously, when a previously convicted felon is appointed as a payee, we establish diaries and monitor the payee with personal contact follow-ups.

*E. If the law were changed to prohibit all convicted felons (including individuals convicted for felonies "">not related to Social Security or SSI benefits) from serving as rep payees, what impact would this have on beneficiaries? Would you expect more or less abuse by rep payees of vulnerable beneficiaries?*

**SSA Response**

Prohibiting all convicted felons from serving as representative payee would have a negative impact on our beneficiaries. This could result in our prohibiting a parent

who stole a car at age 18 from serving as representative payee for his/her child. A very large percentage of these payees are relatives with custody of the beneficiary. Finding an equally qualified person to see to the needs of the beneficiary in these circumstances is not likely. As noted above, our study of previously convicted felons serving as representative payees found the vast majority (97.4%) of payees who reported that they were convicted felons properly discharged their payee duties. Even among the remainder, no misuse was discovered. Therefore, prohibiting all convicted felons from serving as representative payees would not significantly change the amount of representative payee abuse.

*F. If a rep payee misuses benefits, presumably SSA will attempt to locate another rep payee for the beneficiary. However, the first rep payee may never be convicted of the misuse, especially if the loss is not large. For example, the IG provides testimony about a father who stole SSI benefits from his son for about two years, yet was never prosecuted. Does that father serve as a rep payee for any beneficiary today? Could he? Does SSA maintain records about such (former) rep payees? For example, does SSA know how many current rep payees have misused benefits in the past?*

#### **SSA Response**

The father in question does not currently serve as representative payee for any beneficiary. While it is possible that he could serve as a representative payee at another time or for another beneficiary, SSA would not appoint him unless direct payment was not possible, there was no alternative payee, and there was compelling evidence that such an appointment would be in the beneficiary's best interest. When misuse is established, even if the IG does not secure a conviction, SSA inputs that data into the RPS. If the misuser files again, the interviewer will be alerted to his/her past poor history and it will be considered when making the appointment. According to the RPS, there are 1,539 current representative payees who have misused benefits in the past.

*G. SSA has proposed new civil and monetary penalties against payees who misuse benefits. Would persons subject to these penalties also be specifically disqualified from serving as a rep payee again?*

#### **SSA Response**

The proposed new civil monetary penalties proposal does not include any provision for specifically disqualifying as a representative payee individuals who were subject to these penalties because they misused benefits. However, we believe that this would be a good change to the proposed extension of the civil monetary penalties provision.

*10. Why is SSA only now implementing some recommendations? In the IG's testimony, he highlights a number of recommendations his office has made to SSA regarding the rep payee oversight process over the years. Some of these have never been implemented, some are only now being implemented. Why? Which recommendations has SSA not implemented or does not intend to implement and why?*

#### **SSA Response**

At SSA's request, in the last several years the OIG has conducted a series of reviews of our representative payee monitoring process to provide recommendations on how to improve the program's effectiveness and efficiency. As a result, the OIG made several recommendations, from changes to the Representative Payee Report form used to collect information from our payees, to systems changes on how to better support the program. SSA evaluated the recommendations within the framework of our competing priorities and resource limitations. We have implemented several recommendations including:

- Developing and distributing a handbook for organizational representative payees.
- Issuing instructions to field offices to screen payees more thoroughly.
- Conducting onsite reviews of fee-for-service and volume payees.
- Developing and distributing a pamphlet for beneficiaries informing them of their rights and responsibilities.
- Changing the focus of the current process which relies on accounting forms to monitoring and compliance of the payee.

In addition, we have started to implement the following recommendations. These involve systems changes which require longer lead time to implement:

- Expand our automated Representative Payment System.
- Instruct field offices to improve controls over retention of supporting documentation of non-responder alerts and accounting forms.

- Develop an accounting form tailored to organizational payees.

There are several OIG recommendations that SSA did not adopt:

**IG:** SSA should exempt from annual reporting those payees who complete extensive reporting for an official or an external guardian (i.e., legal guardians). SSA should periodically certify that these payees still complete the alternate accounting.

**SSA:** We did not adopt this suggestion because of the statutory requirement to obtain accountings from all payees (this was noted by OIG), and because many of these payees have creditor relationships with the beneficiaries, and few have custody.

**IG:** SSA should conduct suitability checks only for payees intended for selection. We do not believe that SSA needs to conduct checks for all payee applicants.

**SSA:** We believe that suitability checks are necessary for all applicants in order to ensure that the best payee applicant is selected.

**IG:** Revise the payee accounting form to include questions which focus on events that payees commonly fail to report.

**SSA:** The representative payee accounting form is designed to monitor the payees' use of the benefits, and to elicit information on how any unused funds were conserved. The form also asks other payee-related questions such as whether the representative payee has been convicted of a felony or if the custody of a child has changed. Further, instructions sent with the accounting form explain other events to be reported. We believe asking questions not related to use of benefits would dilute the primary purpose of the form. Other forms are available to address eligibility and should be used.

*11. Why are abuses rising? According to the IG's office, allegations of fraud involving rep payees have increased on average from 206 per month in 1998 to about 1,100 a month so far this year. I know the IG's office has grown during that time, enhancing its ability to investigate abuse. But is there fire under this smoke? How do you account for such a rise in allegations?*

#### **SSA Response**

While we believe the IG may best be able to respond to the rise in receipts of allegations of fraud involving representative payees, several factors may play a role in explaining the increase. One factor is the establishment of the OIG Hotline, which now receives calls directly from individuals who previously contacted SSA field offices. The FO's often handled these inquiries with no involvement by the IG. Other factors that contribute to the rise in allegations may be the extensive publicity of misuse cases and an increase in the number of investigators. Further, the Agency has placed increased emphasis on the representative payment program.

*12. How does H.R. 3666 differ? In addition to legislation that SSA has forwarded on this issue, Congressman Bob Wise of West Virginia has introduced H.R. 3666. How does this bill differ from the proposal SSA has put forward? It appears to the subcommittee that the retroactivity under H.R. 3666 is without limit, meaning any benefits determined to have been misused in the past, whether in 2000 prior to enactment, or in 1999 or even in 1989 and before are eligible for reimbursement provided other conditions are met. Is this reading correct? If enacted, should a limit be placed on the retroactivity of legislation like H.R. 3666? What should that limit be?*

#### **SSA Response**

We believe that Representative Wise's bill moves in the right direction in attempting to make beneficiaries whole when their benefits have been misused by their representative payee. In that respect we support H.R. 3666. Like the SSA's proposal, this bill would improve the safeguards for beneficiaries with representative payees. Beneficiaries with representative payees are some of the most vulnerable of beneficiaries.

As drafted, H.R. 3666 is broader than the SSA proposal. However, this may have been more a result of drafting than of intent. Currently, when any representative payee has been determined to have misused an individual's benefits, SSA can reissue the Social Security or Supplemental Security Income benefits only in cases where there was negligent failure on SSA's part to investigate or monitor the performance of the payee. Our proposal would provide that when an organizational payee misuses a beneficiary's benefits, SSA would reissue the benefits automatically, without regard to whether SSA failed to investigate or monitor the performance of the payee. Thus, a distinction between SSA's proposal and H.R. 3666 is that our proposal is limited to cases of misuse by organizational payees. We have recently, however, stated that we would support expanding our proposal to include individual payees representing 20 or more beneficiaries.

With regard to the effective date issue, we agree that the retroactivity under H.R. 3666 appears to be without limit. However, the provision in the Social Security Act that allows us to make beneficiaries whole in certain misuse situations was included in the Omnibus Budget Reconciliation Act of 1990 (OBRA '90—P.L. 101-508, enacted 11/5/90), which was effective upon enactment. Therefore, H.R. 3666 may be limited to that effective date. Subsequent to the submission of your questions, Congressman Wise introduced another bill, H.R. 4651. This bill parallels the Administration's proposed bill except that it has an OBRA '90 effective date.

Having done further review of the availability of information contained in our electronic systems, we now believe that it would be preferable to make provisions relating to re-issuance of benefits effective with respect to misuse determinations made in January 1995 or later. We believe this date is the earliest point in time that SSA has reliable information on our computer records for cases that involved misuse of benefits. Additionally, this effective date would allow SSA to reissue benefits in the affected misuse cases even if the misuse determinations have already been made. Included among such cases would be the beneficiaries whose benefits were misused by Ivy Services—a misuse case mentioned in Inspector General Huse's testimony. (Misuse determinations were made in this case in 1997.)

SSA's Office of the Actuary advises that whether the effective date for SSA's proposal remains unchanged (i.e., effective for misuse determinations made after 1999) or is made effective retroactive to January 1995, the proposal is still estimated to have a negligible effect on outlays from the OASDI trust funds.

*13. What has been done about payments to deceased rep payees? Please tell us what steps have been taken to prevent continued payments to rep payees who have died. We now allow for recovery of this money as if it were an overpayment. How much is being recovered? Compared with what total overpayment? Do you have further suggestions for better preventing payments after rep payees have died?*

**SSA Response**

SSA has conducted a study of cases that were initially identified as potential "payments to dead representative payees." Our study revealed that in most cases, we were in fact paying benefits to a new representative payee. However, incorrect coding indicated otherwise; that is, we were paying a new person, but failed to update the new payee's social security number on our systems.

Our study did find several instances where payments were being certified to deceased representative payees, however, and, therefore, SSA will be performing a match of death computer files against our representative payee system and investigating all appropriate cases. We plan to complete this within the next 6 months.

We assume your overpayment recovery questions stem from the recently enacted Foster Care Independence Act of 1999 (P.L. 106-169). This law made representative payees personally liable for benefits they received on behalf of a beneficiary after the beneficiary's death and has no bearing on cases where the payee is a deceased individual. In fact, as the benefits in these cases belong to the beneficiary (who is still entitled) and not the representative payee, they do not represent overpayments.

*14. Why haven't certain Freedom of Information Act requests described by Mr. Geffert been granted? Are there other Freedom of Information requests involving rep payees that SSA has denied in the year? For what information? In each case, what has been the justification for the denial?*

**SSA Response**

We denied Mr. Geffert's request for records pertaining to the Aurora Foundation because the Office of the Inspector General (OIG) advised us that the investigation was ongoing and disclosure of investigatory records could interfere with the investigation. The documents were withheld under Freedom of Information Act (FOIA) exemption (b)(7)(A). Mr. Geffert has resubmitted his request, and while we have been advised that the investigation is still ongoing, we expect to release some documents, including the Aurora screens in the Representative Payee File and Aurora's applications for bonding and licensing. We have informed Mr. Geffert that this information will be released as soon as the U.S. Attorney involved in the Aurora case allows release.

We have identified only two other similar FOIA requests involving representative payees within the past year. Case NR5363 originally requested an electronic copy of the Master Representative Payee File. The requester agreed to withdraw the request after we explained that extensive reprogramming followed by manual review would be necessary to delete personal information protected by the Privacy Act which we would have withheld under FOIA exemption (b)(6). Case NR1597 involved allegations of misuse by the Association for Retarded Citizens of Rutland, Inc. In

this case, the investigation was closed. Portions of the documents were deleted or withheld under FOIA exemptions (b)(5), (b)(6), (b)(7)(C), and the grand jury materials were withheld under FOIA exemption (b)(3).

In addition, Subcommittee staff forwarded the following question:

*15. How is the foreign representative payee program different from the domestic program? What safeguards are in place to monitor the foreign representative payee program?*

**SSA Response**

Generally, the same policies directing development and selection of representative payees and use and accountability of benefits that are in effect domestically are applied outside the United States. However, significant differences exist between the domestic and foreign representative payee programs, and modification of procedures is frequently required. For example, suitable representative payees are usually not difficult to find outside the United States; most of the beneficiaries requiring management of their benefits are children under age 18, not homeless individuals or those living in boarding house or institutional situations. More typically, beneficiaries are living in family settings with close relative-payees who are interested in their care and well-being. In addition, in some countries such as Canada, there is a large number of public officials empowered by law to act for mentally incompetent individuals as their representative payees.

Through SSA's ongoing program of validation surveys and other extensive studies of the foreign program, we have regularly reviewed the foreign representative payee program and have gained an awareness of unique customs and cultural differences in various countries that might influence our selection of a payee or the payee's ability to perform his or her duties. For example, in the Philippines, the wife or mother usually assumes responsibility for the financial resources of the family. For this reason, a mother will be preferred over a father as a representative payee for the child. If the father is selected, a comprehensive explanation supporting this decision must be included in the file.

Another standard practice for Foreign Service Posts (FSPs) that service a significant beneficiary population is the establishing and maintaining of records of representative payees who have been proven to be unsuitable. The FSPs consult these records during the payee selection process to assist them in choosing the best payee possible for the beneficiary.

Further, there is an extensive history of oversight of the foreign representative payee program to assure that payees are carefully and correctly executing their duties for the welfare of the beneficiary. One such effort is the Foreign Enforcement Program, under which an annual contact is made with every representative payee on behalf of every beneficiary whose benefits are subject to representative payment. The purpose of this contact, in the form of a written questionnaire, is to ascertain that the beneficiary remains eligible for benefits and that the payee is using the benefits for the beneficiary's support and welfare or conserving them in an appropriate manner.

When considering the small size (as of April 2000, there are 31,409 foreign beneficiaries who have representative payees) and unusual nature of the foreign payee role, and the continued effectiveness of the existing safeguards, we believe that the foreign representative payee program succeeds in addressing the needs of beneficiaries outside the United States who are unable to manage or direct the management of their payments.

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Chairman SHAW. And now we have Mr. James Huse, who is the Inspector General in the Office of the Inspector General. Mr. Huse, if you would have a seat at the table.

Mr. Huse?

**STATEMENT OF HON. JAMES G. HUSE, JR., INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION**

Mr. HUSE. Good morning, Mr. Chairman and Congressman Matsui. Thank you for the opportunity to discuss the Social Security Administration's representative payee program.

This critical program is designed to protect the interests of some of the most vulnerable members of our society. Today, I would like to summarize my full statement for the record.

But first, I need to emphasize that the vast majority of rep payees are honest, trustworthy people. However, recent events have shown that this program needs tighter controls to prevent abuses by those entrusted with this great responsibility.

Since fiscal year 1998, we have opened in the OIG 1,352 rep payee investigations, obtained 313 convictions, and identified over \$7.5 million in losses. Several of our cases represent severe abuses, where a number of individuals were victimized.

In my written statement, I highlighted our investigation of Ivy's Social Services, Incorporated, whose owner misused about \$274,000 of beneficiaries' funds for personal purchases over a 15 month period, while serving as a fee-for-service rep payee for 330 individuals.

Our Aurora Foundation investigation is our most recognized case. Aurora was an organizational fee-for-service rep payee that served over 140 disabled individuals. The president of Aurora embezzled about \$300,000 over a 4 year period, of which almost half represented payments issued by Social Security.

Even though Aurora had been a fee-for-service rep payee since 1995, Social Security had never conducted an on-site review. However, at the time of our investigation, Social Security notified Aurora of a pending site visit, based on complaints against it.

We have also encountered significant abuses by individuals serving as rep payees. After receiving a complaint from the Veterans Affairs Inspector General, my office opened an investigation that involved Ms. Jean Bote.

She acted as a professional guardian and rep payee for approximately 20 beneficiaries. Our investigation determined that Ms. Bote misused over \$200,000 in Social Security and Veterans Affairs benefits.

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

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

We believe that the agency needs to strengthen its selection process, because this is Social Security's best opportunity to prevent the misuse.

Social Security also needs to strengthen its rep payee monitoring program. We have recommended that Social Security implement additional controls to ensure that payees do not misuse benefits.

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

On-site reviews are another part of the monitoring program. State institutions that participate in the rep payee program are reviewed every 3 years.

Social Security may also conduct on-site reviews if a problem is brought to its attention. Unfortunately, these reviews are detective, rather than preventative. We believe Social Security should conduct periodic reviews of payees and focus more on monitoring and compliance issues.

Finally, in another review, we found that payments were often made to deceased rep payees. We estimated that since July 1998, about \$17 million in payments were issued to over 2,000 deceased payees. We recommended that Social Security conduct routine computer matches, to ensure that it promptly identifies payees who are deceased, and quickly selects new payees.

Social Security has acknowledged the need to address rep payee oversight issues. And we have agreed to work together with the agency to protect our expertise.

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

I will be happy to answer any questions you may have.

[The prepared statement follows:]

**Statement of the Hon. James G. Huse, Jr., Inspector General, Office of the Inspector General, Social Security Administration**

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

**THE REP PAYEE PROGRAM—A BRIEF OVERVIEW**

SSA provides Social Security and Supplemental Security Income (SSI) benefits to the most vulnerable members of our society—the young, the elderly, and the disabled. Congress granted SSA the authority to appoint Rep Payees for those beneficiaries that SSA determines to be incapable of managing their own benefit payments. Each Rep Payee has a legal responsibility to use SSA's benefit payments for the use and benefit of the beneficiary only. At the present time, about 6.5 million Social Security and SSI beneficiaries rely on Rep Payees to manage their monthly benefits.

There are two major types of Rep Payees—individual Rep Payees and organizational Rep Payees. Individual Rep Payees are typically relatives of the beneficiary, who are entrusted to use such funds in the best interest of the beneficiary. Although individual Rep Payees may at times provide services to multiple beneficiaries, they are prohibited from charging fees for such services. Organizational Rep Payees are typically large institutions that provide care and treatment for beneficiaries residing in such institutions (e.g., Department of Veterans Affairs hospitals, State psychiatric institutions, nursing homes, and extended care facilities). Other types of organizational Rep Payees may include community groups, charitable organizations, and other nonprofit agencies. The Social Security Act allows qualified and authorized organizational Rep Payees to collect a fee for providing Rep Payee services.

