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ENSURING THE INTEGRITY OF SOCIAL SECURITY PROGRAMS: PROTECTING SENIORS FROM REPRESENTATIVE PAYEE FRAUD

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

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ENSURING THE INTEGRITY OF SOCIAL SECURITY PROGRAMS: PROTECTING SENIORS FROM REPRESENTATIVE PAYEE FRAUD

TUESDAY, SEPTEMBER 9, 2003

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

The committee met, pursuant to notice, at 10 a.m., in room SD–628, Dirksen Senate Office Building, Hon. Larry Craig (chairman of the committee) presiding.

Present: Senators Craig and Carper.

OPENING STATEMENT OF SENATOR LARRY CRAIG, CHAIRMAN

The CHAIRMAN. Good morning, everyone. The Senate Special Committee on Aging will be in order.

We are here this morning to discuss an aspect of Social Security that is very important to our nation's seniors. Through the representative payee program the Social Security Administration appoints representatives for persons that have difficulty managing their own benefits. As you all know, Social Security benefits are often the only source of income for millions of older Americans. The integrity and the accountability of the representative payee program is critical to ensure the well-being of our most vulnerable citizens.

In May of 2000 this committee held an investigative hearing that revealed numerous incidents of misuse of Social Security funds by representative payees. It is time to take another look at this program to determine what work remains to be done to protect the Social Security benefits paid to the vulnerable elderly.

There are currently 5.4 million representative payees who manage benefits for 7.6 million beneficiaries. Each representative payee has a legal responsibility to use Social Security payments for the use and benefit of the beneficiary. Although the vast majority of individual and organizational payees are honest and trustworthy, our investigation has confirmed that abuses still occur. The Social Security Administration's inspector general has reported that in a 6-year period over 3,200 representative payees misused approximately $26 million in benefits entrusted to their management. The full extent of these abuses remains unknown.

In a recent case authorities successfully prosecuted a woman on murder charges. The lady murdered her spouse, for whom she was also the representative payee. She was further convicted of misusing Social Security benefits intended for her husband.

While we commend the efforts the Inspector General of Social Security has made thus far in combatting fraud, the problems that I have cited raise the question that I hope to have answered today. To what extent are older persons under the representative payee program still being harmed under the current system and most importantly, what is currently being done to intensify the protection within the representative payee program? Clearly one of the responsibilities of this committee is oversight and the constant monitoring of programs that make a major impact on the lives of the elderly in this country.

Members of the committee may be here this morning. The ranking member, Senator Breaux, although very interested in this program, is before Finance this morning looking at ID fraud and ID theft. Also, the Commerce Committee is meeting this morning, so we have cross-conflicts but our job is to build a record for the rest of my colleagues to look at as we work with those agencies that administer program and policy for our seniors.

So with that, let us move right to panel one, Social Security Administration Office of Inspector General, James G. Huse, Jr., Inspector General. We are very pleased to have you with us this morning. I know you have been doing a lot of work in this area and we are anxious to hear your testimony. Please proceed.

STATEMENT OF JAMES G. HUSE, JR., INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL, BALTIMORE, MD

Mr. HUSE. Thank you, Mr. Chairman. I appreciate this Committee's concern with respect to the Social Security Administration's representative payee program. After more than 8 years of Office of Inspector General investigations and audits into the representative payee process, I can tell you in all honesty that no one is more concerned than I am.

It is SSA's job, my job and Congress's job to ensure that representative payee abuse occurs as infrequently as possible, and that when it does, the guilty party is stopped and brought to justice and the beneficiary made whole as expeditiously as possible. To that end, we have sought legislation to enhance SSA's ability to prevent representative payee misuse.

Before I describe the measures I feel would be most beneficial, let me provide an example of why this legislation is so sorely needed. Sadly, this case I am about to discuss, while grander in scale than most, is representative of what we see in the course of our investigative and audit work.

In Washington State an organizational rep payee service—actually named "Payee-R-Us" handled the benefits of as many as 200 vulnerable beneficiaries, receiving a fee of $25 per client. Our investigation revealed that the Executive Director of "Payee-R-Us" embezzled over $107,000 in benefits, converting the money to her own use. She was sentenced to jail time and ordered to pay restitution to 88 victims.

During the last 6 years, we opened well over 3,000 investigations of representative payees. In the course of those investigations, we have identified nearly $26 million in misused funds and have obtained more than 600 convictions.

H.R. 743, which has been adopted by the House, contains many of the legislative provisions that we have requested to bolster the representative payee program. Last October, we issued an audit report that identified 121 people whose own SSA benefits had been terminated because they were fugitive felons but who were still permitted to serve as representative payees for other beneficiaries. This was not an oversight. SSA policy permits fugitive felons to act as representative payees. In March of this year, we estimate that SSA would place approximately $19 million in the hands of fugitive felons acting as representative payees. H.R. 743 would stop this practice and also provide other safeguards in the representative payee selection process.

It is incumbent upon SSA to adequately monitor the chosen representative payees to ensure that the funds are being used to aid the beneficiary, not the representative payee. We have found in performing audits of representative payees that SSA is frequently unable to provide the annual accounting forms representative payees are required to submit. H.R. 743 would allow SSA to promptly address a representative payee's failure to submit the annual accounting forms by requiring the representative payee to report to a SSA field office and submit the accounting documents in order to receive the beneficiary's check.

Our ability to deter and punish abusive representative payees hinges on referrals from SSA, documentation from SSA, and adequate legislation. A June 2002 review showed that SSA failed to refer 78 percent of representative payee abuse cases to our office for review. This represented over $5.9 million in misused benefits.

While our civil monetary penalty program has proven enormously successful in deterring and punishing program fraud—the time has come to provide a similar tool for the representative payee process. H.R. 743 provides that authority.

I appreciate this Committee's attention to this issue, which has long been a target of our audit and investigative efforts. I look forward to working with you to bring improvement to this important aspect of the Social Security Administration's work and I would be happy to answer any of your questions, Mr. Chairman.

[The prepared statement of Mr. Huse follows:]

U.S. Senate

Special Committee on Aging

Statement for the Record

The Social Security Administration's Representative Payee Program

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

September 9, 2003

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

SSA provides Social Security and Supplemental Security Income (SSI) benefits to the most vulnerable members of our society—the young, the elderly, and the disabled. Congress granted SSA the authority to appoint representative payees where needed to receive and manage these beneficiaries' payments. There are currently about 5.3 million representative payees who manage benefits for millions of beneficiaries.

A representative payee may be an individual or an organization. Individual representative payees are typically relatives of the beneficiary, who are

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

"Payee-R-Us," an organizational representative payee service in Washington

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

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

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

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

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

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

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

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

[redacted]

referred to my office for consideration under the CMP statutes. Unfortunately, the current CMP statutes do not provide for penalties to be imposed for conversion of benefits by representative payees. We need legislation that provides this much-needed authority. We believe provisions

such as those contained in H.R. 743 are a step in the right direction for addressing the problems in the Representative Payment Program.