## EARLY WARNING SIGNS

Over the last several years, our audits and investigations revealed early warning signs that may have gone unheeded by the Agency. These warning signs existed in both the Rep Payee selection process and during post-selection monitoring process.

**Screening and Selection of Rep Payees**—When SSA determines that a beneficiary is incapable of managing his or her own benefit payments, SSA searches for a suitable Rep Payee. SSA regulations give preference to family members over friends, third parties, and organizational Rep Payees.

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

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

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

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

We believe that the selection process, specifically the suitability determination, should be strengthened. This presents SSA with the best opportunity to prevent improper benefit payments before issuance. In a March 1997 evaluation report entitled, *Monitoring Representative Payee Performance: Roll-Up Report*, we recommended that SSA conduct a more thorough screening of potential Rep Payees.

**Rep Payee Monitoring and Oversight Activities**—SSA has some basic safeguards in place to ensure that Rep Payees do not misuse benefits. SSA requires an annual accounting report from all Rep Payees, for each beneficiary under their care. Additionally, SSA has the ability to conduct on-site reviews of organizational Rep Payees.

**Annual Accountability Reports**—An annual accounting report form, the "Representative Payee Report," is sent to every Rep Payee. The form elicits information concerning the dispensation of SSA funds that the Rep Payee has received, on behalf of each beneficiary.

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

In our September 1999 report entitled, *Nonresponder Representative Payee Alerts for Supplemental Security Income Recipients*, we found that the field offices lacked supporting documentation for the failure to timely complete accountability forms. This lack of documentation resulted in an inability to identify the reasons that Rep Payees had not completed their accounting forms as required. We recommended that SSA instruct field offices to improve controls over the retention of supporting documentation and obtain accounting forms from Rep Payees. SSA disagreed with our recommendation and stated that field offices are required to send these documents to an outside storage facility. We believe that the retention of these documents, and their ability to be easily retrieved, is essential to the identification, and ultimate prosecution, of Rep Payee's for fraud or misuse. Indeed, this is consistent with SSA's written policy. SSA's Program Operations Manual System (POMS) states that payee accounting reports must be retrievable in the event that the form must be reviewed for a misuse or fraud allegation.

*On-site Reviews of Representative Payees*—Another part of SSA's oversight and monitoring of Rep Payees involves on-site reviews. State institutions that participate in the on-site review program are reviewed once every 3 years. In addition, SSA may conduct an on-site review if a problem with a payee is brought to its attention. On-site reviews are visits with the Rep Payee or the administrators of such organizations, and they consist of an examination of the relevant accounting records. Additionally, interviews with beneficiaries are conducted to determine if their needs are being met. Unfortunately, these reviews may not identify Rep Payee abuses until after the fraud has occurred. Further, many beneficiaries are incapable of communicating any problems due to their disabilities—the basis of their need for a Rep Payee in the first place.

In our March 1997 Roll-up report, we made several recommendations to improve the efficiency and effectiveness of SSA's Rep Payee monitoring program. Included in the report were recommendations for SSA to conduct periodic reviews of selected Rep Payees and to change the focus of the current process from accounting to monitoring and compliance.

Finally, in our September 1999 report, *The Social Security Administration's Procedures to Identify Representative Payees Who Are Deceased*, we reported that benefit payments were sometimes made to deceased Rep Payees. In some cases, SSA could not be sure that the funds were ever used on behalf of the beneficiaries for which they were intended. We also reported that SSA does not ensure that new Rep Payees are selected when former Rep Payees have died. In July 1998, from a review of SSA's Death Master File, we estimated that 2,091 deceased Rep Payees received about \$17 million in Social Security and SSI payments. We recommended that SSA: (1) conduct routine computer matches to ensure that SSA promptly identifies Rep Payees who are deceased and; (2) select new Rep Payees in a more timely manner. SSA agreed with our assessments and plans to implement our recommendations.

#### FRAUD CASES HIGHLIGHT PROGRAM VULNERABILITIES

While the vast majority of Rep Payees are honest, trustworthy people, several recent cases have demonstrated that key controls could have prevented major fraud cases. No case better exemplifies this point than the Aurora Foundation case, which was the subject of a television news magazine segment in January 2000, entitled "When Nobody's Looking." Aurora Foundation, Inc. was a high-volume, organizational Rep Payee that served over 140 disabled individuals in West Virginia. Although Aurora had been a fee-for-service Rep Payee since 1995, SSA had not yet performed an on-site review. However, at the time of our investigation, SSA had notified Aurora, by mail, of a pending review based on complaints.

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

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

From November 1996 to February 1997, a SSA Field Office (FO) received approximately 45 complaints of funds being mismanaged by Ivy's Social Services, Incorporated (Ivy's), a fee-for-service Rep Payee located in Phoenix, Arizona and Denver, Colorado. Upon receiving this information from the FO, my office promptly opened an investigation. Our investigation revealed that Ivy's was an organizational Rep Payee for 330 individuals from March 1996 to May 1997. During this short period of time, the head of Ivy's spent approximately \$274,000 of the beneficiaries' money to make personal purchases. In addition to paying off \$65,000 in personal credit card debt, the subject of the investigation also used the funds to furnish, and pay the rent for, three personal residences. In May 1999, the head of Ivy's was sentenced to 18 months imprisonment, and ordered to pay full restitution of \$274,000 to SSA.

We have also encountered significant abuses by individual Rep Payees who are not affiliated with an organization. Ms. Jean Bote acted as professional guardian and Rep Payee for approximately 20 recipients of Social Security benefits. Several

of the beneficiaries for whom she collected benefits were elderly veterans with mental disabilities. In response to a complaint received by the Veterans Affairs Inspector General, my office opened an investigation and determined that she misused over \$200,000 in SSA and VA benefits for her own personal gain. Subsequently, Ms. Bote was sentenced to 37 months incarceration and 3-years supervised release. She was also ordered to make restitution totaling \$200,000 to the five victims. Prior to sentencing, Ms. Bote presented the probation office with a \$200,000 check in anticipation of the restitution ordered.

Since Fiscal Year 1998, our office has opened 1,352 Rep Payee investigations, which have led to 313 convictions and identified over \$7,500,000 in fraud losses. The vast majority of these investigations have involved individual Rep Payees acting on behalf of one individual, as opposed to organizational Rep Payees that are responsible for multiple individuals.

#### WORKING TOGETHER TO FIND COMMON SENSE SOLUTIONS

As SSA has acknowledged the need to address Rep Payee oversight issues, we have agreed to work together with the Agency and provide our expertise and assistance. Specifically, over the next several months, we will work with the Agency to:

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

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

We also believe that with additional Civil Monetary Penalty (CMP) authority, SSA can make sure that Rep Payees who abuse the system are punished, even when they are not prosecuted. The CMP program has proved to be enormously valuable both in preventing fraud from occurring, and in recovering monies stolen from SSA. However, there are currently limitations to pursuing CMPs in the Rep Payee Program.

I would like to illustrate this point by telling you about a father who applied to be the Rep Payee for his disabled minor son in 1996. He received approximately \$10,713 in SSI disability payments for his son's benefit and care. Later, in July 1998, the child's mother applied to be his Rep Payee. It became apparent that the father never had custody of the child, and that he used the payments designated for his son for his personal use for almost 2 years. The father refused to repay the funds to SSA. Because the dollar loss fell below the prosecutive threshold, both the criminal and civil divisions of the U.S. Attorneys Office declined the case for prosecution. At that point, our Office of Investigations referred the case to our Office of Counsel for possible action under the CMP program. Unfortunately, we could take no action in this case because the son was eligible for the payments. Therefore, under existing law, the funds were properly paid despite the fact the child most likely never benefited from them. The father's conversion of these benefits did not constitute a false statement made in order to obtain or retain the benefits—as I said, the benefits themselves were proper. In the absence of specific CMP language pertaining to theft or misuse, the father's theft of his disabled child's benefits had to go unpunished.

Finally, I would like to comment on an important Agency legislative proposal that would counter organizational and individual Rep Payee abuses. In February 2000, SSA submitted a draft Rep Payee bill for consideration by this Congress. This draft legislation would require, among other things, that organizational Rep Payees be licensed and bonded. It also seeks to expand the CMP program to address the improper conversion of benefits by Rep Payees—a scenario described earlier in my testimony. I applaud SSA's recent efforts in this area to deter and detect Rep Payee abuse before it starts.

While I strongly support SSA's recent legislative efforts, there are additional front-end safeguards that may be appropriate. Specifically, individual Rep Payee identity and financial documents should be verified thoroughly, prior to selection of a Rep Payee. Further, large organizational Rep Payees should be subject to financial and background screening prior to selection.

Once a Rep Payee has been selected, more rigorous monitoring would be beneficial. SSA's current business process, for collecting and retrieving Rep Payee accounting forms, should be examined carefully. Additionally, I look forward to SSA's planned on-site reviews, as mentioned earlier. These reviews will be more detailed and thorough than any prior reviews conducted by SSA.

Mr. Chairman, we look forward to working with the Agency and this Committee to improve this vital program. We need to be sure that appropriate Rep Payees are selected and that the benefits are used for the purposes there were originally intended.

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

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Chairman SHAW. You made reference to deceased payees. What happened? Where is the money going when you have a deceased rep payee?

Mr. HUSE. Well, it goes to probably another family member or another person.

Chairman SHAW. Are the checks going out or the bank account that money is being wired into, does that generally have more than one signatory on it? How are they getting the money out to the beneficiary; or if it is being misplaced or misused, how is that?

Mr. HUSE. I am not sure I understand your question.

Chairman SHAW. Well, how are they cashing the checks?

Mr. HUSE. They are cashing the checks, most of these, by electronic funds transfer. By not reporting the death, the automatic payment is made. And as far as Social Security is concerned, the rep payee is still alive, so the funds are then disbursed by family members or spouses, or whatever the situation is.

This is an area that plagues us, not only in this particular program, but in other benefits, too, by failing to report that.

Chairman SHAW. Well, I know if a recipient dies, through death certificates and what not, if they die in this country, the Social Security Administration is advised. Could you cross-check with that with the rep payees? Do you get their Social Security numbers, or is there any way we have of checking that?

Mr. HUSE. Well, you are correct, Mr. Chairman, Social Security maintains a master death file. And, in fact, many other agencies use it, because it garners this information from across the country. What we are suggesting is that that death file be matched against the rep payee program in a computer match.

Chairman SHAW. So you are suggesting the question I just asked?

Mr. HUSE. Exactly, exactly, and we have audit work to that effect that we have done and made recommendations to the agency on that issue.

Chairman SHAW. Have you reviewed the procedures? Dr. Daniels did not like to call this auditing procedures, because of the qualifications of the people that are in the field.

But whatever you call it, the record checking that is done in the field, she indicated that there is a procedure that they go through. Is that a written procedure that you have looked at or have been able to review?

Mr. HUSE. We have looked at it in our work, and we have suggested areas where it can be strengthened. When this current wave of provocative cases came to the attention of Social Security, I wrote a letter to the Commissioner, and took the extraordinary step of volunteering our audit services to participate in this en-

deavor to put something on the street immediately, to try and deal with this problem.

So we have, as Dr. Daniels said, a partnership arrangement, where we will offer our expertise and advice, and we do have the accountants go to Social Security, as they try to make a more robust and effective process, here.

Chairman SHAW. Have they been responsive to your suggestions?

Mr. HUSE. Yes, sir, they have.

Chairman SHAW. Good. Do you think that an overall review of their procedures should be underway at this point, based upon the experience that we have had?

Mr. HUSE. Well, we have been in existence as an OIG now for 5 years, since independence. In that period of time, we have done three strong audit reports on the representative payee process, and made numerous recommendations to the agency. If implemented, these would, in effect, have strengthened some of these areas.

Chairman SHAW. If they were put into effect?

Mr. HUSE. If they were put into effect.

Chairman SHAW. They have not been?

Mr. HUSE. Well, I was just going to go there. This is a workload Social Security, in the field, that gets deferred. It is not addressed because there are other priorities that interfere.

We do not have a performance measure in our performance plan that deals with having this process as effective and having the best integrity that it possibly could. And in my opinion, where you do not have a performance measure, normally in life, you do not have much compliance or an incentive. So we think that that is probably called for, also.

Chairman SHAW. What about overseas beneficiaries; how do we know that they are still alive?

Mr. HUSE. Well, Social Security has overseas payment benefit officers that monitor the overseas payments, and has a series of reviews that are conducted, country by country, each year.

We send OIG investigators on these reviews to look at the deceased. And most of this is in the deceased payee realm. And I can give you a much better answer of what has been done there in writing, if you wish, over the past 5 years. But we have been doing this.

Chairman SHAW. Yes, I would like to look at that in all areas, because I think we are probably paying a lot of dead beneficiaries in other countries, where we do not get the information back, where with the wire transfers, the money just keeps flowing.

It seems to me there should be, whether there are enough Social Security people around the globe to check on this, the people receiving these things, at some regular intervals, should be required to come in to see the different consular offices or something.

Mr. HUSE. And that is basically how this survey is conducted. They take the universe and a country and a sample.

Chairman SHAW. Is it sufficient?

Mr. HUSE. I think it is a good process. In some foreign countries, of course, the numbers are daunting. There are some European countries where we have significant numbers of retired beneficiaries. And in other places, we can take the entire universe. But it is a business process that works.

Chairman SHAW. Mr. Matsui?

Mr. MATSUI. Thank you, Mr. Chairman.

Mr. Huse, did you review the file on the Aurora situation?

Mr. HUSE. Yes, sir.

Mr. MATSUI. And you are very familiar with that?

Mr. HUSE. I am very familiar with Aurora.

Mr. MATSUI. And your office obviously did a thorough investigation, talked to people over there, talked to the beneficiaries that were defrauded, and all of this?

Mr. HUSE. We did a complete investigation for the United States.

Mr. MATSUI. Is it your opinion that there were only a couple of complaints in that 4 year period, from your review of the file, or was there more than that? I am just puzzled by this, and I can not seem to get to the bottom of it, from my own perspective.

It seems to me that when you have that many beneficiaries and that much money involved over a 4 year period, that there had to have been more complaints than what was represented. And maybe I am totally off on this. But what does your file show, from your reading of the files?

Mr. HUSE. I do not know that we can answer that question, specifically. But in other areas that had early warning potential, for example, the use of this annual accounting form that is required on every individual beneficiary, in our investigation, we were only able to find in Social Security's field records 12 of these forms for a universe of around 140 beneficiaries. That meant that a significant number of these were missing.

When we executed a search warrant on Mr. Gamble's office, a number of these accounting forms were in his files, still in the original envelopes, that he never responded to.

Again, I come back to the fact that these are great processes, but they only work if they are followed as a business process.

Mr. MATSUI. Yes, and let me say this. I think your recommendations and what the SSA has implemented is helpful. But, you know, on-site inspections and all of those, they are helpful if there is competence at the level of administering the programs and the benefits.

Mr. HUSE. Exactly.

Mr. MATSUI. And that is where I am kind of coming from. You know, there is obviously a total breakdown in the system, some place. If this was \$20,000 over a year period, well, OK, I will give the person a break. But this is 4 years and a quarter of a million dollars, and it just does not seem to smell right.

And I was somewhat taken aback that this guy was an outstanding citizen and all this stuff, and that had an impact, I suppose. But I remember back in the early eighties, when we had a lot of S&L suede shoe guys that were outstanding citizens in S&L, that defrauded the government of some trillion billion dollars.

Mr. HUSE. Sure.

Mr. MATSUI. I need an explanation of this. You know, this is great, what you are recommending, on-site inspections, more paperwork and all this stuff. That is great. But if you have got folks that do not understand what they are doing or do not care what they are doing, there has to be more to this.

Mr. HUSE. And that is why I made the suggestion that by making this a performance measure or goal that the agency strives to reach, then it becomes an imperative for managers and executives to ensure that this particular workload is accomplished.

Of course, in the broad scheme of things, that means probably some other adjustments have to be made, maybe on the customer service side. But that is the nature of government. You have to make these choices.

Mr. MATSUI. I know, but that does not answer my question.

Mr. HUSE. I want to be responsive.

Mr. MATSUI. Well, is there accountability by some of the folks in the SSA office and the regions? There has got to be some accountability.

I mean, here we are having this hearing and you are the Inspector General. Could you say that there were people in that office that should have done a better job? Do they commit acts of misfeasance, or is this something that you could prefer not to talk about? And I would understand that.

Mr. HUSE. Well, the technical term of whether an entity is negligent or not, it has legal implications.

Mr. MATSUI. You used a stronger word than negligence.

Mr. HUSE. Right.

Mr. MATSUI. I am using misfeasance.

Mr. HUSE. But I think I can comfortably state, based on the record of reports that have been issued, both in my name and my predecessor's name, in the last 5 years, that this is a business process that needs to be fixed. It needs to be fixed with stronger accountability, and it needs to be strengthened with better performance. And we are on record saying this.

Mr. MATSUI. I know, and you are suggesting things, and some of them have been implemented, you know, more on-site inspections and those. But that is not the question I am asking you. I mean, I am saying, those are a given.

Could this have happened in spite of that? And I kind of think that maybe it could have, given what I am hearing, and the fact that this went over a 4 year, 48 month period, because this guy was a good neighbor.

Mr. HUSE. If you are suggesting that there needs to be a different focus, I agree with you.

Mr. MATSUI. Yes, that is what I am saying.

Mr. HUSE. Because in these instances, we have a focus in Social Security, and an appropriate one.

Mr. MATSUI. If I could just say this, I do not want to be snowed, OK. I mean, I do not want this little fix. And, you know, I agree the legislation makes sense.

But in a way, it makes it easier if we hold the beneficiary harmless. Because, you know, maybe then the whole Aurora issue would not have even been before our attention, because the beneficiaries would not be here complaining, and their attorneys would not be here complaining. So maybe we need to have that safeguard.

So I am concerned about, was there any accountability; are there letters in personnel? And I know they are personnel matters, so I can not be involved in that. But, certainly, there has to be more than just mistakes were made.

I mean, gosh, we are talking about a quarter of a million dollars. A lot of folks were hurt. People that you and I and everybody else were supposed to be protecting.

And I can not see us as saying, well, mistakes were made. This guy was a good citizen, so we were misled. That is just not enough for me.

Mr. HUSE. That is why, in my testimony, I really think we need to do a totally different job in selecting these people in the first place.

Mr. MATSUI. Well, if this guy was a good citizen, they would have selected him under any circumstances. He went to church with them. He was a banker.

Mr. HUSE. And I know I am sliding around, coming to the answer that you want.

Mr. MATSUI. Well, I just want honesty.

Mr. HUSE. And I hope I am honest.

Mr. MATSUI. Well, you are, but I mean, what I want is why this happened. It happened because somebody screwed up, because some folks were misled, right, by this guy, and they should have done a better job of holding this guy accountable. And so maybe these people have to be held accountable. That is the whole idea of government.

Mr. HUSE. But this particular situation happens when this focus, this stewardship, if you will, of this particular area was not important. What was more important was to get benefits out the door.

Mr. MATSUI. You did not get benefits out the door.

Mr. HUSE. They got them out the door.

Mr. MATSUI. Well, they got them out to the wrong person.

Mr. HUSE. Right.

Mr. MATSUI. And this is great that we are doing all these great things. But it will not make any difference if the guy is a crook, and people say he is a nice guy, so we do not want to embarrass him.

Mr. HUSE. I think in the past 5 years, since we have had an Office of the Inspector General at Social Security, we have done a lot of consciousness raising about fraud and integrity issues.

And we have really tried to shift a culture that really is focused on social work, not on fraud prevention. And we have come a long way, and a lot of it with the help of this Committee, in resources and agents and auditors. We are still engaged in that.

But it is still to be reached, and we are not laying that down. But that is really at the heart of what you are talking about.

Mr. MATSUI. Do you know where there has been accountability to these folks that were administering this program?

Mr. HUSE. I do not believe there has been, no. I mean, that is in the administrative area.

Mr. MATSUI. You know, is that something you are supposed to look into?

Mr. HUSE. Well, we have. I mean, we have down the record of what these situations are.

Mr. MATSUI. And you do not think there should be anything beyond that, then?

Mr. HUSE. Are you referring to disciplinary actions and the like?

Mr. MATSUI. Well, I mean, obviously, individuals were involved in this. You know, maybe I should not ask that.

Mr. HUSE. My belief is that the record is there, which is what the Inspector General does. We do not propose administrative actions or disciplinary actions. We merely bring the facts to the table.

Mr. MATSUI. Yes.

Mr. HUSE. I do not think there is a focus here that anything really went wrong. I think it is more viewed as an accident of circumstances. Our audit work says something else. We really need to have stronger procedures. That is about all I can say.

Mr. MATSUI. I am really troubled by this. But I guess I have to accept your comments.

But it just seems to me that there should be more. And I am sorry, Mr. Chairman, I do not mean to take too much time on this.

Chairman SHAW. Go ahead.

Mr. MATSUI. But there should be some accountability.

Mr. HUSE. And I accept the fact that, you know, I have a position where I speak to these issues. And I do, as strongly as I can. But I can only make recommendations to the Commissioner and to the agency. What they do with those, all I can do is report back to Congress on what we have reported and what has happened.

Chairman SHAW. You spoke of accounting forms, and you said there were less than 20 of them, and there should have been well over 100 of them. Are these forms required?

Mr. HUSE. They are required by the existing procedures that Social Security has.

Chairman SHAW. Well, now the previous panel said they had no warning that there was something wrong. Well, goodness, if the reports were not coming in that they require, that is the biggest red flag that you can possibly have. And probably what happened, Mr. Gamble said, nobody is looking at me.

I mean, this goes back to the situation—the locks on your house keep honest people honest. If somebody wants to get in, they are going to get in. And it seems to me that these reports are going to keep honest people honest.

And it may be that Mr. Gamble, if he knew that he had to file these reports regularly, and that people were going to get after him if he did not. I am amazed. That is a red flag that should have just gone right up. So I think the system failed badly.

Mr. HUSE. The system fails because it was not followed. And, again, I know from our work that it has become one of these workloads that gets set aside.

Chairman SHAW. I wish the previous panel was still here, because I would like to call them back to the table, based upon that. Because to me, that is a huge question. And we will follow it up with written questions to both of those witnesses as to why that did not raise a flag. And, also, I hope they start reviewing other files to be sure that that stuff is coming in.

Mr. HUSE. That is all part of this new emphasis that we have put together. When I say “we” that is the Social Security and the OIG, working together, because it is sort of an emergency. I mean, we really believe we need to do something there.

Chairman SHAW. But your testimony is that the existing system was not being followed.

Mr. HUSE. That is correct. And our audit reports, on the record, have indicated that over a 5 year period, in different aspects.

Chairman SHAW. Yes, go ahead, Mr. Matsui.

Mr. MATSUI. The one thing that brings accountability to the system is to find out who made the mistakes and hold them accountable. And that does not sound to be what is going on right now. You are coming up with these recommendations that kind of lulls us into thinking that maybe this is a great way to handle it.

But I think it is more than that. I have to believe what the gentleman to your left said, that this guy was somebody we trusted. And that is not enough. I think, as the Chairman said, they did not look at the records. They did not try to figure out what was going on.

And I have to believe that those beneficiaries, a number of them, had to have been complaining somehow. Maybe they did not log it, but there had to have been more complaints than two or three. It just does not make sense when you lose a quarter of a million dollars.

Mr. HUSE. My concern here is that whatever process we finally strengthen and have as an abiding process, that it function in a preventative manner, as opposed to detective.

Mr. MATSUI. Well, I do not want to get argumentative with you. But preventive, that is exactly what I am talking about. If you hold somebody accountable, and then others find out about it, then perhaps they will not do the same kind of thing, within the office.

I am not talking about the Aurora people. I am talking about the people that were administering the program that perhaps were not up to doing a good job.

Mr. HUSE. I am not arguing with you at all.

Mr. MATSUI. But that is where I am coming from.

Mr. HUSE. OK.

Mr. MATSUI. There has to be some accountability. And I do not think that anybody is paying attention to the accountability part of it.

Mr. HUSE. I think, in the recent months since these very provocative cases have come to the public eye, there is quite a bit of attention being paid to this now.

Chairman SHAW. Thank you.

Thank you, Mr. Huse.

Mr. HUSE. Thank you.

Chairman SHAW. Mr. Huse, we may have some more questions, after we get this final panel, that we would like submitted in writing to you.

Mr. HUSE. I will be glad to answer them.

Chairman SHAW. OK, thank you very much.

The final panel is Nancy Coleman, who is the Chair of the Federal Advisory Committee on Representative Payees, and Director of the Commission on Legal Problems of the Elderly, the American Bar Association; Reginald Glover, who is the Director of the Patient Resources Offices of the Mental Hygiene, State of New York, on behalf of the National Association of Reimbursement Officers; Ann Sparks, who is a Representative Payee Director of the Mental Health Association of York County, in York Pennsylvania; Diane McComb, who is the Executive Director of the Maryland Associa-

tion of Community Services, Severna Park, Maryland; and Garry Geffert, whose name has been used several times today, who is a Staff Attorney the West Virginia Legal Services Plan, Incorporated, in Martinsburg, West Virginia.

Welcome, and we have all of your written statements. We would invite you to summarize, as you see fit.

Ms. Coleman?

Ms. COLEMAN. Thank you.

Chairman SHAW. I saw you back there, shaking your head up and down quite bit, so I am looking forward to your testimony.

**STATEMENT OF NANCY COLEMAN, CHAIR, REPRESENTATIVE PAYMENT PROGRAM, FEDERAL ADVISORY COMMITTEE, AND DIRECTOR, COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY, AMERICAN BAR ASSOCIATION**

Ms. COLEMAN. I am Nancy Coleman. I am here today as a private citizen. I do not represent the American Bar Association. While the Association is my employer, I am not here in any official capacity.

I was fortunate enough to chair the Federal Advisory Committee created by Social Security a number of years ago. The committee came out with 25 recommendations, which I have provided to the Committee's staff already.

Instead of going to my written testimony, let me look at several of the issues that have arisen this morning, and comment on those to see where we might go.

I was quite disturbed at the question of whether or not state licensing of an agency, private, not-for-profit, or otherwise, was adequate to any audit or any other kind of question.

I do not know, having looked at state licensure of agencies throughout the country, any standards that exist for those; nor, do I know what kinds of standards one would expect a state to put on an agency providing rep payee services.

The Advisory Committee suggested that there be a Federal set of standards developed, and that those Federal standards include both monitoring standards, as well as standards for performance; a set of standards that would combine both a monitoring function, an auditing function, as well as an accountability function for agencies.

I do not think that suggestion gets around the question of bonding. I think that bonding is a separate question and one that needs to apply not simply to those agencies which are fee-for-service agencies under rep payee services, but for all payee services; that is all organizational payees.

That includes mental health institutions, which are exempt now from some of the requirements that other organizations must meet under this program. It also includes governmental agencies.

The Inspector General, in the early nineties and throughout the nineties, found many public agencies—whether they were agencies of state, departments of social services, or guardianship agencies—also had numerous problems.

They could be self-bonded and self-assurance bonded, but they need to make those assurances. They are handling hundreds of thousands of dollars of Social Security benefits.

Now the second issue the Committee discussed, and one I would like to turn to, is the responsibility that a rep payee organization has toward the beneficiaries.

This is one issue that is not really talked about, but it seems to me comes to the critical point which you, Congressman Matsui, were looking at a minute ago. That is, one needs to find out what the needs are of the beneficiary and address those needs; i.e., through funding.

In a case that we looked at in Tennessee 4 years ago, we found that the agency charged a fee up front and charged a fee to send checks out to the beneficiary, because they were in different parts of the state. Once the check was received, the beneficiary had to pay a check cashing fee as well.

It seems to me that we are not maximizing benefits here, but we are minimizing benefits in an effort to try and monitor the dollars that are going out. So it seems to me that the organizational payee needs to not only be accountable to the beneficiary; but they also need to make sure that the money is used appropriately.

It seems to me that a third area needs to be considered. As addressed by Chairman Shaw, there is not now a requirement that any of these agencies be audited as a condition for being a participant as a representative payee. There is no reason why they should not; why not?

If I was looking at the Aurora situation today, I would ask another question. If, in fact, Mr. Gamble was to submit annual reports on an individual basis for each individual where he was rep payee, he should also, and this is not a requirement now, as a permanent standard, be able to account for all of the moneys, on an annualized basis, that run through his hands for beneficiaries.

This should not be simply a statement that says: I spent this much on Mrs. Jones. Rather this statement should account for all beneficiaries. Again, this is an auditing requirement that seems to be very reasonable given that he was handling hundreds of thousands of dollars annually for beneficiaries. The cost of business, it seems to me, needs to be looked at.

Finally, I guess one of the things that is very disturbing about Aurora, and something we see happening throughout the rest of the United States in some cases, is a situation where we have very little communication between the courts and the rep payee systems in Social Security. In fact, we have a statutory provision which does not allow us to share the list of Social Security beneficiaries with the court system.

So even in cases where you have kids who might be under a court order for abuse and neglect or under court supervision and receiving Social Security benefits, there is no way of communicating between the court system because of a prohibition in the legislation. I talk a little bit about this in my written testimony.

It seems to me that there are a number of areas where we need to look forward, and also look backward. Specifically, I think Congressman Matsui, about the issue of standards and performance and where we should go with this.

I think the legislation is fine. I also think that it is really limiting and does not go far enough. I think that the suggestions made by Social Security to change their system for on-site reviews,

and so forth, are going in the right direction, but are not going far enough; nor, do these suggestions deal with, prospectively, some of the issues that will develop in the future.

Let me discuss three things that the Advisory Committee reviewed. One, is the need for performance standards. Two, the need to randomly find any type of rep payee beneficiary problem by looking at all beneficiaries on a random basis.

While you do not have to look at 30 percent a year, you do need to be able to say that Mrs. Jones, acting on behalf of Mrs. Smith, has the same probability of being looked at as Mr. Gamble does, simply because she could be stealing what would amount to be a life savings from an individual not simply a quarter of a million dollars, over a period of time.

Second, it seems to me that you have to look at and do away with the distinction of mental health institutions as a separate category that currently have on-site inspections once every 3 years.

I mean, people have moved out of institutions. In Massachusetts, for instance, people are held on the institutional rolls. They've got living community settings, yet they do not have access to the dollars and the benefits, because they are all held and paid for out of the institutional's rep payees.

Second, the governmental agencies, as entities, as rep payees, need to have the same level of oversight that large organizational payees do. They are no different than anybody else in many ways.

So I will stop there, and take questions. I am very concerned about this. While we looked at a number of the issues and our report has a number of recommendations in this area, we did not look specifically at how the beneficiary may be made whole again. It was not an area in which we thought we could make any systematic recommendations.

[The prepared statement follows:]

**Statement of Nancy Coleman, Chair, Representative Payment Program, Federal Advisory Committee, and Director, Commission on Legal Problems of the Elderly, American Bar Association**

Thank you for including me in your list of witnesses today. My name is Nancy Coleman and I am here today as a private citizen. The Social Security Administration created a Federal Advisory Committee in July 1995 to look at the Representative Payment program. I chaired that Advisory Committee which presented its findings to Social Security November 1996. The insights and recommendations that I will share with you today derive from that experience through working with the Representative Payment Staff, the field hearings that were held throughout the country and with the other distinguished members of the Advisory Committee. My knowledge of the field of Social Security and Guardianship, as well as other law and aging issues comes from the many experiences that I have had throughout my professional life. I served as an investigator for the Senate Aging Committee in the late 1970s, I have served on the boards of several national aging organizations, and I have worked for several national advocacy organizations. While I am currently employed as the Director of the American Bar Association's Commission on Legal Problems of the Elderly, the views I am presenting are my own personal views and should not be construed as representing the views of the ABA or any of its entities.

The Representative Payment Federal Advisory Committee held four field hearings across the country over a period of sixteen months. During this period we heard from beneficiaries, payees, Social Security officials, advocates, governmental agencies and advocates about some of the problems faced by this large number of beneficiaries who receive their benefits through organizational payees. The Committee spent a great deal of its time considering aspects of the program that dealt with organizational payees. Several critical issues developed that included the appropriate use of funds by payees, the type of staffing that an organization should have and the types of standards by which the performance of payees should be measured.

The Advisory Committee worked at the same time that the Office of Inspector General was also looking at misuse and appropriate use of funds by payees and reached many of the same conclusions.

The Committee should consider broadening the language of the proposed legislation because it is currently limited to "fee for service" organizations with regard to bonding. All organizational payees should be required to be bonded. Governmental agencies should be self insured and state that they are. I will elaborate on this later when I discuss the recommendations of the Advisory Committee.

There are a number of issues which are related to the quality, delivery, and accountability of services to beneficiaries who have payees, especially organizational payees. All payees should be subject to filing annual reports. Institutional payees do not currently have to file any reports because of the on-sight reviews that they are now subject to. This distinction should be removed.

Social Security, through legislation or regulation should develop standards for all organizational payees. These standards should include but not be limited to bonding, access to records by the beneficiary, access to dollars by the beneficiary, limits on self dealing, and maximization of benefits, etc. The standards that are developed should be subject to public comment.

The proposed legislation and some of the newly developed policies at SSA suggests that Random Reviews and inspections should be developed for volume payees. The Advisory Committee along with the Inspector General found that random on-site inspections should exist for all types of payees and not be limited solely to volume payees. The IG found non-custodial adults to be as troublesome as large organizations. IG also found government payees to be a problem. Institutions were also found to be a problem.

The proposed legislation Annual certification requirement should not be limited to fee for service payees but rather should be made by all organizational payees without distinction to size, fee or non-fee, institution or government agency.

The Advisory Committee did not make recommendations about reissuance of benefits but we did have some discussion about it and heard testimony about the issue. We were told by SSA that they did not have the authority nor inclination for overpayment recovery unless there was an individual who was acting as payee and they could charge as overpayments against any personal benefit that they might have had, so we would have been supportive of these recommendations that are now before you for fee forfeiture, reissuance of benefits, overpayment recovery, and civil monetary penalties. The latter we were told was within the authority of the IG if the office every sought to use it.

Another issue which the legislation should be concerned with and does not at the current time is the ability of state Courts dealing with beneficiaries who may or may not have representative payees to access SSA records. Courts may have jurisdiction over a child or an adult but they are not currently able to find out about benefits, appointment of payees, or other information about the individual. This freedom is granted in a few cases to state offices of social services under an agreement. The problem has surfaced in the context of a grant that the American Bar Association's Fund for Justice and Education now has from the State Justice Institute and SSA. The grant is to educate Social Security about guardianship and state courts about representative payment.