Finally, we are now planning a 3-year study to determine whether representative payees are meeting their fiduciary responsibilities with regard to managing and spending beneficiaries' funds in accordance with SSA policies and procedures. We believe a comprehensive study of the Agency's representative payees should be conducted. The study will determine whether representative payees are meeting their responsibility to manage and spend beneficiaries' funds in accordance with SSA policies and procedures. This study will provide recommendations to address specific problems and vulnerabilities of representative payees, and address systemic problems found in the representative payee process.

The Chairman. Jim, thank you very much for that testimony. First and foremost let me commend you and your office for the work you have done to date and the initiative in looking for ways to improve the process and the development of H.R. 743. I think all of us recognize the potential vulnerability here of the individuals being served and there ought to be safeguards, there ought to be effective reporting forms and systems. It does not take huge staffs anymore to do that. It takes a computer process and a thoroughness of carrying through and investigating those who fail to respond.

You mentioned in your testimony that fugitive felons by the thousands are administering funds on behalf of the elderly program and that H.R. 743 would take care of that. How has that ever been allowed to happen in the beginning? Was it an oversight or just the acceptance of the fact that that was going to be done and no one was going to question it?

Mr. HUSE. I believe SSA's policy is focussed on finding a representative payee for a particular beneficiary. SSA's present regulations permit, for example, a fugitive felon to be a representative payee. However, the fugitive felon law that we enforce was not enacted until 1996, so SSA's policy precedes that. In some instances these felons could be parents or relatives that maybe in the best position to be the representative payee and I think in that instance——

The CHAIRMAN. Physically they might be in the best position.

Mr. HUSE. Correct.

The CHAIRMAN. They also might have a track record that would suggest they are not the right person.

Mr. HUSE. That is very true but to answer the question, I think the intention was service and not anything else.

The CHAIRMAN. You mentioned that the legislation would prohibit that practice.

Mr. HUSE. The new legislation, if it is passed and made law, will prohibit that practice.

The CHAIRMAN. So I am assuming that Social Security still believes that service can be provided to an individual and still prohibit or disallow a fugitive felon from providing that service.

Mr. HUSE. I believe that as a result of our audits, the Social Security Administration takes a very careful view of who is selected as a representative payee now I believe our audit work has had that impact. However, the ability to permit a fugitive felon to be a representative payee that permission is still there and those decisions from the past are still somewhat in effect. I would say that SSA understands the issue now.

The CHAIRMAN. So we can suggest that the bureaucracy grinds forward slowly.

Mr. HUSE. I think that is a fair statement.

The CHAIRMAN. You mentioned over 3,000 cases that the Inspector General has pursued that have resulted in hundreds of convictions for fraud. Is it fair to say when we look at the scope of the numbers of payees and those being served that that is the tip of the iceberg? Is that a fair assessment?

Mr. HUSE. The 3,000 plus cases that I mentioned are cases that were actually referred to us for an investigation by the Social Security Administration and those——

The CHAIRMAN. How did they rise to the level of referral? Is there an auditing process that is thorough and on-going that triggered an investigation that brought them forward?

Mr. HUSE. There could be a variety of instances. The auditing process of representative payee reports may indicate that an investigation might be appropriate or more often than not, it might be complaints from the beneficiaries themselves about particular rep payees that prompt the action. So there are a variety of ways.

What your question was, though, is it the tip of the iceberg? I am not sure, but we know that the 3,000 number is not the universe. We do know that many cases do not get referred to us for whatever reason there is in the business process and we also know that not all of the representative payee reports that are required to be submitted annually by rep payees are even available.

The CHAIRMAN. Well, let us go into that because that was going to be my follow-up question. If there is a requirement to submit an annual report and that annual report is not submitted, is there a way to follow up? Does that failure to submit trigger an activity that would cause a follow-up? My reaction is that if somebody is failing to report on their own activity which is financial in nature, I would first go there. Why aren't they reporting and are they trying by failure to report to cover something up?

Mr. HUSE. This is a good question, Mr. Chairman. Our audit work indicates that your premise is correct, that many of these reports are not submitted and we also know they are not followed up on. These become workloads that are deferred for many reasons for example, resources and available time—and the net effect is that we do not know what we do not know, and that is not a good thing.

I also should add that we do receive many of our allegations that result in investigations from our fraud hotline.

The CHAIRMAN. In the annual report what type of information is required to be included that substantiates or documents the activities?

Mr. HUSE. It is a fairly simple report. It does not require much more than a statement and an accounting that the funds that were paid to a particular beneficiary were actually used for the benefit of that beneficiary and how they were used. It does not require any great substantiation or back-up accounting material, simply the submission of the report itself. So it is hard to understand why we do not receive these.

The CHAIRMAN. If the payee's name is in the system and a report comes in from that payee and it is filed, I assume attached to that person's name, and a computer button is pushed or a keyboard is pushed to indicate those who have not filed by a certain date and another notice goes out that you are in failure of filing, which probably triggers because there is always going to be honest people who fail to meet deadlines, I cannot understand, although there are how many million of them, that that is not now a computerized system that requires very little staffing ultimately and that there is a way to follow through. So I guess my question is what happens to those persons who fail to submit?

Mr. HUSE. Well, we have suggested in our audit work that at the point that those annual accounting forms are not submitted and when SSA's follow-up is not responded to, either, that there should be intervention. The representative payee should have to come to a field office to receive the check. Those are some of the things that H.R. 743 would strengthen. We believe that this field office intervention process is a key piece to representative payee accountability.

But again I have to come back to the fact that this does become a workload issue and as with many workloads at Social Security, these get deferred in the face of more pending priorities.

The CHAIRMAN. Beyond the legislation itself and you have suggested that the proposed legislation would correct some of these problems, how many of them are legislative in character or the need or the authority to make those kinds of decisions and how many of them are purely administrative that could be made within the current authority, as good business practices?

Mr. HUSE. There is the possibility to get some redress for this administratively within the process itself. We believe that to help avoid overpayments, if Social Security issued a receipt to a person receiving disability benefits who reports work or changes in earnings, that might help us here. If the representative payee fails to provide these accounting forms, if SSA authorized the redirection of the payment then to a SSA field office, requiring that representative payee come in and provide the required accounting forms that could be done without legislation.

We believe that disqualifying from serving as a representative payee persons convicted and imprisoned for more than a year or who are fleeing prosecution, custody or confinement, that could be adjusted in the rules today without legislation. So those are three things that could be done administratively.

The CHAIRMAN. Well, yes, and my guess is that if you are a convicted felon, you are not going to object to the fact that you were discriminated against because you were not chosen to handle someone's money. The reality is if you are a convicted felon you have given up, by those actions and that court decision, certain rights which are taken away from you. I am trying to sit here and understand why that would not be an automatic administrative action on the part of the Social Security system or do they feel they are liable for lawsuit because a felon is going to sue them, a convicted felon?

Mr. HUSE. I think the next witness might be better able to answer the philosophical part of your question, Mr. Chairman. I know that there is a rationale for this. In some of these instances the need to provide the service sometimes requires these seeming incongruous policies or incredible policies.

The CHAIRMAN. I guess your review of it may give you a broader perspective of it than mine. I am not sure I see that as an acceptable practice.

Mr. HUSE. Neither do I.

The CHAIRMAN. Even under the physical difficulties that we see in frontier States oftentimes, like Idaho, where distance and travel is oftentimes a substantial problem, there are honest, legitimate people out there who will assist in helping those who are less capa-

ble of handling their affairs to manage them. It is a matter of finding them and I think it is not that difficult.