The importance of making sure that the beneficiary is made whole when the payee takes advantage is a prime concern and something that the Advisory Committee discussed but did not make any recommendations about. However the Committee did believe that there needed to be a much better way of monitoring and creating standards for the performance of organizational payees. If standards were developed and monitored there would probably be less misuse of the limited amounts of benefits.

I have included several of the recommendations from the Advisory Committee's report for your consideration.

RECOMMENDATIONS FROM THE FINAL REPORT, NOVEMBER 1996. REPRESENTATIVE  
PAYMENT ADVISORY COMMITTEE

*Recommendation for Organizational Performance Standards*

Establish performance standards for all organizations wishing to serve as payee beyond those set for individuals. In addition to money management, reporting, advocacy, and support for beneficiary self-improvement, standards for organizations should include such elements as financial stability and overall responsible presence in the community in which the beneficiary resides; sound record-keeping and data management; integration of case management, budgeting, financial decisions to ensure that case managers have appropriate access to the beneficiary's assets to meet

needs; as well as established processes for appropriate personal interaction between those decision-makers and the beneficiary.

- Negotiate with providers of services (landlords, banks, grocers, utilities, etc.) to secure the “best possible deal” for the beneficiary;

- SSA should also develop a contract or job description for payees which is tailored to payee type (individual or organizational). This could explain the principles for payee performance, rules regarding use of benefits, bonding and other financial requirements as well as other suggested “best” payee practices. Payees should be required to sign this contract agreeing to comply with the requirements of serving as payee.

- Demonstrate effective internal communication between case management and financial management components to ensure that case workers will receive final decisions regarding requests for beneficiaries’ needs within 24 hours.

- Agree to receive funds through direct deposit.
- Be bonded or self-insured (i.e., governmental payees) to a degree commensurate with the amount of funds handled and maintain ongoing documentation of this protection;

- Demonstrate sound financial management policies;
- Hold funds in State or federally insured interest-bearing bank accounts, county-based bank accounts, brokerage accounts and other collateralized accounts. (Interest accruing in these accounts is the property of the beneficiary and must be held in accordance with all the rules governing beneficiaries’ funds. It should never be commingled with the organization’s operating funds);

- Maintain records on computer software provided by SSA or meet systems standards set by SSA;

- Have a stable presence in the community in which the beneficiary resides;
- Maintain adequate resources to assist the beneficiary with his/her social service needs;

- Maintain adequate and well-trained staff to perform the expected duties of a payee; and

- Secure annual independent audits of their financial management of beneficiaries’ funds, be subject to triennial onsite review by SSA, and submit an annual affidavit to confirm their adherence to established standards.

Because of the fragmentation of responsibility which often occurs within organizational payees, the Committee believes it is important that all case managers tending to the needs of beneficiaries should have ready access to those controlling funding.

In the case of organizational payees who are also creditors of beneficiaries (for example, custodial institutions or board and care operators), the payee should file a conflict of interest statement which attests to the organization’s commitment to ensure that the beneficiary’s needs are given priority over any debt owing to the payee.

#### *Recommendation Fees for Services*

Cap at the lesser of \$25 or 10 percent of monthly benefits the monthly fee for payee services, regardless of type of benefit being paid. Expand selection criteria and performance standards for organizations which collect a fee for payee services to require prior experience in serving the clientele and community recognition.

Although it remains deeply troubled that beneficiaries currently pay the cost of fees for payee services, the Committee regretfully acknowledges that no viable alternative for funding currently exists. Therefore, the Committee reaffirms SSA’s current policy of allowing certain nonprofit and governmental organizational payees to collect a fee for their services and reluctantly accedes to the reality that beneficiaries currently must bear this burden. Should alternative funding become available from sources other than beneficiaries’ funds, the Committee would almost certainly support it.

Furthermore, nonprofit organizations which wish to be authorized to collect a fee for payee services, must submit for evaluation, additional information to establish their financial stability and experience in providing services within the community. These requirements are in addition to those which already exist.

#### *These organizations should:*

Have been in existence for at least 2 years providing services to the clientele for whom they now wish to serve as payee *and* collect a fee;

Provide information about the services provided which establishes ability to effectively serve as payee. This information should include evidence of linkages with other community organizations and appropriate banking support as well as list all other funding sources identifying the purpose for which each source was granted;

Provide at least three references from local community service organizations who could attest to the stability of the organization and ability to effectively advocate; Submit a copy of a current bonding instrument to demonstrate that bonding is commensurate with the organization's financial risk (regardless of the number of beneficiaries being served);

Provide a statement of affirmation that additional fees (such as check cashing fees) will not be solicited from the beneficiary and that the authorized fee will not be collected in any month for which the beneficiary's basic needs could not be met.

An organization collecting a fee must meet the performance standards required of other organizational payees as well as the "best practices" standards SSA encourages all payees to follow these should be included as standards not simply practices:

- Maintain regular contact (generally at least once monthly) with the beneficiary. These contacts should be face-to-face unless the payee can adequately describe an alternative approach that provides comparable results;
- Demonstrate an active interest in advocating for the beneficiary to obtain needed services. This includes providing assistance in completing application forms and other tasks where beneficiaries are unlikely to obtain needed services if left to perform those tasks on their own;
- Receive and disburse funds in a manner which minimizes the possibility of diversion of funds to the purchase of drugs or alcohol. This includes encouraging beneficiaries to participate in alcohol or drug treatment, support groups (such as Alcoholics Anonymous, Narcotics Anonymous, etc.) employment or other institutional or non-institutional programs involving steps to self-improvement and lifestyle enhancement;
- Negotiate with providers of services (landlords, banks, grocers, utilities, etc.) to secure the "best possible deal" for the beneficiary;
- Encourage positive lifestyle choices and where possible, help foster beneficiary independence and self-sufficiency. This includes developing a mutually agreed-on budget for meeting current and future needs, and paying outstanding debts; and
- Avail themselves of opportunities to attend orientation and training sessions as directed by SSA.

#### *SSA Response to Misuse*

Enhance beneficiary protection by strengthening investigation of all misuse complaints/reports, tracking their outcome, and pursuing legislative support for recovery from the misuser. Develop a specific misuse recording and tracking form to be used for this purpose.

#### *Accountability Goes Hand in Hand with Standards*

*Authority*—SSA's policies on payee accountability are derived from the Act § 205 and § 1631 and 20 CFR 404.2001 and 416.601.

§ 205(j)(3) and § 1631(a)(2)(C) of the Act specify that ". . .the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. . ." The regulations at 20 CFR 404.2065 specify that SSA "may require periodic written reports from representative payees. . ."

*Current Policy*—SSA's current accountability process relies on the yearly report sent to each payee. The purpose of the report is to monitor payee performance in spending, saving and investing benefits, as well as soliciting certain facts that might trigger a reassessment of the payeeship (payee felony convictions, changes in custody status, etc.).

Accountability reports represent a high volume workload for the Agency. To manage this volume, and to permit some tailoring of the report questions to make it more user-friendly, SSA has developed two basic report formats—one for parents (and grandparents or stepparents) with custody of up to four minor children, and a less tailored format for all other payee types. [Note: The current accountability process, whereby each payee is asked to complete an annual report, was developed in concert with the *Jordan Court* which required universal annual accountability of all payees, including parents and spouses with custody of the beneficiary. Some State institutions which are subject to a different accountability process were exempted from the *Jordan* order.]

*Discussion*—As considered by the Committee, accountability within the representative payment program is composed of several elements:

- The payee's direct accountability to the beneficiary;
- The payee's responsibility for providing a periodic accounting to SSA, as well as submitting to any special reviews of financial records that may be requested; and

SSA's overall monitoring of payee performance to ensure that appropriate practices are being followed and that beneficiary needs are being appropriately addressed.

The Committee heard testimony that some payees regularly meet with the beneficiaries they serve to discuss financial planning, review bank records and balances, cost of care records, etc. But it was not clear that this level of interaction is generally the practice. In line with earlier recommendations regarding the beneficiary's role, the Committee recommends that SSA's instructions to the payee include more emphasis on the payee's obligation to have regular discussions with the beneficiary (preferably face-to-face) about how the beneficiary's needs will be met. Part of that discussion should include a review of recent disbursements of funds. How that review is carried out depends upon the type of records that are kept and how monies are spent. Bank records, custodial charges, etc. should be available for beneficiary review. Cash expenditures should involve receipts in most instances, and these could be reviewed with the beneficiary. Finally, the payee should be required to discuss and furnish, to the beneficiary, a copy of any yearly SSA accountability report. This is no different than a standard established for payees.

The Committee reaffirms the need for annual reports from all payees. However, the Committee believes SSA can make the accountability process more effective in detecting irregularities and perhaps simplify Agency processing if it develops additional report formats which could be tailored to solicit more pertinent information of specific payee types.

The Committee would like to see all payees account with more specificity about how retroactive benefits (or funds conserved from a prior period) were used; break out large, durable purchases from daily living expenses for food, clothing, and housing; and acknowledge any "no value added" expenses (such as check cashing fees). All payees should also be asked questions designed to identify cases where the payeeship may no longer be needed or appropriate. In addition, organizations should be asked to disclose information about other services provided to the beneficiary and whether any fees have been charged.

SSA's responsibility for monitoring overall payee performance can be satisfied, for most individual payees serving few beneficiaries, through a program of ongoing integrity reviews as discussed later in the report. But for payees serving substantial numbers of beneficiaries, additional oversight will be necessary to ensure that the payee's practices (integration of case management and financial planning, prompt reporting of events, bonding instruments, auditing, etc.) satisfy the enhanced standards of performance the Committee recommends. This is true whether the payee is considered an "organization" or an "individual" such as a public guardian, an attorney or a volunteer, etc. serving a significant number of beneficiaries.

The Committee believes this oversight should take the form of an onsite review. Because FO personnel often make case referrals to the larger payees who might fall under this review, the Committee recommends the onsite reviews be handled by an SSA's assessment component to avoid any inherent conflict of interest. A list of available payees, shown to be capable of providing adequate service for additional cases, would be provided to FOs for use in streamlining the payee selection and application process.

#### *Recommendation Direct Payee Accountability to the Beneficiary*

Require payees to periodically inform beneficiaries about how their benefits have been spent or saved, and to provide the beneficiary with copies of any accountability reports furnished to SSA.

Payees must agree at the time of their appointment to meet frequently with the beneficiary to discuss and assess the beneficiary's current and future needs. Periodically, the payee should, as appropriate to the beneficiary's capacity, review disbursements actually made. The payee should also provide the beneficiary with a copy of the annual report filed with SSA.

Agreement by the payee to interact with the beneficiary in this manner will help signify an ongoing commitment to responsible benefit use. Educating beneficiaries regarding the payees' responsibility to be accountable and promoting beneficiary access to information about the handling of benefits will decrease the potential for exploitation.

#### *Recommendation Annual Payee Reports*

Retain an annual accountability report requirement tied to individual cases for all payees. Develop separate tailored reports for custodial and non-custodial individual and organizational payees to elicit information about expenses, use of retroactive benefits, disclosure of creditor relationships and restored capability. For organizational payees, once a year require an affidavit regarding organizational reporting

standards. Explore the feasibility of electronic reporting for organizations and individuals serving as payees.

All accountability report formats should identify the full amount for which the accountability report is required (including any retroactive benefits and conserved funds) and elicit accountability for the following:

- Housing;
- Food;
- Medical treatment;
- Personal expenses;
- Fees paid on behalf of the beneficiary (such as check cashing fees, etc.);
- Fees collected for providing representative payment services;
- Large purchases (e.g., such as the purchase of a television set); and
- Funds used to pay outstanding debts.

Accountability reports should disclose whether or not the beneficiary has been in the custody of the payee for the reporting period. For non-family member payees, the form should elicit whether the payee is an organization, and if so, the total number of beneficiaries it serves.

#### *Affidavit Requirement/ Performance Standards*

In addition to the annual accountability report it submits for each beneficiary served, organizations should be required to submit an annual affidavit to confirm:

- Bonding commensurate with the financial volume of the organization's program;
- Date of last independent audit; and
- Other services provided to the beneficiary by the organization.

#### *Electronic Reporting/Performance Standards*

At its hearings, the Committee heard testimony from some organizational payees that they currently use electronic methods of internal bookkeeping. The Committee recommends that SSA establish criteria and standards for accepting electronically transmitted accountability reports. Electronic reporting by payees may prove less burdensome on them and may result in a more detailed report.

#### *Recommendation Onsite Reviews*

Replace SSA's current onsite review process (which covers only certain State institutions) with a broader process which would triennially assess the continuing ability of all types of organizations and individuals to serve as payee for multiple beneficiaries.

The Committee heard testimony regarding the potential impact of poor performance by individual and organizational payees serving multiple beneficiaries. The Committee believes that an onsite review process is integral to determining a payee's continuing ability to adequately serve its clients if that payee is an organization or an individual serving a substantial number of beneficiaries. Though the Committee recognizes the potential cost of such reviews, it recommends they be completed on a triennial basis.

The Committee recommends that these onsite reviews cover:

- Integration of client services with financial planning. (How the program is set up to meet the comprehensive needs of the beneficiaries served. For example: how often the beneficiary is seen; whether and how funds are provided directly to the beneficiary; beneficiary access to information about the status of his/her funds; provision for beneficiary input into the financial planning process, etc.)
- Record keeping and data management. (Adequacy of record keeping practices, including records regarding expenditures; identification of any fees charged to the beneficiary; posting of interest, etc.)
- Employee training. (Adequacy of internal practices to keep payee or its employees trained regarding payee requirements and changes in the entitlement programs).
- Willingness/capacity to serve additional clients.

The Committee notes that the current onsite reviews are sometimes conducted by field personnel in offices parallel to the facilities reviewed. The Committee believes an SSA component other than the FO should conduct these onsite reviews to avoid any potential conflict of interest. The Committee further suggests that SSA's assessment component, the Office of Program and Integrity Reviews (OPIR) is probably best suited to conduct these onsite reviews.

The results of the onsite reviews should be made part of the precedent files maintained by the appropriate FOs to be used in future appointment actions and deci-

sions to help ensure that any new appointments are consistent with the payees' capacity for acceptable performance.

*Integrity Reviews*

The Committee notes that case sampling to measure program effectiveness in the representative payment area has in the past generally been restricted to ad hoc reviews of targeted accountability workloads. The Committee concludes that ongoing sampling of all representative payment workloads are necessary to ensure program integrity and to identify trends that should influence policy making.

*Recommendation Annual Sampling*

Implement annual sampling programs that would gauge the quality of SSA decisions rendered in the representative payment program in the areas of (in)capability decisions, payee selections, and misuse determinations. Determine the integrity of payee accountability reports by sampling which includes corroborative verification of the information provided.

It is important for SSA to implement sampling programs to identify problem areas that need correction. These sampling programs could also assess trends in program results that might point to needed policy changes. At present, SSA has little objective data regarding the overall quality or consistency of decisions rendered in the representative payment program. Accountability reports also are taken at face value with no corroborative review. A corroborative review of these reports could identify possible procedural weaknesses as well uncover misuse not currently detectable. SSA's sampling techniques should involve redevelopment of the cases with collateral verification.

The Committee recommends that case sampling to measure the effectiveness of decisions made with respect to representative payment issues should be conducted by OPIR. As the SSA component with responsibility for and experience in managing assessment activities, the Committee believes that OPIR is well qualified to develop the most meaningful and accurate results.

I am testifying in my personal capacity and in this capacity I do not receive funding from SSA. However, the ABA Fund for Justice in Education receives funding from a cooperative agreement with the State Justice Institute and SSA on a project on guardianship and representative payees. Additional funding comes from the Administration on Aging of DHHS, the Department of Justice, and numerous foundations.

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Chairman SHAW. Thank you, Ms. Coleman.  
Mr. Glover.

**STATEMENT OF REGINALD GLOVER, PAST-PRESIDENT,  
NATIONAL ASSOCIATION OF REIMBURSEMENT OFFICERS**

Mr. GLOVER. Good morning, Chairman Shaw and Members of the Subcommittee. I am Reginald Glover, past President of the National Association of Reimbursement Offices, known as NARO. I am pleased to present testimony in support of the legislative amendments proposed by the Social Security Administration to improve the oversight of representative payees.

Since its inception in 1955, NARO has provided a forum for professionals serving mental health, mental retardation, and additive disorder programs operated by or in service of state and local governments.

Although primarily involved in reimbursement and financing of these programs, many of our members also serve as representative payees for Social Security and other eligible benefits for our clients. On the whole, NARO members serve as representative payee for thousands of consumers who are incapable of managing their own funds.

Many of our members serve as representative payees of Social Security benefits on behalf of state-operated institutions. As such, we are subject to a review of the management of our payee programs by Social Security every 3 years, the triennial review that everyone has been referring to.

In general, our members have established longstanding and productive relationships with both the local and regional Social Security representative in our jurisdiction. We have found the triennial reviews to offer constructive ways in which we can continue to improve our procedures and practices as rep payees.

I would add, although it is not in my written testimony, that we are audited routinely by our State Comptroller's Office about how we handle these benefits. There is a significant amount of auditing on how the benefits are handled.

When a consumer leaves one of our member institutions, a new rep payee is sought. In some cases, our members assist in the process of finding a new payee.

Several of our members have reported difficulty with new payees. Occasionally, a beneficiary's funds are not used for current needs and living expenses. In a few cases, our members have seen the benefits of groups of former clients misused, with funds not available for the beneficiaries' needs.