My last question, Jim, and I thank you for your testimony and response this morning, in February we looked at the misuse of guardianships over the elderly and trying to track those more effectively and cause our States to strengthen their review of and the courts' review of guardianship, protocols that walk people through the process and quality them more effectively than we are qualifying them today.

Is there any way to know how many court-appointed guardians are administering Social Security funds without going through the representative payee program?

Mr. HUSE. No. However, we have some statistics that we obtained from SSA. When a court-appointed guardian files an application with the Social Security Administration to become a representative payee, that is the way we know and are able to account for that particular responsibility. Right now, with old age and survivor's disability insurance beneficiaries, there are about 250,000 beneficiaries who have a representative payee and a court-appointed guardian and of these, about 201,000 representative payees serve that 250,000 universe.

With Supplemental Security Insurance income, about 99,000 recipients have court-appointed guardians but we do not know the number of representative payees that serve those 99,000. That number is not available.

The CHAIRMAN. Well again, thank you very much for your testimony.

Mr. HUSE. You are welcome.

The CHAIRMAN. As we work our way through this I will take a serious look at that legislation to see how we might cause it to move here on the Senate side as an assistance to the Social Security Administration dealing with this problem. Again thank you.

Mr. HUSE. Thank you, sir.

The CHAIRMAN. Well, our next panel this morning is the Social Security Administration, Frederick Streckewald, assistant deputy commissioner for Disability and Income Security Programs. We do appreciate your presence here this morning and look forward to your testimony, Frederick, so please proceed. Thank you.

STATEMENT OF FREDERICK G. STRECKEWALD, ASSISTANT DEPUTY COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, WASHINGTON, DC

Mr. STRECKEWALD. Mr. Chairman, thank you for inviting me to talk about Social Security's representative payee program. We now have about 6.7 million Social Security and SSI beneficiaries who are paid more than $44 billion per year through the representative payees. About half of our beneficiaries are minor children and more than 80 percent of the representative payees are family members. But if an interested family member or friend cannot be found, SSA will arrange for an organization to perform the duties of the representative payee. This is fairly rare. Of the more than 5 million rep payees, only about 42,000 are organizational payees. All payees are closely scrutinized before being selected. Misuse occurs in less than 1/100th of 1 percent of all cases or about one in 10,000 cases.

In reality, millions of Americans are being assisted voluntarily by family and friends in a way that can make us all proud. However, we are always seeking ways to improve the representative payment process because every case of misuse represents money being denied to one of our most vulnerable beneficiaries.

Since we last testified before this committee in May 2000, we have conducted an aggressive and multi-faceted initiative to improve the integrity of the representative payee program. We have strengthened our selection procedures, expanded our monitoring efforts and made improvements to the representative payment system. We have built upon the foundation laid by the SSA Representative Advisory Committee, the in-depth work done by the Office of Inspector General, as well as our own program experience, and we have a number of initiatives under way to improve payee selection. For instance, we awarded a contract to Dunn & Bradstreet in 2001 for credit background checks for fee-for-service payees. This effort is consistent with the IG's suggestion that we put more emphasis on the selection process of representative payees and we hope to expand this service in 2004 to all high-volume payees.

In addition to the court and statutorily mandated annual accounting process, we have expanded our monitoring program to conduct triennial reviews for about 1,700 fee-for-service and high-volume payees. These reviews include a face-to-face interview and an assessment of the payee's recordkeeping. We also interview a sample of beneficiaries to see if their needs are being met.

In addition, beginning June 2000 we began an annual recertification of fee-for-service organizations to ensure that the requirements for licensing or bonding continued to be met. We have other useful reviews; for example, a 6-month review for all newly appointed fee-for-service payees, which provides an excellent opportunity to build a relationship between the payee and the local field office, as well as identify any payee training needs.

In addition, we randomly select every year 30 percent of the volume payees and fee-for-service payees who have not already been selected for review that year.

Last, we also monitor for trigger events. That is, we conduct reviews of payees in response to third-party reports of misuse, complaints from vendors of failure to receive payment, and similar reports.

As you would expect, there is a systems component to our efforts. Since March 2003 we are imaging all rep payee annual accounting reports, enabling more efficient storage and retrieval in the event of a misuse allegation. Also, we have made a number of enhancements over the last 3 years to the representative payee system, which is a centralized computer file with information about representative payees and the beneficiaries they serve. For example, the system will no longer allow a claims representative to unknowingly appoint an individual with a rep payee as a payee for another beneficiary.

We recognize that administrative actions alone cannot address all the issues and concerns with the representative payee program. In April the House passed H.R. 743, a bill that would provide increased safeguards. One particularly important provision would restore benefits that have been misused by representative payees

serving 15 or more beneficiaries without having a finding of negligence on SSA's part or restitution from the organization payee. This bill also includes other provisions that would significantly increase the number of reviews SSA currently does, require most fee-for-service organizational payees to be bonded and licensed, and increase or extend penalties for misuse of funds by representative payees.

In conclusion, let me say we are keenly aware that beneficiaries who need a representative payee are among the most vulnerable of our beneficiaries. The representative payee program and its millions of volunteer payees provide a vital service to these beneficiaries. We at SSA take our responsibilities to provide prudent stewardship of this program very seriously and we believe that with the help of Congress, we will be able to further improve the protections for our beneficiaries with payees when funds have been misused.

We look forward to working with Congress and with the Office of the Inspector General to assure public confidence in our programs and I would be very happy to take any questions you have.

[The prepared statement of Mr. Streckewald follows:]

For Release on Delivery

SOCIAL SECURITY ADMINISTRATION REPRESENTATIVE PAYEES

SENATE SPECIAL COMMITTEE ON AGING

SEPTEMBER 9, 2003

TESTIMONY OF

FRITZ STRECKEWALD
ASSISTANT DEPUTY COMMISSIONER
FOR PROGRAM POLICY

Testimony of Fritz Streckewald,
Assistant Deputy Commissioner
Disability and Income Security Programs,
Social Security Administration,
Before the Senate Special Committee on Aging
September 9, 2003

Mr. Chairman, Senator Breaux, members of the Committee, thank you for inviting me here today to talk about the Social Security Representative Payee Program. I want to discuss improvements we have made to strengthen our representative payee program as well as legislative changes that Congress is considering to improve protections for beneficiaries with representative payees.

When OASDI or SSI recipients are not able to manage their benefit payments to meet their basic needs, the Social Security Administration (SSA) appoints a representative payee. We take this responsibility extremely seriously because individuals who need a representative payee are our most vulnerable beneficiaries.

Let me start with some facts about representative payees. Almost all representative payees provide much needed help to beneficiaries carefully, compassionately, and totally on a volunteer basis. We have 5.3 million representative payees that serve 6.7 million beneficiaries managing $44.4 billion in annual benefits. About half of the beneficiaries are minor children. Eighty-four percent of the payees are family members, primarily parents or spouses. The representative payment program relies heavily upon family relationships to ensure that our beneficiaries' funds are used appropriately to meet their needs for food, clothing, and shelter and that any remaining funds are conserved for their future use. Of the 5.3 million payees, less than 1 percent or 42,000 are organizational payees and they serve 750,000 beneficiaries.