The clients for whom we serve as payee are among the most vulnerable of the nation's citizens. Without Social Security benefits appropriately used on their behalf, many of our clients would return to institutional treatment.

In the District of Columbia, for example, one organizational payee filed for bankruptcy of its service programs over 5 years ago. Beneficiary funds were apparently used to meet routine program expenses and, as of this date, the beneficiaries have not received any repayment of these funds. The institutional provider was re-established as payee until the bankruptcy proceedings become final.

As I understand it, the proposed legislation would remove the requirement that there be a finding of negligence on the Social Security Administration's part in order for a beneficiary to receive funds misused by a rep payee.

NARO fully supports this amendment in that it will allow beneficiaries such as those we represent to continue to live in the community and maintain benefits. We also support the provisions of this legislation that requires non-governmental payees to provide a bond and that withholds fees to any payee who may have misused a beneficiary's funds.

We do have some concerns about the regulations under which Social Security will define misuse. Often, the appropriate use of a beneficiary's funds by a rep payee may be viewed by the beneficiary or another agency as a potential misuse of funds. Regulations regarding misuse must be written to include specific conditions that define an instance of misuse. We would be willing to work with the SSA Commissioner in the development of these regulations.

NARO also believes that this legislation could be strengthened with additional amendments to require public notification of payees that have misused funds. Such notification may assist our members

to avoid discharging our clients to payees who have misused funds in the past.

Further, since many organizational payees also receive payment for services provided from the beneficiary's funds, NARO would support an extension of this bill that prohibits payment to the payee from the beneficiary's funds until the full amount of misused funds by the payee is restored.

I thank you the Chairman for the opportunity to present the views of the National Association of Reimbursement Officers. I would be happy to accept any questions.

[The prepared statement follows:]

**Statement of Reginald Glover, Past-President, National Association of Reimbursement Officers**

Good Morning, Chairman Shaw and members of the Subcommittee, I am Reginald Glover, Past-President of the National Association of Reimbursement Officers (NARO). I am pleased to present testimony in support of the legislative amendments proposed by the Social Security Administration to improve oversight of Representative Payees.

Since its inception in 1955, NARO has provided a forum for professionals serving mental health, mental retardation and addictive disorder programs operated by or in service of state and local governments. Although primarily involved in reimbursement and financing of these programs, many of our members also serve as Representative Payee for Social Security and other eligible benefits for our clients. On the whole, NARO members serve as Representative Payee for thousands of consumers who are incapable of managing their own funds.

Many of our members serve as Representative Payees of Social Security benefits on behalf of state-operated institutions. As such, we are subject to a review of the management of our Payee programs by the Social Security Administration every three years. In general, our members have established long-standing and productive relationships with both the local and regional Social Security representatives in our jurisdiction. We have found the triennial reviews to offer constructive ways in which we can continue to improve our procedures and practices as Rep Payee.

When a consumer leaves one of our member institutions, a new Rep Payee is sought. In some cases, our members assist in the process of finding a new Payee. Several of our members have reported difficulty with new Payees. Occasionally, a beneficiary's funds are not used for current needs and living expenses. In a few cases, our members have seen the benefits of groups of former clients misused, with funds not available for the beneficiaries' needs. The clients for whom we serve as Payee are among the most vulnerable of the nation's citizens. Without Social Security benefits appropriately used on their behalf, many of our clients would return to institutional treatment. In the District of Columbia, for example, one organizational Payee filed for bankruptcy of its service programs over five years ago. Beneficiary funds were apparently used to meet routine program expenses, and, as of this date, the beneficiaries have not received any repayment of these funds. The institutional provider was re-established as Payee until the bankruptcy proceedings become final.

As I understand it the proposed legislation would remove the requirement that there be a finding of negligence on the Social Security Administration's part in order for a beneficiary to receive funds misused by a Rep Payee. NARO fully supports this amendment in that it will allow beneficiaries such as those we represent to continue to live in the community and maintain benefits. We also support the provisions of this legislation that requires non-governmental Payees to provide a bond and that withholds fees to any Payee who may have misused a beneficiary's funds.

We have some concerns about the regulations under which SSA will define misuse. Often, the appropriate use of a beneficiary's funds by a Rep Payee may be viewed by the beneficiary or another agency as a potential misuse of funds. Regulations regarding misuse must be written to include specific conditions that define and instance of misuse. We would be willing to work with the SSA Commissioner in the development of these regulations. NARO also believes that this legislation could be strengthened with additional amendments to require public notification of Payees that have misused funds. Such notification may assist NARO members to avoid discharging our clients to Payees who have misused funds in the past. Further, since many organizational Payees also receive payment for services provided from the beneficiary's funds, NARO would support an extension of this bill that prohibits

payment to the Payee from the beneficiary's funds until the full amount misused by the Payee is restored.

I thank you Mr. Chairman, for the opportunity to present the views of the National Association of Reimbursement Officers of this proposed legislation. I would be happy to answer any questions you may have.

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Chairman SHAW. Thank you, Mr. Glover.  
Ms. Sparks.

**STATEMENT OF ANN SPARKS, DIRECTOR, REPRESENTATIVE PAYEE PROGRAM, MENTAL HEALTH ASSOCIATION OF YORK COUNTY, YORK, PENNSYLVANIA**

Ms. SPARKS. Thank you, Mr. Chairman and Mr. Congressman. I appreciate the opportunity to speak with you today. I would like to address the amendments proposed by the Social Security Administration to the Social Security Act.

I am the Director of the Representative Payee Program of the Mental Health Association of York County. There are 130 mental health clients in our program.

Social Security limits the fee to \$28 a month. In our program, the fee was established by a formula set down by the accounting, Mental Health/Mental Retardation of York County.

We calculate the total budget necessities (the rent, the utilities, the food, clothing, medical needs.) Then we subtract their total monthly income. That leaves a net amount which then has a discretionary fund of \$50 for their use. That is deducted, and the remainder is left.

What the remainder is, if it is \$28 or more, then we charge a \$28 fee, and the rest goes toward their savings. If it is under \$28, then it is set, whatever that amount is.

The population we serve, people with a mental illness, are very vulnerable. They are frequently taken advantage of by family and friends, and then they are referred to us. We are feeling more of an opposite from what you are seeing here.

Clients referred to us are also often victims of their family or friends who have been their payees and mismanaged their benefits, before they come to us. They are referred to our program by their caseworkers from the mental health office in York.

Having an organization as payee alleviates many of their problems. It is unfortunate that organizational payees have also taken advantage of this population that they have accepted responsibility to represent.

There are a variety of different procedures that organizations use as payees. We have some in the Pittsburgh area that have volunteers that manage their individual checkbooks. And some have a computer program that is designed for representative payees.

The proposed amendments will enable Social Security to reissue the benefits when there is misuse, which I agree that there needs to be defined on what misuse is. Especially with our clientele. If I would just say, you can not have more money because it is going to rent or whatever, Social Security might consider that a complaint; whereas, all their needs have been met, but they want money because they are out of cigarettes or something.

It will also encourage the organizations to take a closer look at the checks and balances and the security.

I strongly advocate for the Social Security Administration to promote the use of a centralized computer program for all organizations appointed as payees. This will promote the recording of the transactions for the clients, and facilitate the monitoring of their benefits.

We do a lot of computer printouts for Social Security, and showing what checks we have written for their needs. Also, we are bonded.

And with the payee reports that you were talking about in West Virginia, if we do not get them back within a month, they send us a second notice, and we get it back. But sometimes the second notice comes before the month is even up. We are regularly reporting on them.

We have monthly meetings with our caseworkers and our clients to go over what needs are being met for the clients. So we are not only just monitored by our Social Security, but also by their caseworkers.

Thank you.

[The prepared statement follows:]

**Statement of Ann Sparks, Director, Representative Payee Program, Mental Health Association of York County, York, Pennsylvania**

Thank you. I appreciate the opportunity to speak with you today. I would like to address the amendments proposed by the Social Security Administration to the Social Security Act.

I am the Director of the Representative Payee Program of the Mental Health Association of York County, PA. There are 130 clients in our program, the majority of whom have a diagnosable mental illness. Social Security limits the fee to \$28.00 a month. In our program the fee is established by a formula. We calculate the Total Budget Necessities (rent, utilities, food, clothing, medical needs) then subtract the Total Monthly Income. That leaves the Net Amount which then has a Discretionary Fund (\$50.00 minimum) deducted and a Remainder is left. This Remainder decides the amount of the fee. If it is more or equal to \$28.00 then the fee is \$28.00 and the remaining amount is used for the client's savings. If the Remainder is less than \$28.00 then the fee is set at that amount left. So the fees vary from \$0.00 to \$28.00 with an average fee being \$19.00.

The population we serve, people with a mental illness, is very vulnerable. They are frequently taken advantage of by family and friends and stigmatized by society. Clients referred to us are often victims of family or friends who have been their representative payees and mismanaged their benefits.

Having an organization as payee alleviates many of these problems. It is unfortunate that organizational payees have also taken advantage of this population that they have accepted responsibility to represent.

I am aware of a variety of different procedures that organizations use as representative payees. From having volunteers manage individual checkbooks for clients to computer programs specifically designed for representative payees.

The proposed amendments will not only enable Social Security to reissue beneficiaries' benefits when misused by an organization but it will also encourage the organizations to take a closer look at the checks and balances and the security measures they have for their programs.

I strongly advocate for the Social Security Administration to promote the use of a computer program for all organizations appointed as representative payees that will promote the recording of all transactions for the clients. Thereby, facilitating the Social Security Administration monitoring the usage of the beneficiaries' benefits.

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Chairman SHAW. Thank you, Ms. Sparks.

Ms. McComb.

**STATEMENT OF DIANE MCCOMB, EXECUTIVE DIRECTOR,  
MARYLAND ASSOCIATION OF COMMUNITY SERVICES FOR  
PERSONS WITH DEVELOPMENTAL DISABILITIES, INC., SE-  
VERNA PARK, MARYLAND**

Ms. MCCOMB. Good morning, and thank you for the opportunity to be here today. My name is Diane McComb. I am the Executive Director of the Maryland Association of Community Services for people with developmental disabilities.

Our organization has in its membership 105 community organizations that support over 21,000 people with developmental disabilities, and their families, in the State of Maryland.

We have a system in Maryland that allows many people to make choices, live where they want to live, and live in very small programs. We do not have large community intermediate care facilities, as other states do. We support people in a variety of settings. And practices, with regard to representative payees, are varied.

I polled our members, prior to coming, and asked what their experiences were, based on some of the questions that the staff thought might be helpful in your deliberations here today. And while I did not hear from everyone, and we have not formally discussed this as an issue that could be problematic, I find the responses rather interesting.

It is estimated that 85 percent of the people in our system of developmental disabilities do receive SSI or SSDI. And it is estimated that a high percentage of those do, in fact, have representative payees, which may be family members, but often are organizations.

With the exception of a very few of our organizations, most of them would not fall into the large organization or large representative payee classification, and most are nonprofit organizations.

Clarification of the definitions would be very helpful, as well as guidelines and the handbook that others had talked about, as the standards do not appear to be uniform.

Some very well intended individuals may have a very subjective response to an individual with a disability, and when they would like to have funding access for a personal reason, may deny them. Some may unknowingly use the funds, for fees inappropriately, may overcharge for rent. Often, the organizations that are the payees are, in fact, the residential support agencies and sometimes the landlords.

While we believe that standards are in place in our State to monitor for that type of abuse, (for instance, we have just adopted new regulations, almost a year ago now,) that requires licensing to monitor individual finances and the policies that are set within each of the organizations. But to my knowledge, they are not specific and they are not uniformly applied.

There appears to be a sense that we can put a lot of policies in place, and they will keep honest people honest. If somebody wants to abuse funds of individuals with disabilities, if they are the representative payee, there is lots of latitude to do that.

I echo the others that spoke before me that even a well-intentioned nonprofit organization could, in fact, have something in place in their policies and procedures that might not be according

to the wishes of the individual with the disability, or in accordance with what might be perceived, generally, to be in the best interests of the individual.

And that does not mean that they are malevolent. It may be that what was once thought 20 years ago to be a good concept is no longer a good concept.

I will give you an example. As our state has shifted from agencies that are funded by the state with budgets that are assured to one where something like a voucher is allocated to a person with a disability, and they can choose where they live and with which agency they might seek support, the individual who identifies the representative payee takes on a much bigger role. The funds that are available to the individuals with cognitive disabilities really should be monitored.

Our organization supports monitoring that is reasonable and not be burdensome. But at this point, I would not think that it would necessarily be a good idea to exclude the smaller organizations that are acting in that capacity.

Thank you for the opportunity to come here today. Being asked to participate stirred the interests in our membership about this issue. We recognize that as a professional organization, we have not adopted standards that we would recommend to our agencies.

And it does raise the question, as our system has changed and the way that we view the rights of individuals with disabilities, that this is an area that should certainly be looked at.

Thank you.

[The prepared statement follows:]

**Statement of Diane McComb, Executive Director, Maryland Association of Community Services for Persons with Developmental Disabilities, Inc., Severna Park, Maryland**

The Maryland Association of Community Services for Persons with Developmental Disabilities (MACS) is a private, nonprofit organization dedicated to strengthening agencies to better support people with disabilities in their own communities. MACS is comprised of 105 member agencies that support over 21,000 Maryland citizens with developmental disabilities and their families in numerous community living, supported-employment, habilitation, and other support settings throughout the state. MACS provides advocacy to increase the capacity of Maryland's communities to support people in inclusive settings; to foster a climate that develops and nurtures a quality workforce; and to promote the highest standards of program excellence.

We were asked to present information regarding rep payee practices in our state. In Maryland, many situations are prevalent. Although I am unaware of any organization set up to exclusively manage SSI or SSDI benefits on behalf of an individual, there are certainly trusts that are managed to do just that. It is very common for nonprofit agencies that provide comprehensive supports to individuals with developmental disabilities to assist those individuals in managing their finances.

Clarification of the fiduciary relationship between people with developmental disabilities and those individuals who exercise control or authority over their resources would be welcomed by many of the organizations that serve in the capacity of representative payee for disability benefits. Although many people with developmental disabilities are capable of independently managing their money, there are many others for whom assistance is essential. Regardless, protocols should be in place for any situation in which someone other than the individual receiving benefits serves in a rep payee capacity. Some of the agency practices which appear to provide safeguards include:

- the separation of consumer funds from agency monies;
- consumer benefits deposited directly into their own individual account;
- original bank statements mailed to an independent monitor, or to an individual who has no interaction with the staff responsible for assisting consumer in money management;

- a prohibition against bank checks;
- the imposition of a set limit for withdrawal amounts at any one time;
- the requirement for staff to provide all receipts and delineation of expenditures routinely;

Although abuse seems neither wide-spread nor frequent among our member programs, there does not appear to be a universal use of safeguards. Some agencies routinely have consumers sign withdrawal slips so that staff can go to the bank and access accounts with no formal process in place to assure that consumer assets are protected.

Given the times, and the move to support people with disabilities in communities and homes of their own choosing, safeguards are more essential than ever to protect the financial resources available to individuals. The proposed changes by the Social Security Administration appear likely to hold representative payees more accountable while offering additional protections to the intended beneficiaries.

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Chairman SHAW. Thank you, Ms. McComb.  
Mr. Geffert.

**STATEMENT OF GARRY G. GEFFERT, STAFF ATTORNEY, WEST VIRGINIA LEGAL SERVICES PLAN, INC., MARTINSBURG, WEST VIRGINIA**

Mr. GEFFERT. Thank you, Mr. Chairman and Members of the Committee. I am Garry Geffert. I am a Staff Attorney in the Martinsburg Office of the West Virginia Legal Services Plan where, among others, I represent some of the victims of the Aurora Foundation.

I am here to urge the Subcommittee to recommend passage of H.R. 3666, which was proposed by my Congressman, Bob Wise, along with some of the additional measures like bonding, that the Social Security Administration has proposed.

I think his bill and the supplemental measures would give meaningful protection to some of the most vulnerable people in our society. These are people who, because of their disabilities, can not handle their financial affairs. I think it is also important that Congressman Wise's bill makes the relief retroactive.

I want to talk about the Aurora Foundation a little bit. In the early nineties, the Aurora Foundation was set up by Gregory Gamble. It was set up as a non-profit corporation. Mr. Gamble was a local businessman.

Once the foundation was established, the Social Security Office routinely told beneficiaries that the Aurora Foundation would be their payee, and beneficiaries were not given a choice. Our information is that this was also true for beneficiaries who wanted some individual to be the payee. The Aurora Foundation was pushed to be their representative payee.

Our information is also that, from time to time, many of the Aurora Foundation clients made complaints about the way their money was handled, or about some bill that was not paid. These complaints were made orally. These are not people who regularly work with paper.

I thought it was significant that Social Security sprang into action when they got something from a lawyer, because lawyers know how to put on paper and get somebody's attention. I think what happened is that attention was not paid to the beneficiaries who

were making what were probably viewed as isolated complaints, but together formed a pattern.

Then in early 1999, the clients of the Foundation began getting eviction notices for nonpayment of rent and notices from utility companies that their service was going to be cutoff for nonpayment of bills. Of course, the Aurora Foundation was supposed to have been paying those bills.

Soon, the Foundation office was closed, and a receiver was appointed, but the state's action was too late. The money was gone. There is no bond. There is nothing to collect from. Mr. Gamble has entered a plea of guilty to embezzlement of Social Security funds. He has also filed for bankruptcy.