Representative payees provide a vital service to our beneficiaries. Misuse in this program is extremely rare and historically has been found to be less than one one-hundredth of one percent. Nevertheless, that is no consolation to a beneficiary who has lost his or her much needed benefits nor is it acceptable to SSA.

Over the last three years, we've conducted an aggressive and multi-faceted initiative to improve service delivery. In 2000, SSA instituted a comprehensive review of the representative payment program. We built upon the foundation laid by the SSA Advisory Committee, recommendations by the Office of the Inspector General, as well as concerns raised by this committee in a prior hearing. SSA recognizes that representative payment works best when there is collaboration among SSA, the payee, and the beneficiary. Our goal was to strengthen the program while preserving the rights of the beneficiary, respecting the contribution of the payee and ensuring that payments are used in the best interest of the beneficiary. We therefore reviewed our:

- selection, education, and monitoring of payees;
- education of beneficiaries; and
- Representative Payee System.

In addition, we developed a representative payee web page (www.ssa.gov/payee) which contains valuable program information for the public. I would now like to briefly discuss each of these areas.

Selection and Education of Payees

Our policy is to select the most qualified individual or organization to serve as representative payee. All payees are closely scrutinized before being selected.

If possible, we generally appoint a family member to be the representative payee—preferably in the immediate family. If an immediate family member is not available or would not serve the best interests of the recipient, we look for another interested relative, such as a niece or nephew, or friend to serve as representative payee.

If an interested family member or friend cannot be found (or is not willing to serve), SSA will ask an organization willing to perform the duties of representative payee. To promote recruitment of organizational payees, we developed "A Recruitment Tool for Organizational Representative Payees." This tool includes a video, a factsheet and talking points for use by our field offices in their recruitment efforts.

We have several educational initiatives underway. Since 2000, we have created a training kit for new organizational payees entitled "A Tool Kit for Training Organizational Representative Payees. This tool kit includes a video, "A Guide for Organizational Representative Payees," the beneficiary pamphlet, a lesson plan and a power point presentation. We have also developed a pamphlet for adult beneficiaries explaining their rights and responsibilities and updated our program instructions for our field personnel in our effort to strengthen the representative payee program for our field personnel as well as inform the public.

Background and Credit Checks

In order to enhance the protection of our beneficiaries, who have organizational payees, we have a number of initiatives underway to improve payee selection. We awarded a contract to Dun and Bradstreet (D&B) in 2001 to obtain credit background checks for fee

[redacted]

While the D&B contract helps with the organizational payee, we have also held focus groups for fee-for-service payees to determine if individuals of such organizations should routinely undergo criminal and credit history background checks. We are currently evaluating the results of those focus groups.

Monitoring Initiatives

Once selected, all payees must maintain records of the beneficiary's income and expenses. In virtually all cases, SSA requires annual accounting of the benefits received and how they were spent for every beneficiary. If this information is not received or is incomplete, we follow up with the payee. If SSA has cause to believe that an organization is not using benefits properly, we have an additional review procedure that focuses on the organization's records and includes contact with the beneficiary and staff of the organization, as well as vendors.

When SSA testified before this Committee in 2000, we described our plans for improving safeguards for our beneficiaries who need assistance from a representative payee. Since then, we have implemented those representative payee program improvements and I want to briefly review those initiatives and provide you with the status.

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

We conduct onsite reviews for approximately 1,824 payees. This includes all 819 fee-for-service, 790 volume (serve 100 or more beneficiaries) who are subject to expanded monitoring, and 215 individual representative payees serving 20 or more beneficiaries. All of these reviews are done on a triennial cycle. This review includes a

problems found in these reviews have been commingling of funds and incorrect titling of accounts. We have taken corrective actions in

In addition, we continue to monitor for "trigger" events. That is, we conduct reviews of payees in response to third-party reports of misuse, complaints from vendors of failure to receive payment, and similar reports.

We believe that our expanded onsite review program:

- protects vulnerable beneficiaries by reacting quickly to questionable indications;
- deters payee misconduct;
- provides a strong oversight message to payees;
- ensures that fee-for-service payees continue to be qualified under the law;
- establishes good lines of communication between SSA and the payees; and
- promotes good payee practices.

Changes to Representative Payee System and Related Systems

The Representative Payee System (RPS) is a centralized computer file containing information about individuals and organizations providing representative payment services and the beneficiaries that they serve. It is an integral part of the representative payee application process. The RPS has been useful for investigating fraud, suitability of payee applicants, and identifying trends.

The RPS contains a number of investigative features, for example, the RPS:

- automatically verifies the representative payee's Social Security number against SSA's Numident file;
- automatically checks the database for a history of misuse/fraud;
- does not permit the selection of a person convicted of a violation under section 208 or Section 1632 of the Social Security Act (penalties for fraud) to serve as payee;
- will not permit someone who has a representative payee to serve as representative payee.

The RPS is our most effective investigative tool in assisting our field office employees in making appropriate representative payee selections.

We have made a number of improvements to the RPS. The improvements will provide additional information for use in determining the suitability of the payee, and additional information for use in monitoring payee performance. The RPS now allows for the collection of additional data for fee-for-service payees (e.g., license or bonding information such as the amount of the bond and expiration dates). For the monitoring program, the RPS stores the date from our site visit and, if appropriate, the date and reason why an organization is no longer authorized to charge a fee. This provides a historical record on each of the fee-for-service organizations. These improvements have been made within the last 30 months. We are considering other changes to the RPS as time and resources permit.

[redacted]

(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 important protection to the most vulnerable of beneficiaries—those who have no family or friends willing or able to be a payee.

Such authority would enable us to restore benefits that have been misused by an organizational representative payee, thereby reducing 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.

This bill also includes other provisions that would strengthen the representative payee program and increase the protections it provides. These provisions would:

- Require SSA to conduct periodic onsite reviews of all non-governmental fee-for-service representative payees, any other organization serving 50 or more beneficiaries, and individual payees serving 15 or more beneficiaries. This requirement would increase by nearly two-thirds the number of reviews SSA currently does.

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 organizational or individual 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

and redirecting benefits to the field office would provide an extremely effective tool to insure that a payee returns the annual accounting form, while providing the field offices the flexibility to take the most appropriate action in a particular case.

Conclusion

SSA continues to strive to improve our representative payee program through procedural and technological changes and by supporting and proposing legislative solutions. As I stated earlier, beneficiaries who need a representative payee are of particular concern to us because these are the most vulnerable of our beneficiaries. We have a responsibility to them, and to the taxpayers as stewards of public funds. Consequently, we have been active in educating our staff as well as potential and current payees. We have initiated new background checks of current payees and new monitoring practices with the guidance of accounting firms. Because we do not tolerate misuse of benefits by representative payees, we will continue to strengthen our representative payee program. We have implemented those plans we described to you in 2000 to improve our monitoring and oversight process.

Finally, we believe with the help of Congress, we will be able to further improve the protections for our beneficiaries with payees when funds have been misused. We look forward to working with Congress to assure public confidence in our programs.

The CHAIRMAN. Well, thank you very much. Is it Fred or Frederick?