In response to your question, Mr. Chairman, the bankruptcy judge has ruled that the debts owed as a result of the embezzlement are not dischargeable, but Mr. Gamble does not have any money to repay the some \$223,000 that the Inspector General has found is owed to the various Aurora Foundation clients.

Under the current law, my clients are going to be able to recover their lost Social Security benefits only if they can prove that the loss was the result of the negligent failure of the Commissioner of Social Security to investigate or monitor their representative payee. But this is neither a simple nor a swift task.

Social Security's monitoring duties are so minimal that it is difficult to prove that they negligently failed to meet them. All that Social Security requires of the payee is to file this two page form, and this is it. It has a few boxes and a couple of places to put check marks.

This summary accounting is probably appropriate when the payee is a family member of the beneficiary. It is not, however, appropriate for organizations like the Aurora Foundation, which handle a lot of money for a lot of people.

Most of the money that was paid to beneficiaries who use the Aurora Foundation was put into one checking account. At least until the end, that checking account usually had enough money in it to show that they had enough money to cover for any one individual.

But nobody, not Social Security, or anybody else, ever required the Aurora Foundation to take and add up this line on here, which shows how much was saved for the client, and add those up for all the beneficiaries, and see if that much money was in the account. That simple accounting step would have shown much earlier that money was missing from the Aurora Foundation.

In fact, we took testimony of the bookkeeper from the Aurora Foundation, and she said she could never make the books balance. The boss just assured her that everything was OK, because he had the checks, missing from the records.

The additional problem my clients face is they have to prove the negligence in the Social Security administrative complaint scheme. This is a system which is excruciatingly slow, and where we do not have the sort of discovery procedures that are available in a court proceeding to get information.

Of course, most of the information we need to show what Social Security did is in the hands of the Social Security Administration. Right now, they are playing "hide the ball."

I have made Freedom of Information Act requests for basic information, like what the Foundation files applied to be a payee. And my clients, and I, on their behalf, have made Privacy Act requests, asking for copies of these statements that were supposed to have been filed.

Social Security denied my Freedom of Information Act request, saying that disclosure might interfere with the criminal investigation which, of course, is not the standard. They have not even responded to the Privacy Act request, asking for copies of the individual account statements.

I learned when I read the Inspector General's testimony that he gave in the Senate on Tuesday, that maybe it is because there are only twelve of the statements. But that is something that they have not told either to my clients or me.

I think Congressman Wise's bill will solve these problems. It eliminates the need for us to show negligence. Social Security beneficiaries could promptly recover benefits upon which they depend for the necessities of life. And Social Security can then recover from the representative payee, and I think they are in a better position to do that. In addition, the bill would make the relief retroactive, which is of primary importance for my clients.

I thank you for the opportunity to address you, and urge you to approve this legislation.

[The prepared statement follows:]

**Statement of Garry G. Geffert, Staff Attorney, West Virginia Legal Services Plan, Inc., Martinsburg, West Virginia**

My name is Garry G. Geffert. I have been a staff attorney with the West Virginia Legal Services Plan, Inc. office in Martinsburg, West Virginia, for almost twenty years. The West Virginia Legal Services Plan, Inc. annually obtains a grant from the Legal Services Corporation to provide legal assistance to low-income individuals in civil matters.

I urge the Subcommittee to recommend passage of H.R. 3666, proposed by my Congressman, Representative Bob Wise, amending Titles II and XVI of the Social Security Act. Congressman Wise's bill would give meaningful protection from exploitation to the most vulnerable to Social Security and SSI beneficiaries, those who cannot handle their own financial affairs and so must depend on representative payees. Congressman Wise's bill does this by permitting a social security beneficiary to recover any benefits which have been misappropriated by a representative payee without proving that the Social Security Administration was negligent in overseeing the representative payee. And, it would provide retroactive relief.

A recent incident which occurred in my home town, and which was the subject of a segment on the news program *20/20*, shows the need for passage of Congressman Wise's bill.

Many social security beneficiaries in our area have no family member who can serve as a representative payee. In the early 1990's, a local business man, Gregory Gamble, set up a non-profit corporation, called the Aurora Foundation, to be a representative payee, for a fee. The corporation was essentially a one-person operation. Once the Foundation was established, the local Social Security office routinely told beneficiaries that the Aurora Foundation would be their payee; beneficiaries were not given a choice.

From time to time, beneficiaries complained about the Aurora Foundation and the manner in which their funds were handled. Those complaints were largely ignored; none were investigated. In 1996, a beneficiary wrote to the Foundation complaining about the handling of his money, and sent a copy to the Social Security Administration. He was subsequently allowed to discontinue using the Foundation as his payee, but no investigation of his complaint was made.

In early 1999, clients of the Aurora Foundation began getting eviction notices for nonpayment of rent and letters from utility companies threatening to cut off service for nonpayment of bills. These were, of course, payments that the Aurora Foundation was supposed to have made for its clients. The Foundation office closed and the

state court appointed a receiver. The state's action was too late. The money was gone.

The Office of the Inspector General of the Social Security Administration audited the Foundation's records and determined that \$223,353.00 had been stolen from 127 Aurora Foundation clients.

Mr. Gamble has entered a plea of guilty to embezzlement of Social Security funds. He has also filed for bankruptcy. Although the Bankruptcy Judge has ruled that the debts to my clients, and other Aurora Foundation victims, are not dischargeable, Mr. Gamble has no assets from which to repay the individuals whom the Social Security Administration put in his clutches.

Under current law, my clients may be able to recover from the Social Security Administration ("SSA") the benefits which the Aurora Foundation misappropriated. However, in order to recover they must show that they lost their benefits as the result of "the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee." 42 U.S.C. § 405(j)(5); 42 U.S.C. § 1383(a)(2)(E). This is neither a simple, nor a swift, task.

Social Security's monitoring duties are so minimal that it is difficult to show they negligently failed to meet them. All Social Security requires of a payee is the filing of a two-page summary of income and expenses. (Form SSA-623-F6). While this summary accounting is appropriate for a family member acting as payee, it is inadequate for an organization which handles the money of many individuals.

The inadequacy of the reporting requirement is demonstrated by the Aurora Foundation. The Aurora Foundation maintained one checking account, into which were placed all the benefits for almost all of its clients. The Foundation then purported to keep records showing how much of the account belonged to each client. Until the end, the account usually had more money in it than belonged to any one client. However, no one ever required the Foundation to show that the account had all of the money for all of the beneficiaries. Social Security does not even require an organizational payee to show that its bank accounts balance. The Aurora Foundation's part-time clerk testified that she tried to balance the client checking account, but could not make it balance. When she asked her boss about it, he said that the problem was caused by bookkeeping entries he had failed to make, and that she should not worry about it.

Further, negligence must be proven in the SSA administrative complaint scheme, a system which has no time deadlines and can be excruciatingly slow, and under which there are none of the normal procedures through which information can be obtained. This seriously handicaps the ability of my clients to pursue their claims, as neither my clients nor I have been able to determine whether the Foundation even filed the short summary forms which the SSA does require. While both my clients and I have made requests under the Freedom of Information Act and the Privacy Act, SSA has been playing hide the ball. It has refused to turn over even basic information about the Foundation, claiming that release of that information could hinder its criminal investigation, and it has failed to respond to any of the Privacy Act requests seeking copies of the annual summary statements which the Foundation should have filed for the clients.

Congressman Wise's bill, H.R. 3666, would solve these problems. It would eliminate the need to show that the SSA was negligent in its oversight of the representative payee. The SSA beneficiaries could promptly recover the benefits upon which they depend for the necessities of life. The SSA could then recover from the dishonest representative payee, a task which it is in a far better position to accomplish than are the beneficiaries.

Congressman Wise's bill also does what the SSA's bill does not; it makes the removal of the "negligence" requirement retroactive. This is of crucial importance to my clients, and the other victims of the Aurora Foundation. Their money was stolen prior to the end of 1999; under the SSA's bill, they would recover nothing. That is not fair. It was not their choice to have the Aurora Foundation appointed as their payee; the SSA directed them to the Foundation. They should not suffer from the poor choice of the SSA.

The one hundred twenty-seven victims of the Aurora Foundation are in desperate need of the relief which Congressman Wise's bill would afford them. On their behalf, I ask that your Committee recommend passage of H.R. 3666 to the House of Representatives.

Thank you for the opportunity to present these views to you.

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Chairman SHAW. Thank you, Mr. Geffert.

Mr. Matsui.

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

Mr. Geffert, I think you have said this. But it is your testimony that the SSA office in West Virginia was knowledgeable about complaints for quite some time; did you say that?

Mr. GEFPERT. Yes, as we have been able to piece it together, complaints were be made. Somebody would go in and say, I have got this problem. But no record was ever made of it.

Mr. MATSUI. Right, right.

Mr. GEFPERT. And I think that is the problem. And I think it may be a function of what you were discussing earlier, as well. Everybody knows this guy, and he is a good guy. So there can not be anything wrong. But because they did not log their reports of the complaint, the pattern never emerged.

It may also be, as some of the witnesses here have suggested, that the beneficiaries were questioning something that there is nothing wrong with. But the problem we faced, and the clients faced, is that even with the justified complaints, there is no record, so you can not uncover what is going on.

Mr. MATSUI. I am going to defer other questions, Mr. Chairman, because I know you and others may have questions. But I want to thank the five members of this panel. It has been very helpful, and I really appreciate it. We hopefully can take some kind of action to address the issues you raise.

Thank you.

Chairman SHAW. Mr. Collins.

Mr. COLLINS. I do not have any questions, but I do appreciate the testimony here today.

Chairman SHAW. Mr. Geffert, the accounting form that you were holding up, is that the one that Mr. Huse testified, that there were less than 20 of them?

Mr. GEFPERT. I believe it is. It is this form, SSA-623, F-6, and I think that is what he was making reference to, although he would probably have a better answer to that than I would. But that is the only form that I am aware of that has that information.

Chairman SHAW. Did you find out anything today that helps your case?

Mr. GEFPERT. Well, yes, I found out that there were only 12 reports, and I think that indicates something.

Chairman SHAW. I think it indicates a lot. But I am not trying to help you, or tell you how to try your case.

[Laughter.]

Mr. GEFPERT. Well, I am looking forward to having a hearing record to put in with our complaint.

Mr. MATSUI. If you need any jurors, just call us.

[Laughter.]

Chairman SHAW. I am interested about what they are hiding from you in the discovery. Are you going through the discovery process, and they are putting up some kind of a defense, or what is the problem?

Mr. GEFPERT. There is no discovery process in the administrative scheme. So what we did is try to use the Freedom of Information Act. And I asked for basic documents, because I understand there

was a criminal investigation going on, at the time I made the request.

What I asked for was, what did the Aurora Foundation show you when they got the license? What information did they submit to show that they should be a representative payee, and what did you do, looking at them? I think those are the three basic areas.

And the response I got is, we can not tell you anything because there is a criminal investigation going on. That is not the standard of the Freedom of Information Act. There has got to be a showing that disclosure would somehow interfere with the investigation. And I do not know how that information would interfere.

But with a Privacy Act request, which I find more troublesome, my clients asked for documents about them and to which they are absolutely entitled, as I understand the law. And that is about these representative payee reports, because our suspicion is that they were not filed. We did not even get a response.

Now most of my clients went in with a letter from me saying, here is what you need to ask for. Some of them reported that the letter was taken. Some of them were told, we will get back to you. Everybody tells me, nobody got back.

And I lend credence to that, because I made a written request on behalf of one of my clients, with the requisite forms, to which I have never received a response. I sent it to the local office, where I understand there is supposed to be a record of at least whether or not these reports were filed. And to that, I have not gotten a response. That troubles me.

But it may be that because of the poor recordkeeping, there is nothing there, and so that is why we are not getting anything back.

Chairman SHAW. Is there a statutory requirement that those things be filed?

Ms. COLEMAN. Yes.

Mr. GEFFERT. I know it is regulatory. I do not know if it is statutory.

Chairman SHAW. Ms. Coleman.

Ms. COLEMAN. Yes, there was a Supreme Court case called Jordan, which mandated that there be annual reports made for every beneficiary, except those institutions that have the 3-year, on-site review.

Chairman SHAW. So Mr. Gamble should have been required.

Ms. COLEMAN. Mr. Gamble was obligated in accepting the responsibility of being a rep payee to file individual reports annually on each individual to whom he was appointed rep payee. He did not, obviously.

And if only 12 reports were filed over a 4 year period of time, and there are several hundred beneficiaries, he has missed a lot.

Chairman SHAW. Is this an annual report?

Ms. COLEMAN. It is an annual report.

Now I think that there are two things that are important to understand about the annual report.

Chairman SHAW. Now wait a minute. There were only 12 filed over how many years?

Mr. GEFFERT. All I know is what I read in the testimony and it was not clear whether that was the total over the number of years or for the last year.

Chairman SHAW. Oh, I did not realize you were here, Mr. Huse.  
Mr. HUSE. But what we are focusing on is what we found at the time that the case broke, and we only had 12. Now they have since found another 20.

Chairman SHAW. Total, over what period of time?

Mr. HUSE. That is subsequent to our search that day.

Chairman SHAW. Did you find them in the government files, or did you find them in Mr. Gamble's file?

Mr. HUSE. We were looking in the agency's files. But while we were searching, we found the unopened envelopes from Social Security in his files.

Chairman SHAW. Is the procedure that the Social Security sends those out for each payee and, obviously, no one is monitoring whether they come back? Boy, I will tell you, if the IRS did this, April 15th would become a holiday.

[Laughter.]

Mr. GEFFERT. Actually, the Inspector General, in one of his earlier monitoring reports about this, described the procedure. And something that struck me as odd was the tracking system.

They send a report form out. If it does not come back within, I don't know, 30 days, they send out another letter. This is all done through a private contractor on a computerized system.

And then there is a second step, and a follow-up request. But at the end of the year, if no report has been filed, they start over again, and the computer record is written over.

Chairman SHAW. I think I will submit a question to the Dr. Daniels as to whether or not these letters were sent out, and whether they were followed up. That is something that this Committee should know.

Ms. Coleman, you talked about problems between the Social Security and the courts, that they are not communicating with each other.

Ms. COLEMAN. Correct.

Chairman SHAW. What is the purpose of that? You said it was statutory, I believe.

Ms. COLEMAN. Well, it is a privacy prohibition. Currently there are a few statutory overrides to it that allow states to get a hold of records.

But at the moment, there is no overall provision that enables Social Security to share that information with courts, where they may have beneficiaries in common. And there is a need for such a provision.

Chairman SHAW. OK, we will have to look into that.

Thank you all very much. We appreciate it. It has been a very good hearing.

Ms. COLEMAN. Thank you.

Chairman SHAW. We are now adjourned.

[Whereupon, at 12 noon, the hearing was adjourned.]

[Questions submitted by Chairman Shaw, and Mr. Huse's responses follow:]

#### **OIG Responses to Representative Payee Questions**

1. *Regarding annual accounting requirement*, the IG testified that SSA could initially produce only 12 of the more than 100 accounting reports the Aurora Foundation was required to submit annually for the beneficiaries for which it served as rep

payee. Later, a limited number of additional reports were found in SSA's files, but still were short of the amount Aurora was obliged to submit as rep payee. In fact, when the IG investigated Aurora's files, it found many of the accounting report forms still unopened in their original envelopes from SSA.

- How many accounting reports did you receive from Aurora in each of the years during which Aurora was a rep payee for Social Security/SSI beneficiaries? How does that compare with the number of beneficiaries for which Aurora was rep payee during each of those years?

- Why did Aurora's failure to submit so many accounting forms not result in a closer examination of its operations by SSA?

- Why do you think the IG testified that "it is our belief that adequate monitoring would have detected financial discrepancies in the rep payee's accounting records" in several cases of fraud? Do you agree or disagree that "adequate monitoring" would have detected problems with Aurora sooner, better protecting at least some of the benefits that were lost?

- Are you still searching for files from Aurora? Have you found any additional files? If so, how many?

- What other examples are there of rep payees that fail to submit accounting forms as required? What has been SSA's response in other cases in the past? Do you expect that response to change?

*Answer*

- We cannot attest as to how many Aurora rep payee accountability reports SSA received each year. While we requested all the reports, SSA only provided 12, substantially less than should have been filed for the 120–140 beneficiaries for which it was payee. SSA staff advised us that most forms were actually filed, but were not originally provided to us because of problems in locating and retrieving them.

- If Aurora did not file the remaining forms, we defer to SSA to explain why this did not result in closer examination of Aurora's operations. SSA does have policies and procedures that require follow-up action when a rep payee does not file an annual accountability report.

- We believe adequate monitoring will better detect rep payee fraud, and may have better protected some victims in the Aurora case by detecting problems sooner. Monitoring practices when the fraud in the Aurora case occurred were insufficient to detect fraud.

- We are not independently searching for any additional accounting forms from Aurora. In addition, SSA has not provided us with any additional accounting forms for Aurora.

- We will defer to SSA regarding examples of instances in which rep payees failed to submit a required accounting form, as well as SSA's previous responses to these instances and planned future responses. Generally, SSA does not notify us about a non-response situation unless there is an indication of fraud. With increased awareness and congressional concern in this area, we expect SSA will strive to improve its recordkeeping and retrieval process for accounting forms, and will conduct all required follow-up actions when a rep payee does not file an annual accountability report.