Mr. STRECKEWALD. Frederick. Thank you.

The CHAIRMAN. First of all, Frederick, let me commend you, the Social Security Administration, obviously for the work that is done and effectively done to prevent fraud as it relates to how Social Security benefits get out to the recipient. The representative payee program is watched and watched closely because it is clearly an opportunity for fraud. I think my concern not only for the current recipients is that we are prepared administratively, functionally, organizationally to handle an ever-increasing number of beneficiaries as the baby-boomer crowd begins to hit the Social Security system in very, very large numbers.

During the initial screening of a prospective representative payee, how is the accuracy of information related to identity and financial security verified? How do you effectively do that? I know that you talked about hiring for background checks and that type of thing. Is that a fairly limited process? Are you without a conviction or is there something to track them even more broadly?

Mr. STRECKEWALD. We distinguish between personal payees, the vast majority of payees are family members and spouses and friends, versus organizational payees and even more so, the fee-for-service payees, who are actually allowed to collect some of the beneficiary's check as a fee for their service. So for the more typical family member or friend, we have an application that requests a lot of information.

First of all, they have to come into the office, so we get to see them, look them in the eye, ask them their name, look at their picture ID, make sure they are who they say they are, the way we do every other person dealing with us in a field office, and then we go through a series of questions. On the representative payee application it asks their relationship to the beneficiary and it asks them to state their own source of income and how they support themselves. For example, either it is a job or it is Social Security benefits. We verify that. We have queries we can pull up to verify their employer how much they are making, and we also, of course, have records on how much their Social Security benefits are.

So we can verify their own source of income and we also ask other questions—have you ever been convicted of a felony? If they have, we drill down on that. We find out when it was. Was it last year or was it when you were 16 and you stole a car? Let's find out the seriousness of this crime before we consider you to be a payee.

We look very closely at the relationship with the payee and the extent to which they either have custody of the person and provide for them already or they are a very close friend or associate and they constantly visit and show an on-going concern in taking care of the person.

Now on the other side of the equation, a lot less commonly but it does come up where you have the organizational payees. As you mentioned, we do a credit check for all fee-for-service payees. We want to find out from Dunn & Bradstreet whether or not they have credit-worthiness to make sure they are not a borderline company that does not have good financial stability.

We also know about most of these organizations. The field offices know their communities. They have heard of that organization, so they have a reputation. They have local standing, which we also bring into play when we make a determination about whether they would be the best payee.

If we are appointing an organizational payee that means that we have gone through our list and we could not find a spouse, a son, a daughter, a family member, a friend, and we have already checked that out and now we are down to kind of lower on the list of preferable payees. We begin the types of questions that we ask organizational payees, which has to do with their standing in the community and their relationship, if any, with the beneficiary.

The CHAIRMAN. I appreciate time and thoroughness and the kind of staff time it takes. You are visiting with a family member, or a friend or the person who represents themselves as that person. You are walking them through the questionnaire. You ask the question, "Have you ever been convicted?" and they say no. Do you take that a step further? Is there a check run to determine whether they have or have not been, if there is any suspicion whatsoever?

Mr. STRECKEWALD. Generally not unless we have some other indicator. Again a lot of the claims reps know the people in their service area, they have read the newspapers, but generally not unless there is another indicator.

However, what we have found on one study is that a number of people—a lot of people voluntarily tell us when we ask, yes, I have been convicted of a felony. When we drill down and check that out against felony records, it turns out half of them had not really been convicted of a felony; they were confused. They had been convicted of a misdemeanor or they thought we were talking about the beneficiary.

So, it is a question whether a rep payee applicant has been convicted of a felony that we use as a screening tool but it is not, in itself, a determinant one way or the other. It is certainly two strikes against you if you answer yes to that question. You are not likely to become payee, but there are some limited circumstances, particularly with a crime of many years in the past; with a parent who has custody and is showing parenting skills and support for their child, their disabled child, we may find that parent to be the best payee, rather than an organizational payee.

The CHAIRMAN. Your fugitive felon program appears to work very well to prevent fugitive felons from receiving SSI payments. Does your agency support the expansion of that program toward other Social Security payments?

Mr. STRECKEWALD. We believe the provision in H.R. 743 has merit. It would make the SSI and Title II policy consistent.

Our only hesitancy is that we think we should move carefully because of the earned benefit right of a Title II payment versus an SSI payment and we want to make sure that the fugitive felon records are 100 percent reliable before we terminate people's benefits. That is our real concern, is reliability of the information.

The CHAIRMAN. The term "felon," one who has been convicted, and I do not dispute in the professional person's ability to assess when that conviction occurred, what was the basis and if they have lived an honorable life since that time and it was X numbers of

years before that, but how can a fugitive felon—and fugitive is an interesting word tied to that, I assume therefore on the run attempting to escape notice—how can they serve as a representative payee?

Mr. STRECKEWALD. If they are the type of fugitive felon that is on the run and is moving from city to city, I absolutely agree with you; there is no way that we would want to make that person a rep payee because they are most likely going to use the money to finance their flight.

What we have found is that there are some people listed on the fugitive felon database that we get from the FBI and from a lot of the States that, in fact, are not really on the run per se. They have a warrant out for their arrest. Some of them do not know that, so they are still at home taking care of their child or their mother. They may have missed a parole meeting or probation meeting.

However, if somebody is listed as a fugitive felon we believe that counts very strongly against them as being a payee. We would do a suitability determination and we would check to see whether there are other persons in the family who have demonstrated concern for this beneficiary that would make a better payee. We also look very closely at the care that has been provided to this beneficiary by that person who is being categorized as a fugitive felon.

So it is unlikely that we would keep them as a representative payee, the way our current policy is set up. The H.R. 743 provision basically means that we would be mandated to find another payee if a person is on the fugitive felon database.

The CHAIRMAN. It is my understanding that you have about 3,000 fugitive felons currently administering funds; is that correct?

Mr. STRECKEWALD. I believe that number is probably pretty close to what our numbers are. We receive ours from the IG. They provided a number of cases to us that they felt were fugitive felons who were receiving benefits as rep payees and we instituted a wide range of suitability investigations on as many of those as we could. Some of them resulted in change in payees, some of them were still in progress as far as I know, and others we have determined that despite the fact that they are on a database that says they are fugitive felons, in fact they are still the preferable payee because they are not actually in flight and they are still maintaining the care and service and interest in the beneficiary. Again this is a very rare occurrence.

The CHAIRMAN. Those individuals are required to make the annual report, are they not?

Mr. STRECKEWALD. Yes.

The CHAIRMAN. I am moving into that now because I am frustrated that that is not followed up on and accurately tracked, which appears to be the case.

Mr. STRECKEWALD. If I could just add to my last answer, when we do the suitability review of a convicted felon or a "fugitive felon," if we are forced because there is nobody more preferable to be the payee, we then institute much closer monitoring activities. We ask to see them more often. Most payees, they just have to send us a form but these folks, we have to actually see them, talk to them. We have to get more information from them. So we do not

just treat them as any other payee if we are forced to keep them as a payee for the time being. I just wanted to clarify that point.

The CHAIRMAN. As I say, they are required to make the annual report. Does the failure to make that report trigger an interview, trigger a requirement for them to come in?

Mr. STRECKEWALD. Yes, it does.

The CHAIRMAN. More specifically, if they are on the database as a fugitive felon?

Mr. STRECKEWALD. All representative payees, virtually every one of them, are required by law to submit an annual accounting of how they spent the money and I think Mr. Huse laid it out pretty well, that they are given a form that says how much beneficiary money they have had in their trust for this last year, and how they spent it? How much did you save? How much was left over from last year? What did you do with that?

So it specifies where the money went and when the forms are returned, they are looked at. First of all, we scan them in electronically now, so we have better access to them than we have had in the past. We used to have paper boxes of them lying around that were very hard to locate but they have been scanning them in now for over a year.

We have employees that look at the forms pretty closely to see if everything looks copasetic. If we do not like what we see on the form, it is referred to a payment center or field office to follow up with the payee.

Your question is if we do not get the form, what do we do, and we have very stringent procedures in place now, thanks again to the help from the IG for identifying this problem. The payee gets an initial request—it is computer-generated just as you assumed—and they get one more request. Right now we are getting 88 percent response rate from two requests, so at that point we are OK. We know some people do not get right on it.

However, if we do not get a response after the second request and a reasonable number of days after the second request, the case is earmarked and is sent to our field office and the field office then takes more rigorous means to contact the person and it requires the payee to come into the office. Look, we need to talk and if you do not come into the office, it means the benefits will be suspended.

So we get most of our reports that have been sent out. The 12 percent that did not come in after the second request, we get most of them when the people come into the office because they do not want the benefits to stop. But if there are a few that do not come in, then we institute suitability investigations and we probably end up changing the payee, since this person has not met the responsibilities.

The CHAIRMAN. From a failure to respond to the second inquiry through to a time that might provoke causing them to have to come in, how long is that stretch of time usually?

Mr. STRECKEWALD. In Title II (Social Security benefits) cases, the payee has 120 days after a payee record has been selected for accounting and mailed to respond to an initial request for completion of the Representative Payee Report. If the payee does not return the completed reporting form within 120 days, a second request is mailed to the payee. If the payee does not respond within 120 days

of the selection for a second request, a "nonresponder" alert is generated to the servicing field office (FO) for their investigation and possible action. Our policy requires that the FO make a personal contact with the payee to obtain the required information. If the payee is uncooperative, the FO will initiate a suitability investigation and develop for a payee change.

For title XVI (SSI payment) cases the process is the same, except the timing between mailings is somewhat shorter due to systems differences between the two programs. For SSI, the timeframe between the mailing is 90 days.

The CHAIRMAN. So what you are telling me is that after the process ultimately works its way out there is approximately 12 percent who fail to respond?

Mr. STRECKEWALD. After two requests that are computer-generated, without a lot of employee intervention. These are routine requests to send the report in and we get about 12 percent that do not respond after the second request.

The CHAIRMAN. So you are telling me that as you work it all the way through, that you get a response out of 100 percent payees?

Mr. STRECKEWALD. No, I do not know the exact number of that 12 percent that end up coming into the office and giving us the report face to face. I am assuming that there are still some that do not come into the office. Those are the ones that we institute suitability investigations on and we very often end up changing them from the payee because they did not meet their responsibilities, of which one is to give us an annual reporting of their expenditures.

The CHAIRMAN. Do you know this year how many persons have been revoked as representative payees as a failure to report? Well, the year is not complete but——

Mr. STRECKEWALD. In 2002, we estimate that 40,000 representative payees were replaced because they failed to provide annual accounting forms. Of the 40,000 approximately 14,000 were representative payees for Social Security beneficiaries and 26,000 were payees for Supplemental Security Income beneficiaries.

The CHAIRMAN. I just have to believe that if you have folks who fail and keep failing, there is a reason why it is going on besides absent-mindedness.

Mr. STRECKEWALD. We agree. That is one reason we institute suitability investigations when this has gone on long enough.

The CHAIRMAN. Is there ever random processing in the sense of checking the reports of payees to determine whether they are accurate?

Mr. STRECKEWALD. I would say for the high volume routine personal payees, most likely not. We believe that a lot of our focus should be on the organizational payees because these are people that do not have a family or personal relationship with the beneficiary. They are a business, so we do random reviews. We just pop in and we say OK, we want to look at your books and your records. They know we are coming every 3 years but they do not know where or when we are coming within that 3 years and we just show up and say let's see your books, let's see if you can account for where all the money is going for all your beneficiaries. So that has really been the focus of our ad hoc reviews.

The CHAIRMAN. Well, I can appreciate with those who are for profit providing a service, the accuracy or the overview of those and because you can probably look at a concentrated mass, if you will, of recipients.

Mr. STRECKEWALD. Right. A lot of times there will be 100 or 200 beneficiaries in the one site; you are right.

The CHAIRMAN. It is my understanding that sometimes Social Security recipients die—but the money is still going to the household of the deceased. How prevalent is that problem on an annualized basis? Does Social Security hold figures on that, when money continues to go for a period of time?

Mr. STRECKEWALD. Yes, we do. The latest figures I have for that, there is about $900 million released after death of the recipient. That is pretty small compared to the approximately $350 billion our outlays are but it is money we want back. In fact, we have worked very closely with the Treasury Department to come up with ways of retrieving that money from direct deposit accounts and from people's table tops where the check is just sitting there because they do not know what to do now that the person is deceased. I am happy to say that we get about 90 percent of that money back into the trust fund and into the Treasury.

For those that we do not get back right away, we have to believe there may be a fraud element there. Why are they not giving this money back to us? Have they spent it? Well, if so, that is fraud. So then we would institute a fraud proceeding and perhaps get the inspector general involved.

The CHAIRMAN. How many of those failures to report death is tied to a representative payee? Do you have any statistics on that?

Mr. STRECKEWALD. We are not sure how many "failure to report deaths" are associated with representative payees. However, for beneficiaries with payees, when we look at the number of checks released after death, that is, one check or, two or more checks released after death, we found that about 4,000 SSI and 10,000 Social Security beneficiaries had more than two checks released after death. This is about one percentage higher than for those beneficiaries who do not have payees.

The CHAIRMAN. Under the representative payee system how would you decide on an organizational payee over a family member or a close friend?

Mr. STRECKEWALD. In almost every circumstance that we come across the family member or the close friend always has preference over the organizational payee. The only exception would be one, if the family member or close friend had been convicted of a crime against Social Security in the past and that is something required by law. We are not allowed to appoint a payee if that is on their record and we have a record of that, so they are out no matter who they are.

The second thing would be if they are a family member but they have not convinced us that they really have this person's best interest at heart. That is very rare but there may be evidence in the community that they have not been caring for their child, they have not been caring for their parent, and we may be forced to look elsewhere. But it is very, very rare. Again this is a voluntary corps of rep payees. There are millions of them and most of them are con-

cerned family members and parents that just want to do the right thing for the beneficiary, who is usually severely disabled and incapable of handling their own benefits.

The CHAIRMAN. Both you and Mr. Huse have referred to the legislation that is working its way through Congress. How much of the problems you see within the Administration can be done administratively versus the actual need to require a law to make things happen?