2. *Why has it taken so long to implement the IG's recommendations about non-responding payees?* In December 1996 the Inspector General made specific recommendations regarding monitoring non-responding payees, specifically on following up non-receipt of reports and verifying local Office action. SSA is now proposing to conduct these checks. But why wasn't action taken in the last 4 years? Obviously you think this step will help reduce fraud and abuse or you wouldn't be moving forward now. How many abuses might have been prevented if you had followed the IG's advice three and a half years ago? What amount of benefits would have been protected in the Aurora case if the first instance of non-response had resulted in the selection of a new rep payee? The second? Third?

*Answer*

- We will defer to SSA to explain why it has taken this long to implement our December 1996 recommendations regarding nonresponding payees, and the known effect of the delay in implementation.

- As for the Aurora case, we cannot determine what amount of benefits would have been protected from misuse if instances of nonresponse had resulted in the selection of a new payee. Based on our review of SSA's records, we cannot determine when the initial nonresponse occurred in each instance because SSA's records do not maintain a history of previous nonresponders. However, you should be aware, that the accountability reports are only one aspect of a more comprehensive monitoring system necessary to deter and detect fraud. The accountability reports require minimal information as reported by the rep payee. A dishonest payee may falsify infor-

mation in the report and send it in timely. In these cases, fraud may easily go undetected unless SSA exercises some oversight or review of the information reported.

3. *Where is the documentation?* The IG believes that retention of supporting documentation for the failure to timely complete rep payee accountability forms and the ability to easily retrieve these forms is essential to the identification and ultimate prosecution of rep payees for fraud or misuse. According to the IG, your own procedures say the rep payee accounting reports must be retrievable in the event the form must be reviewed for misuse or fraud allegation. Yet your offices are required to send these documents to an outside storage facility. Where are local offices storing these documents today? *What instructions are your local offices following?*

*Answer*

- All accountability reports are returned to SSA at a data operations center (DOC) in Wilkes-Barre, Pennsylvania. The DOC completes the initial screening, data verification, and review of all returned accountability reports. If no further action is needed, the reports are stored for 2 years. The forms are stored in SSA's processing centers or in private facilities near those processing centers, and in SSA's record center in Boyers, Pennsylvania. Because of the volume of forms, SSA generally groups the forms by reporting period date for storage. This is not conducive to making the forms easily retrievable.

- We previously recommended that SSA study the desirability of optical scanning of completed annual accountability reports.<sup>1</sup> This would enable SSA to maintain the information in an electronic database and would reduce problems with retrieving paper copies. Field offices are supposed to follow the procedures in SSA's Program Operations Manual System which state that payee accounting forms must be retrievable in the event that the form must be reviewed for a misuse or fraud allegation.

4. *Should organizational rep payees be subject to audits?* More specifically, should any organization be allowed to serve as a rep payee without being able to submit to SSA an annual audit of its operations? How many organizational rep payees currently have their own operations audited? How many organizations might no longer be eligible to serve as rep payees if this requirement were made and enforced? Could other rep payees be found in those cases?

*Answer*

There are about 45,000 organizational rep payees. We do not know how many of them have annual audits of their operations, how many would continue to be eligible to be a rep payee if audits were required, or whether other rep payees could be found if audit findings required a different rep payee. We do believe that, in some cases, it would be prudent to require an audit of the organization before SSA selects it as a rep payee.

5. *Are SSA screening procedures adequate?* In his testimony, the IG points out that in terms of the screening and selection of rep payees, SSA essentially conducts a records verification of certain documents such as drivers licenses, state identification cards, credit cards, and bank books. However, SSA does not verify the accuracy of this information. Nor does it provide credit or security checks to determine if the potential payee has financial problems, credit problems, or may have been convicted of any other felony. In March 1997, the IG made specific recommendations to SSA to conduct a more thorough screening of potential rep payees. Why weren't these suggestions adopted? Are you currently implementing any of the IG recommendations regarding the conduct of a more thorough screening of potential rep payees? If so, what is the status?

*Answer*

In a previous audit, we made several recommendations that SSA make a more thorough screening of potential rep payees.<sup>2</sup> We recommended that SSA conduct custody checks to verify custody information provided by the payee applicant. However, SSA believes custody verification should be left to the discretion of field office staff. We also recommended that SSA check the adequacy of the rep payee applicant's recordkeeping system during the screening and selection process. SSA agreed to improve its procedures by requiring a description of how beneficiaries' monies are recorded and disbursed. SSA plans to have this in place by August 2000. Finally, we recommended that SSA conduct suitability checks only for rep payees intended for selection. SSA disagreed and indicated that suitability checks will be done for all applicants in order to select the best possible applicant. There is a degree of uncertainty regarding the appropriate level of scrutiny potential rep payees will under-

<sup>1</sup>Monitoring Representative Payee Performance: Roll-Up Report, A-09-96-64201, dated March 1997.

<sup>2</sup>Ibid.

go as a part of a suitability check. This is an issue to be considered by the Agency's work group on rep payee strategies.

6. *What licensing or bonding requirements should organizational rep payees have to satisfy?* SSA's proposal would require only organizational payees who perform this service for a fee to be licensed and bonded. Other witnesses supported requiring licensing and bonding of *all* organizational payees, and you indicated an openness to considering expanding your proposal in this direction.

- What arguments can you think of *against* requiring licensing and bonding in all cases? Do you support those arguments?

- Your original proposal implies that higher standards should be applied to organizations that serve as rep payees under fee-for-service arrangements. Is that justified? Do more allegations of abuse result from fee or non-fee organizational rep payees? How about convictions?

- What proof does an organization applying to be a rep payee have to provide SSA regarding whether it is licensed or bonded? Does SSA check this information annually to ensure that the organization remains licensed or bonded? How? Should an organization lose its licensing or bonding, how quickly will SSA know of it? What response will SSA take?

- One recent case of rep payee abuse involves an individual who took over the operation of a non-profit group (which was licensed and bonded) that previously did not provide rep payee services. What can SSA do to prevent fraud in such cases?

- Section 2 of your proposed legislation states that a nongovernmental organizational representative payee must be licensed in each State in which it serves as a representative payee (provided that licensing is available in such State). It is our understanding that in some States, while the State does not require licensing, a county or locality might. Under your bill, would a representative payee still be required to be licensed in these circumstances? If no, should it be required?

*Answer*

- Currently, nongovernmental fee-for-service organizational rep payees must be licensed or bonded. Beginning in June 2000, SSA will require that they annually update their files to show their bond or license is still in effect. SSA has also proposed legislation that would require fee-for-service organizational rep payees to be licensed and bonded. The legislative proposal does not require licensing and bonding of all organizational rep payees.

- SSA has gone on record in prior congressional testimony that it would need to study the implications of extending bonding requirements to nonprofit organizations. We believe the increased cost for rep payees of requiring licensing and bonding in all cases is the most compelling argument against their enactment. Increased costs for these organizations could discourage some at a time when finding suitable payees is not always easy. We do not believe the cost factor should necessarily defeat the adoption of licensing and bonding requirements. We do agree that the implications of extending these extra requirements to nonprofits should be studied for impact before any legislation is proposed. SSA is developing a policy to balance the need for strengthened investigation and monitoring with costs and burdens to rep payees. We will reserve judgment on extending these requirements until SSA's policies are in place and an evaluation of their impact has been conducted.

- We believe there could be justification to support higher standards for fee-for-service organizational rep payees. However, we do not have any data readily available to support this position. We do not know whether more allegations of abuse, or related convictions, arise in fee or nonfee organizational rep payee situations. Our allegation management system does not capture information that distinguishes between fee and nonfee organizational rep payees. We are updating our system that collects and records data to include information regarding the number of allegations and convictions against rep payees and their various classifications (individual, fee, and nonfee organizational, etc.).

- We defer to SSA to advise you of what proof it requires for licensing and bonding; whether SSA checks that licensing or bonding remains in place; how quickly it learns about rep payees who lose their licensing or bonding; and what action SSA takes when a rep payee loses its license or bond.

- In the case you refer to, only a monitoring program that involved on-site review of financial records at regular intervals would have been effective in detecting fraud. As far as preventing the fraud in the first place, even more thorough screening may not be sufficient. Although the new rep payee had a prior criminal conviction, it would not have barred her from becoming a rep payee under current law. Licensing and bonding of the organization that employed the individual did not prevent this individual from assuming her position.

- As written, we feel SSA's proposed legislation would require licensing in the situation you described. If a county or locality requires licensing, licensing is available

in that State. The legislation only requires that licensing be available in the State, not required. We do agree, however, that this language could be improved to make this clearer.

7. *Should credit checks be done on all potential rep payees?* You can't buy a car, much less be put in charge of another person's finances, without a credit check. Does SSA perform a credit check on potential rep payees, including individual rep payees? Has a sample ever been performed to determine what SSA would find if it did so? Especially if non-fee organizational payees are not required to be licensed and bonded, should such organizations at least be required to pass a credit check? What would that cost? Would that otherwise happen in the course of bonding?

*Answer*

It is our understanding that SSA's policies and procedures require that a SSA employee interview prospective rep payees. However, the review does not include a verification of the information supplied by the prospective rep payee unless SSA has reason to question the applicant's suitability. SSA does not routinely perform a background check to determine whether the applicant has financial problems or bad credit. We are unaware of any studies to determine the credit histories of rep payees. We are not in a position to answer your question of whether a credit check should be required on nonorganizational rep payees that do not have to be licensed or bonded. There are millions of such rep payees, and the costeffectiveness of conducting credit checks is not known. In instances where an organizational rep payee is bonded, we believe local bonding requirements vary, but probably involve credit checks of some level.

8. *What other standards are there for rep payees?* I understand that a witness before the Senate Aging Committee testified that she became a rep payee for a number of beneficiaries after applying over the phone. Is that true? How did that happen? can that still occur?

Is there a minimum age for a person to be a rep payee? How old are the youngest rep payees? How many are there this age?

Most rep payees are individuals and not organizations. do you have any concerns about fraud involving *individuals* who serve as rep payees, as opposed to organizations, which is the thrust of SSA's legislative proposal? What are some recent examples of fraud involving individual rep payees? Why did you not included suggestions to address these cases?

*Answer*

- SSA policies and procedures allow rep payee applications to be filed over the phone in limited circumstances. This is consistent with SSA's commitment to expand service delivery options to its customers. However, a face-to face interview is generally required prior to the rep payee selection decision.

- There is no specific minimum age for a person to qualify as a rep payee. SSA will use its discretion. However, SSA policies and procedures state that individuals cannot be their own payee if under age 15 and individuals with rep payees cannot serve as another's rep payee. There is a strong implication that a person under this age would not be selected to be a rep payee.

- We do not have information on the age of the youngest rep payees and how many there are. We defer to SSA for this information.

- Since most payees are individuals and not organizations, we are concerned that controls and oversight are necessary to prevent, detect, and deter any individual who would commit fraud or misuse while serving as a rep payee. Some recent examples of fraud cases involving individual rep payees are described below.

Our New York office investigated a rep payee who had failed to report her son's incarceration, a Supplemental Security Income (SSI) recipient. During a redetermination, the woman stated her son was at home watching television. The investigation determined the man was incarcerated when his mother stated he was at home. The woman was subsequently indicted, arrested, and convicted for failing to report her son's incarceration. She misappropriated \$33,902 in SSI benefits. The woman was sentenced to 5 months' incarceration and 5 months' home confinement, and she was ordered to make restitution of \$33,902 to SSA.

A resident of Louisiana pleaded guilty to a two-count indictment of violations of title 18, United States Code, section 1001, False Statements. The subject was sentenced to 18 months and ordered to pay \$18,168.00 in restitution to SSA. An investigation by our Houston, Texas, Sub-Office showed the subject was the rep payee for a SSI recipient and made false statements to SSA about the recipient's living arrangements and how she had used the SSI funds she received on his behalf. The rep payee indicated that the SSI recipient was residing with her, and she had been using the SSI funds for

the recipient's benefit. During this period of time, the SSI recipient had been incarcerated in the Louisiana Department of Corrections.

A resident of Houston, Texas, pled guilty to one count of violation of title 18, United States Code, section 1001, False Statements. She was sentenced to 4 months in prison, 4 months' home detention, and 3 years' supervised release. She also was ordered to make \$6,034.00 in restitution to SSA. The subject was the rep payee for an individual who received both SSA and SSI payments. The subject made false statements to SSA about how she had used the SSA funds she received on the beneficiary's behalf. The SSA beneficiary was deceased when the rep payee indicated on SSA forms that she had used the SSA funds she had received on the beneficiary's behalf.

In Sheridan, Wyoming, a man who was rep payee for a child failed to notify SSA that the Department of Family Services had removed the child from his care. The investigation resulted in the man pleading guilty to Theft of Public Money. In Cheyenne, Wyoming, the U.S. District Court judge sentenced the man to 3 years probation and ordered him to pay \$2,070 in restitution.

We are not sure of SSA's reasoning for limiting certain legislative proposals to organizational rep payees, such as SSA reimbursement for victims of rep payee misuse, although costs would certainly be a factor.

9. *Can felons serve as rep payees?*

- Under what conditions may convicted felons serve as rep payees, whether as organizations or as individuals?

- How does SSA enforce current restrictions on convicted felons serving as rep payees? Does SSA actually check its records or other databases or does it rely on the word of the individual applying to be a rep payee? How many people are denied becoming rep payees each year because of current restrictions?

- Based on your records, how many convicted felons serve as rep payees today? Is that number expected to grow in the future?

- Of cases involving allegations of abuse by rep payees, how many involve previously-convicted felons? How many cases involving convictions for abuse by rep payees involve previously-convicted felons?

- If the law were changed to prohibit all convicted felons (including individuals convicted for felonies *not* related to Social Security or SSI benefits) from serving as rep payees, what impact would this have on beneficiaries? Would you expect more or less abuse by rep payees of vulnerable beneficiaries?

- If a rep payee misuses benefits, presumably SSA will attempt to locate another rep payee for the beneficiary. However, the first rep payee may never be convicted of the misuse, especially if the loss is not large. For example, the IG provides testimony about a father who stole SSI benefits from his son for about two years, yet was never prosecuted. Does that father serve as a rep payee for any beneficiary today? Could he? Does SSA maintain records about such (former) rep payees? For example, does SSA know how many current rep payees have misused benefits in the past?

- SSA has proposed new civil and monetary penalties against payees who misuse benefits. Would persons subject to the penalties also be specifically disqualified from serving as a rep payee again?

*Answer*

- Under the Social Security Act,<sup>3</sup> individuals are prohibited from serving as a rep payee only if they have been convicted of a felony of misusing funds in violation of the Social Security Act. Individuals convicted of all other types of felonies may serve as rep payees.

- We maintain a listing of all rep payees convicted of misuse under the Social Security Act and provide that information to SSA. We defer to SSA to inform you of what it does with this information and whether it has resulted in any denials for rep payee applicants.

- SSA records indicate there were 92,243 active rep payees with felony convictions as of April 2000. This information is based on self-reporting by rep payee applicants. We assume the number of felons serving as rep payees will grow proportionately with the growth of the rep payee population.

- Our case management system does not capture information on prior convictions of the subjects of our investigations. We do not have information on how many allegations or convictions for misuse involve previously convicted felons.

- We do not have any data with which we can make an informed opinion on the impact of prohibiting all convicted felons from serving as a rep payee, nor whether this would decrease instances of abuse.

<sup>3</sup> 42 U.S.C. 408 (a) and 42 U.S.C. 1383a.

- In the case of the father who misused benefits but was never criminally prosecuted, SSA records indicate the father is not currently a rep payee for any beneficiary. Theoretically, he could become a rep payee since he is not barred under the Social Security Act. We would defer to SSA as to what information it keeps on such former rep payees.

- Persons subject to penalties imposed by the OIG in accordance with its civil monetary penalty program are not prohibited from serving as rep payee in the future. We strongly support the addition of explicit language in the statute making said persons ineligible to become future rep payees.

10. *Why is SSA only now implementing some recommendations?* In the IG's testimony, he highlights a number of recommendations his office has made to SSA regarding the rep payee oversight process over recent years. Some of these recommendations have never been implemented, some are only now being implemented. Why? Which recommendations has SSA not implemented or does not intend to implement why?

*Answer*

We will defer to SSA regarding its decisions on implementing our recommendations as well as the timing of items scheduled for implementation. We do track the status of prior OIG recommendations. SSA either has implemented or plans to implement most of our recommendations. However, SSA rejected a few of our prior recommendations. We will defer to SSA to advise us which recommendations it rejected, and why.

11. *Why are abuses rising?* According to the IG's Office, allegations of fraud involving rep payees have increased on average of 206 per month in 1998 to about 1100 a month so far this year. I know the IG's office has grown during that time, enhancing its ability to investigate abuse. But is there fire under this smoke? How do you account for such a rise in allegations?

*Answer*

We attribute the rise in the receipt of rep payee abuse allegations to increased publicity and public awareness, a significantly expanded OIG toll-free hotline, and an increase in the number of OIG investigators. The expansion and easy access to information about rep payee misuse, what constitutes violations, and where to send allegations or suspicions of potential violations are also contributing factors.

12. *How does H.R. 3666 differ?* In addition to legislation that SSA has forwarded on this issue, Congressman Bob Wise of West Virginia has introduced H.R. 3666. How does this bill differ from the proposal SSA has put forward? It appears to the Subcommittee that the retroactivity under H.R. 3666 is without limit, meaning any benefits determined to have been misused in the past, whether in 2000 prior to enactment, or in 1999 or even in 1989 and before are eligible for reimbursement provided other conditions are met. Is this reading correct? If enacted, should a limit be placed on the retroactivity of legislation like H.R. 3666? What should that limit be?

*Answer*

SSA's proposed legislation differs from H.R. 3666 in that (1) it would only apply in cases of organizational rep payee misuse and (2) it would not apply retroactively. Under SSA's proposed legislation, beneficiaries who are victimized by a rep payee would still need to meet the negligence standard for reimbursement. SSA is in the best position to determine the associated cost and, therefore, burden of unlimited retroactivity of legislation like H.R. 3666.

13. *What has been done about payments to deceased rep payees?* Please tell us what steps have been taken to prevent continued payments to rep payees who have died. We now allow for recovery of this money as if it were an overpayment. How much is being recovered? Compared with what total overpayment? Do you have further suggestions for better preventing payments after rep payees have died?

*Answer*

- In September 1999, we issued a report on payments made to deceased rep payees.<sup>4</sup> The objective of the review was to determine whether SSA identifies all cases in which a rep payee is needed when a former rep payee dies. We found that SSA procedures did not ensure that a new rep payee was selected when a former payee dies, causing millions in overpayments. We made six recommendations to address the condition.

- SSA agreed with our recommendations and has begun implementing them or plans to implement them. SSA provided us with an estimated timetable for corrective actions. We identified about \$17.3 million in Social Security and SSI overpayments. We have no information on overpayment recoveries in these cases. We have

<sup>4</sup>The Social Security Administration's Procedures to Identify Representative Payees Who Are Deceased (A-01-98-61009).

no further recommendations at this time to prevent payments to deceased rep payees.

14. *Why haven't certain Freedom of Information Act requests described by Mr. Geffert been granted?* Are there other Freedom of Information Act requests involving rep payees that SSA has denied in the past year? For what information? In each case, what has been the justification for the denial?

*Answer*

- In his May 4, 2000 testimony, Mr. Geffert stated that SSA denied his Freedom of Information Act (FOIA) requests in cases where the Aurora Foundation was the rep payee for his clients on the grounds that there was an open criminal investigation.

- The authority to grant or deny FOIA requests lies solely within the discretion of SSA's Office of Disclosure Policy (ODP). However, when SSA believes that records may be in the possession of OIG, our office evaluates the request and provides a recommendation for or against disclosure to ODP to use in making their final determination. In this case, Mr. Geffert's request was forwarded to OIG's FOIA coordinator who determined that there was an open criminal investigation regarding the Aurora Foundation. Based on that determination, our FOIA coordinator recommended that the request for information be denied.

- As required by law, SSA compiles and publishes an annual report on FOIA activities. In 1999, SSA provided combined data on FOIA and Privacy Act requests. SSA reported that it processed 134,609 requests, and granted full disclosure in 131,783 instances. There were 971 partial grants and 565 denials. The overwhelming reason for these was based on the exemption that disclosure would constitute a clearly unwarranted invasion of another's personal privacy. We do not have any information on how many partial grants and denials were issued in FOIA requests involving rep payees.

[Submissions for the record follow:]

**Statement of Sue Davis, Scottsdale, Arizona, on Behalf of the National Alliance for the Mentally Ill**

Chairman Shaw, Representative Matsui and members of the Subcommittee, I am Sue Davis of Scottsdale, Arizona, and a constituent of Representative J. D. Hayworth in Arizona Congressional District 6. I am pleased to offer the views of NAMI the National Alliance for the Mentally Ill on the Social Security Administrations Representative Payee Program. NAMI is the nations largest membership organization 210,000 members and 1,200 affiliates representing individuals with severe mental illnesses and their families. In addition to serving on the NAMI Board of Directors, I am also the parent of an adult child with a severe mental illness.

My son Tod developed schizophrenia in 1983 during his junior year at the Massachusetts Institute of Technology (MIT) in Cambridge, Massachusetts. The level of disability caused by his illness necessitated that he apply for disability assistance through Social Security. In 1986 Social Security determined that he was permanently and totally disabled. He began receiving Supplemental Security Income (SSI) payments. I became his Representative Payee several years later because the cognitive deficits caused by schizophrenia demonstrated that he needed assistance managing his money. I am also his Designated Representative for the purpose of helping him make medical and life decisions. I receive no financial remuneration for these time-consuming services. I gain satisfaction knowing that I am helping my son live with chronic illness and wisely manage his limited resources.

At the outset, I would like to offer NAMIs thanks for convening this important hearing. Social Security disability cash benefits are perhaps the most important source of support for many adults with the most severe and disabling mental illnesses. These limited, fixed incomes provide what is needed to pay rent, purchase groceries and meet other basic needs. For those who depend on organizational and non-family-member representative payees, fraud, abuse, and mismanagement of these funds are critical concerns. NAMI strongly supports every effort of this Subcommittee to prevent fraud and abuse and to ensure that those who have victimized beneficiaries are fully prosecuted. Where fraud and abuse have occurred, NAMI urges that every effort be made to expeditiously restore lost benefits something that has not always occurred under Social Securitys current rules and regulations.

As members of this Subcommittee know all too well, persons diagnosed with severe mental illnesses such as schizophrenia, bipolar disorder, and major depression represent a significant portion of the population of non-elderly adults with disabilities on the Disability Insurance (SSDI) and Supplemental Security Income (SSI) rolls (they make up one-quarter of the SSDI rolls and one-third of the SSI rolls, according to recent SSA estimates).

While not all SSDI and SSI beneficiaries with severe mental illnesses need a representative payee to manage their cash benefits, many do. In most cases, representative payees are appointed according to the recommendation of a Social Security field office that has determined that an individual's cognitive disability renders him or her unable to manage his or her own financial affairs.

*Fraud and Abuse in Representative Payee Programs Should Not Be Tolerated*

As the Social Security Administration (SSA) has noted in testimony before the Subcommittee, 6.5 million elderly and disabled beneficiaries have representative payees. Over 750,000 of these Social Security beneficiaries are served by organizational representative payees rather than family members. In NAMI's view, it is the performance of these organizational and non-family member payees that is the proper focus of these hearings. As several witnesses have noted, the most egregious cases of fraud and abuse that have occurred in recent years have involved either organizational or non-family individual payees including the Aurora Foundation case from West Virginia (over \$300,000 embezzled from over 140 beneficiaries) and the Ivy Foundation case from Phoenix, Arizona, and Denver, Colorado (over \$274,000 in funds misappropriated from 330 beneficiaries). Likewise, Social Security's Inspector General has uncovered a troubling lack of oversight in cases of non-family-member individual payees, including the case of Jean Bote, a representative payee and guardian for more than 20 beneficiaries, who was able to misuse over \$200,000 in Social Security and veterans benefits for personal gain.

While these extreme cases may be rare (only 650 cases of misuse are uncovered every year, according to SSA) and typically in small amounts (only \$3 million out of \$30 billion paid out to beneficiaries through payees), infrequency and a lack of large amounts of money are no consolation to an individual with a severe disability who has lost needed benefits.

In NAMI's view, it is proper for Congress and SSA to focus their prevention and prosecution efforts on these organizational and non-family-member payees. Along these lines, I would like to quote a statement made by a previous witness at this hearing that NAMI wants to make sure does not go unchallenged. In testimony before this Subcommittee today, Ann Sparks of the York County, Pennsylvania, Mental Health Association asserted They [people with mental illness] are frequently taken advantage of by family and friends and She said that clients referred for organizational payees are often victims of family or friends who have been their representative payees and mismanaged their benefits.

NAMI is troubled by this reckless statement, especially given that no other witness, including officials from either SSA or the Inspector General's office, made a similar assertion. Such a sweeping assertion, in NAMI's view, is not only unsupported by independent evidence, but more importantly it unfairly maligns the nearly 5.8 million family members such as myself who currently serve as their loved ones payee. Nearly all of the legislative remedies put forward by SSA deal with organizational and non-family representative payees, a clear expression from SSA's perspective that this is where the real problem lies. More important, an examination of the role that family members play in the representative payee program reveals that they fulfill responsibilities far beyond money management at considerable savings to taxpayers.

*Family Members as Representative Payees*

According to the Social Security Administration (SSA), in cases where a representative payee is needed, family members serve in this role 84 percent of the time. In NAMI's view, these family member representative payees do a tremendous job under sometimes difficult circumstances. Not only do they handle their disabled loved ones financial affairs, they also serve critically important functions such as coordinating social services, housing, medical and psychiatric treatment, and all other aspects of support in the community. It is important to note that family members that serve as representative payees must do so against the backdrop of the discrimination, stigma, and misunderstanding that are so closely associated with severe mental illness. Moreover, in contrast to many organizational payees who accept fees from SSA, parents and siblings assume these responsibilities at no cost to anyone.

This burden can be especially difficult for the large number of aging parents caring for adult children with severe mental illness. As more and more of these parents of the so-called baby-boom generation age into their seventies and eighties, the responsibilities of being a representative payees are certain to become more and more difficult for them to fulfill. While many of these families will assign siblings the responsibility of being the representative payee, the reality is that the demand for institutional representative payees is likely to grow. NAMI therefore believes that

Congress and SSA need to make every effort to ensure that the integrity of this program is restored and promoted in every way possible.

*Social Security Administrations Administrative Actions*

Before turning to the specifics of SSAs legislative proposal to combat and prevent fraud and abuse in the representative payee program, I would like to note some of the important administrative measures the agency has undertaken to promote the integrity of the program. Perhaps the most important of these administrative steps is SSAs triennial review of all organizational payees serving 100 or more beneficiaries and individual payees serving more than 20 beneficiaries. While only a sample of these payees will actually have face-to-face reviews, this is a step in the right direction. These reviews could be improved even further by becoming more like financial audits, rather than remaining simply contact with vendors and corroboration of expenses.

NAMI is also pleased that SSA intends to increase scrutiny of newly appointed fee-for-service payees. We believe that this process could be improved even further by making technical assistance available for newly appointed family-member payees to avoid misunderstanding program rules and responsibilities. NAMI respects that SSAs limited administrative budget prevents more extensive audits of all high-volume payees. However, we believe that more can be done to respond promptly to trigger events involving high-volume payees, such as stepped reviews once reports of misuse of funds are received from beneficiaries or credible third parties.

*Social Security Administrations Legislative Proposal*

NAMI would like to offer strong support for many of the provisions contained in SSAs recommended legislative proposal to combat fraud and abuse in the representative payee program. Perhaps the most important of these recommendations concerns access to restitution of cash benefits that have been lost through fraud, abuse, or misappropriation. Under current law, when a payee has been determined to have misused benefits, SSA can reissue the benefits only in cases where SSA is found to have been negligent in investigating or monitoring the payee. In nearly all other cases, the individual beneficiary loses his or her benefits. It is very difficult for the beneficiary to claim this reissue on his or her own and can result in extreme hardship for beneficiaries.

NAMI therefore strongly endorses a requirement for SSA to reissue benefit payments (including respective fees for fee-for-service payees) in all cases when an organizational payee is found to have misused beneficiary funds, without either a finding of negligence on SSAs part or restitution from the payee. At the same time, NAMI wants to ensure that this long-overdue reform does not result in SSA retreating from its existing duty of demanding restitution of misused funds from former payees to ensure that an appropriate deterrent to misuse is not eroded.

Second, NAMI supports SSAs recommendation for all non-governmental, fee-for-service, organizational representative payees to be both licensed and bonded. Current requirements allow either state licensing or bonding. Mandating that institutional payees meet both requirements will ensure necessary state oversight of business practices and investigation by surety companies that issue bonds. Proceeds from redeemed bonds would also reduce the costs to Social Security from misused benefits that are reissued.

Third, NAMI supports efforts to ensure that organizational payees that have been found to have misused an individuals benefits cannot qualify for any fees from that individuals benefits for the months the payee misused the funds. It is troubling that any organizational payee has ever been able to actually profit by collecting fees from beneficiaries they were simultaneously defrauding. NAMI would like to see this long overdue reform expanded by requiring SSA to notify the beneficiary that their organizational payee has been found to have misused funds and has had fees withheld. Such a notice should also give the beneficiary the opportunity to immediately switch to a different payee.

Fourth, while NAMI supports SSAs efforts to step up restitution of misused benefits and payee fees directly from payees including efforts to recover these funds through overpayment recovery we believe that misuse needs to be more clearly defined to protect individual payees who are also Social Security beneficiaries. In their legislation, SSA is proposing the use of existing overpayment recovery methods (tax refund offsets, referral to collection agencies, notice to credit bureaus, etc.) to recoup benefits misused by individual representative payees. In other words, misused funds (and any fees paid out to organizational payees) would be treated the same as an overpayment made to the payee.

While NAMI strongly supports the goal of expanding restitution of benefits misused by payees, we want to ensure that these recovery methods are limited to gen-

uine instances of fraud and conversion and not to subjective judgments about whether or not handling of benefits by an individual payee (particularly a family member) is in the best interests of the beneficiary. NAMI therefore urges that language be added to this Proposal specifically limiting SSAs authority to use these expanded overpayment collection methods against family representative payees to situations in which there has been actual theft or conversion of funds for personal use. Moreover, SSA should be prevented from using these overpayment collection methods against a family member payee until an allegation of theft or conversion has actually been proven, not simply alleged.

Finally, NAMI strongly supports granting SSA authority to levy civil monetary penalties against organizational payees that misuse benefits. In their legislative proposal, SSA is seeking authority to impose administrative penalties against payees who make false statements to improperly obtain or retain benefits. This would help SSA go after those payees who commit fraud but are never prosecuted criminally, in many cases because the amounts they have stolen are small or prosecutors declined to move forward on criminal charges. The existence of civil monetary penalties will help create a new deterrent against fraud by organizational payees and non-family individual payees who handle large numbers of beneficiaries.

#### *Conclusion*

Chairman Shaw, on behalf of NAMIs consumer and family membership, I would like to thank you for the opportunity to offer our views on this important issue. We look forward to working with all members of the Subcommittee to promote the integrity of the Social Security Representative Payee Program to ensure that the interests of all beneficiaries and their families are protected.

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#### **Statement of Dawn Reese, Harrisburg, PA, Former Representative Payee**

Honorable Chairman and Members of the Ways and Means Committee, thank you for holding this fact finding hearing today on representative payees and potential misuse of social security funds.

Mr. Chairman, today I feel compelled to urge you to review the current selection process of representative payees for Survivor Benefits.

Automatically naming as representative payee a surviving ex-spouse caring for the deceased parent's child—as long as they have not committed a felony or are not currently under investigation for endangering the child—has merit. But I believe we can do more to protect the most vulnerable of our society, our children.

I recently served as a representative payee for my eleven year old nephew, Brian. Brian's father died on February 17, 2000, one month after being diagnosed with cancer. Brian's father, Alan, was the custodial parent of Brian and his brothers for the last five years. Upon Alan's death, custody automatically reverted to their mother. Unfortunately, their mother suffers from manic depression. She has made numerous attempts on her life, and was convicted of endangering the welfare of her children. She is remarried and currently receives Supplement Social Security because she is unable to work due to her disability. Her current husband recently served as her representative payee. They clearly exhibit the inability to manage their financial affairs and are unable to secure a checking account due to a history of writing bad checks.

Together, Brian's mother and I decided I would be the best person to provide for Brian's needs and save for his future, and become his representative payee. Approximately one month, and two checks, after being named representative payee, Brian's mother decided she would like to have full access to Brian's money. She, along with her husband, went to the local Social Security Office and requested that she become Brian's representative payee. The Social Security Administration notified me and told me they are *required* to name her rep payee and that I must submit receipts for monies spent and return all remaining benefits to be reissued to her. There is no doubt in my mind that Brian's survivor benefits, over \$1000 a month, will be used to support and buy for the entire, non-working family.

What I would like you to consider today is whether or not someone with a history of endangering the welfare of their children should automatically be designated representative payee for their child. Should a non-custodial parent automatically be named representative payee upon the death of their ex-spouse, without regard to why that person was the non-custodial parent? Should a person receiving Social Security benefits because of their inability to work because of their mental illness, be designated to administer benefits for another?

We are here today because of the misuses of benefit payments by representative payees. I am here today to bring to your attention the need to make some changes in the way selection, approval, and designations of representative payees are determined for survivor benefits. If we only had a few additional safeguards built into the selection process, we could protect our children and their benefits, and ensure that the administrators of these funds, the representative payees, are responsible individuals capable of carrying out their duties.

I suggest the committee develop procedures to make sure representative payees are, at a minimum, responsible people with no history of abuse or neglect; parents who did not fail to provide child support to the child or to their children from a former marriage; are not mentally disabled; are capable of administering the funds; and dedicated to serving the best interests of the child.

At the time of death, if the deceased was the custodial parent of the children, a background check of the non-custodial parent could be made if they seek to be named representative payee. In my state, we have a statewide central register within the Department of Public Welfare which issues child abuse clearances. The non-custodial parent could be required to present a child abuse clearance in order to be named payee. An investigation could be made to find out whether or not the non-custodial parent or their spouse is not fulfilling their support obligations to children of prior marriages. A few extra steps to prevent abuse of funds and provide protection to beneficiaries is well worth the efforts.

There is one other issue that tugs at my heart. The current policy of refusing survivor benefits to a remarried parent taking care of a deceased spouse's child, advocates divorce and the break-up of the family. It is assumed that a married person has the benefit of a working spouse. That is not always the case. Many children in these households are living in poverty. Parents are not excused from their financial obligation to their child if their ex-spouse remarries. Social Security should do no less.

Thank you allowing me to share my concerns with you today. You have a major task before you and when revising the laws and policies for organizational representative payees, I urge you to review the laws and policies for designating individual representative payees.