Mr. STRECKEWALD. We think that nearly every provision needs to be legislatively mandated. The main exception, of course, is conducting more reviews because, on our own, we have already expanded our reviews and we could on our own expand to the number of reviews that are implied in H.R. 743. That is something we could do administratively.

We also have a strong possibility of being able to administratively implement the forfeiture of fee provision, that if somebody misuses benefits, they have to forfeit the fee. That is a kind of common sense-type thing I do not think we would get a lot of resistance to.

The one that Mr. Huse states that he thought we could do administratively and we are not necessarily sure of is prohibiting a fugitive felon or a felon, a convicted felon, from receiving benefits as a payee. Our general counsel has looked at that and there is the possibility that the way we use the information right now in our matching agreements with the States and with the FBI is specifically for the SSI program. We are not sure if legally we have the authority to use it for Title II purposes but if we had legislation, of course, that would give us the authority. So that is something we would have to look at if we were decide to do it administratively.

The CHAIRMAN. Well, thank you very much for your testimony. I would appreciate that information that we have asked to be more specific with, that that be forthcoming, and I thank you very much. We will continue to work with you and track these programs as they grow, develop, and/or change over the years. Obviously it is important that the beneficiary receive his or her benefits as completely as possible. Thank you.

Mr. STRECKEWALD. Thank you, Mr. Chairman.

The CHAIRMAN. Our last panel this morning is going to be made up of Shirley Shears, Legal Aid of West Virginia, and Jason Wills, Finance Director for Community Action Partnership. If these folks would come forward, please?

Well, again thank you both very much for being with us this morning. Shirley, I will turn to you, Legal Aid of West Virginia, and allow you to start, please.

STATEMENT OF SHIRLEY J. SHEARS, LEGAL AID OF WEST VIRGINIA, MARTINSBURG, WV

Ms. SHEARS. Thank you, Chairman Craig. My name is Shirley Shears. I am a paralegal with Legal Aid of West Virginia for over 18 years. Legal Aid of West Virginia annually obtains funding from Legal Aid Corporation to provide legal assistance to low-income individuals in civil matters.

An incident which happened in my home town which was the subject of a segment of the news program "20/20" titled "When Nobody is Looking: People Robbed of Life Savings by a Man Recommended by the Social Security Administration" and was later aired on the show titled "Fleecing of America." Greg Gamble, a local businessman, set up a nonprofit organization in the early 1990's, the Aurora Foundation, to be a representative payee for Social Security, VA benefits and private funds for a fee. The corporation was essentially a one-person operation. 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 to the local office about the manner in which their funds were handled. Those complaints were largely ignored and none were investigated.

In 1996 a letter was written by a beneficiary to Mr. Greg Gamble complaining about the handling of his money. A copy was sent to the Social Security Administration and the letter noted his concern of the accountability of the organization. He was allowed to discontinue using the foundation as his payee but no investigation of the complaint was made.

The Aurora victims are elderly, middle-aged and young. Some are physically challenged and many are mentally ill. Some suffer from physical and mental illnesses. Some of Mr. Gamble's victims are Vietnam veterans; some suffer from AIDS and HIV. Regardless of the diagnosis, they have one common thread—they are the vulnerable of our society, people who are not capable of taking care of their own financial affairs. The victims must depend on someone else to pay bills, provide funds, and basic needs. Some victims are afraid to complain concerning the handling of their money and others are too ill or simply unaware of the problem.

In early 1999 clients of the Aurora Foundation began to get notices of nonpayment of residential care homes, eviction notices for nonpayment of rent and letters from utility companies threatening to cutoff their services for nonpayment of bills. Several people were evicted from their apartments and became homeless.

Mr. Greg Gamble, as a representative payee, had stolen their money for his own personal use. The money was gone. Safety deposit boxes were emptied, life savings were wiped out, lump sum awards were gone. The money to live in a comfortable old age was gone. The money stolen from the victims by Greg Gamble totaled over a quarter of a million dollars.

In April 1999 an investigation from the Inspector General's Office was made concerning the Aurora Foundation. Social Security checks for 140 clients were intercepted. On April 5, 1999 the Aurora Foundation was shut down by a court order. On April 12, 1999 Mr. Gamble admitted to fraud. He also filed bankruptcy. Although the bankruptcy judge ruled that the debts to our clients and the

Aurora Foundation victims are not dischargeable, Mr. Gamble has no assets with which to repay the individuals whom the Social Security has put in his clutches. On April 14, 2000 Mr. Gamble entered a plea to one count of embezzlement of Social Security, VA and private funds. On June 8, 2000 he was sentenced to 32 months in prison, to be followed by 3 years of supervised release.

Mr. Gamble's time in prison may be served but for his victims the nightmare is not over. The travesty is that several victims are dead, some have been chronically homeless, and some have given up hope of recovering their money. The 137 victims are in desperate need of relief. Protection must be given to prevent future victimization of beneficiaries by representative payees.

I thank you for the opportunity to present my views. Thank you.

[The prepared statement of Shirley Shears follows:]

TESTIMONY OF
SHIRLEY J SHEARS
LEGAL AID OF WEST VIRGINIA
Before the
SPECIAL COMMITTEE ON AGING
U.S. SENATE
September 9, 2003

My name is Shirley J. Shears. I have been a paralegal with Legal Aid of West Virginia for over 18 years. Legal AID of West Virginia annually obtains funding from the Legal Services Corporation to provide legal assistance to low-income individuals in civil matters.

An incident which occurred in my hometown, which was the subject of a segment on the news program 20/20 titled "When Nobody's Looking: People robbed of Life Savings by Man Recommended by Social Security Administration" and was later aired on the show titled The Fleecing of America. Greg Gamble, a local business man, set up a non-profit corporation in the early 1990's, the Aurora Foundation, to be a representative payee, for Social Security, V.A. beneficiaries and private funds, for a fee. The corporation was essentially a one-person

manner in which their funds were handled. Those complaints were largely ignored; none were investigated.

In 1996, a letter was written by a beneficiary to Mr. Gamble complaining about the handling of his money, a copy was sent to the Social Security Administration. The letter noted his concern of accountability of the organization. He was allowed to discontinue using the Foundation as his payee, but no investigation of his complaint was made.

The Aurora victims are elderly, middle aged and young. Some are physically challenged, most are mentally ill. Many suffer from both physical and mental illnesses. Some of Mr. Gamble's victims are Viet Nam Veterans, some suffer from HIV/AIDS. Regardless of the diagnosis they have one common thread, they are the most vulnerable of our society, people who are not capable of handling their own financial affairs. The victims must depend on someone else to pay bills and provide funds for basic needs. Some of the victims were afraid to make complaints concerning the handling of their money others were either to ill or simply unaware of problems.

In early 1999, clients of the Aurora Foundation began getting notices for nonpayment of residential care homes, eviction notices for nonpayment of rent and

letters from utility companies threatening to cut of services for nonpayment of bills. Several people were evicted from their apartments and became homeless. Greg Gamble as their representative payee had stolen their money for his own personal use. The money was gone. Safety deposit boxes were empty, life savings was wiped out and lump sum awards were gone. The money to live in comfort in old age was gone. The money stolen from the victims by Greg Gamble totaled over a quarter of million dollars.

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Mr. Gamble's time in prison may be served but for his victims the night mare is not over. The travesty is that several victims have died, some have been chronically homeless and most have given up hope of recovering their money.

The one hundred twenty-seven victims are in desperate need of relief. Protection must be given to prevent future victimization of beneficiaries by representative payees.

Thank you for the opportunity to present these views to you.

The CHAIRMAN. Well, Shirley, thank you very much. Before I ask you any questions let me turn to Jason. Again, Jason Wills, Financial Director, Community Action Partnership from Lewiston, ID.

STATEMENT OF JASON WILLS, FINANCE DIRECTOR, COMMUNITY ACTION PARTNERSHIP, LEWISTON, ID

Mr. WILLS. Good morning. I would like to thank Chairman Craig and this committee for the opportunity to present testimony regarding the utilization of representative payee services.

My name is Jason Wills. I am a CPA, as well as the Finance Director for Community Action Partnership in Lewiston, Idaho. Community Action Partnership is a social service, nonprofit organization whose services include weatherization, housing, children's services, community services, and aging.

Community Action Partnership's involvement in the implementation of a representative payee's service began out of our aging department approximately 12 years ago. As the need for payee services grew in proportion to our local aging population, the Social Security Administration appoints a representative payee when a beneficiary is determined incapable of managing or directing someone else to manage their Social Security payments. From this beginning our payee program has grown to include individuals from all age groups with various needs for a representative payee.

Historically our program has had 91 payee clients as of September 2001 and 97 clients as of September 2002. Currently our program has approximately 94 payee clients. Of these 94 clients, approximately 15 are over the age of 60. Sixteen percent of our total client base is over 60 years old.

All payee clients we serve are required to have a case manager. All financial requests are received from the client's case manager and evaluated on a case-by-case basis. Our representative payee program has no direct contact with the actual payee clients but rather, shares information with the case manager to present to the client.

Community Action Partnership's highest priority for our representative payee clients is to ensure their basic needs are being met with the limited amount of income received. This is done by developing budgets on a monthly basis and projections for clients on an individual basis. The representative payee program does have some high-risk clients. High-risk clients would be individuals who are aware of the amount of money received from Social Security on their behalf and place requests for nonessential payments before all basic need payments have been met. Payments for food, shelter, clothing, medical care and communication are identified as basic needs for the representative payee clients. On average, our payee clients receive between $500 and $600 a month to live on.

Community Action Partnership has been successful in developing partnerships within our organization that foster and encourage the utilization of our many resources. One of these partnerships includes the representative payee program. Recently an elderly client was facing neglect and abuse in their current living arrangement. Our Area Agency on Aging case managers were able to remove the individual from the potentially harmful situation and were able to

have the individual's financial needs met through the utilization of our payee program.

Community Action Partnership's representative payee program has not always had the strong internal controls in place that it currently has now. In early 1997 it was noted that some potential misappropriation of representative payee funds had occurred in the past. Community Action Partnership contracted with an outside accounting firm to perform a fraud investigation of the payee funds. From this investigation it provided Community Action Partnership with the necessary awareness and experience to implement significant changes to the internal controls surrounding the safeguarding of funds for the representative payee clients.

Some of these controls are outlined as follows: automated accounting ledgers; dual signatures for cash disbursements; signatures cannot include the individual who initiated the cash disbursement; independent monthly bank reconciliations performed by an individual not associated with the representative payee program; all cash disbursements are made payable to vendors with supporting documentation; establishment of a collective bank account rather than separate banking accounts for every individual for efficiencies; and reconciliation of detailed monthly reporting by client.

Community Action Partnership continues to ensure the guardianship of client funds by implementing and maintaining strong internal controls, developing good communication with our local Social Security field office, maintaining good client relations with the client's case managers, and being a financial advocate for our clients in terms of debt resolution and restriction.

Community Action Partnership helps people and changes lives. This statement is especially true for our representative payee program. This program proves to be a valuable alternative to guardianship of an individual's financial affairs and provides clients with the empowerment to control some degree of how their money is spent. The ability to have influence over an individual's financial affairs has proven effective especially for our elderly clients in a time when other privileges are being restricted.

I would like to thank the chairman and the committee for the opportunity to share with you some of these challenges and successes that we have had.

[The prepared statement of Jason Wills follows:]

The Utilization of Representative Payee Services

Testimony provided by

Jason E. Wills, CPA, Finance Director, Community Action Partnership

Before the

United States Senate Special Committee on Aging
Hearing on Social Security Administration Representative Payees
September 9, 2003

Introduction

Good Morning. I would like to thank Chairman Craig and the members of the Special Committee on Aging for the opportunity to present testimony regarding the utilization of a Representative Payee services.

My name is Jason Wills. I am a CPA, as well as the Finance Director for Community Action Partnership in Lewiston, Idaho. Community Action Partnership is a social service non-profit organization whose services include; weathization, housing, children's services, community services, and aging.

Background

Community Action Partnership's involvement in the implementation of a Representative Payee service began out of our Aging department, approximately 12 years ago, as the need for payee services grew in proportion to our local aging population. The Social Security Administration appoints a representative payee when a beneficiary is determined incapable of managing or directing someone else to mange their Social Security payments. From this beginning, our Payee program has grown to include individuals from all age groups with various needs for a Representative Payee.

Historically, our program has had 91 payee clients as of September 2001, and 97 clients as of September 2002. Currently our program has approximately 94 payee clients. Of these 94 clients, approximately 15 are over the age of 60. 16% of our total client base is over 60 years old.

All payee clients we serve are required to have a case manager. All financial requests are received from the client's case manager and evaluated on a case by case basis. Our Representative Payee program has no direct contact with the actual payee clients, but rather, shares information with the case manager to present to the client.

Community Action Partnership's highest priority for our Representative Payee clients is

these partnerships includes the Representative Payee program. Recently, an elderly client was facing neglect and abuse in their current living arrangement. Our Area Agency on Aging case managers were able to remove the individual from the potentially harmful situation and were able to have the individual's financial needs met through the utilization of our Payee program.

Program Strengths/Protection

Community Action Partnership's Representative Payee program has not always had the strong internal controls in place that it currently has now. In early 1997, it was noted that some potential misappropriation of Representative Payee funds had occurred in the past. Community Action Partnership contracted with an outside accounting firm to perform a fraud investigation of the Payee funds.

From this investigation, it provided Community Action Partnership with the necessary awareness and experience to implement significant changes in the internal controls surrounding the safeguarding of funds for the Representative Payee clients. Some of these controls are outlined as follows:

1. Automated accounting ledgers.
2. Dual signatures for cash disbursements.
3. Signatures can not include the individual who initiated the cash disbursement.
4. Independent monthly bank reconciliations performed by an individual not associated with the Representative Payee program.
5. All cash disbursements are made payable to vendors with supporting documentation.
6. Establishment of a collective bank account rather than separate banking accounts for every individual for efficiencies.
7. Reconciliation of detailed monthly reporting by client.

Community Action Partnership continues to ensure the guardianship of client's funds by implementing and maintaining strong internal controls, developing good communication with our local Social Security Field Office, maintaining good relations with client's case managers, and being a financial advocate for our clients in terms of debt resolution and restriction.

Conclusion

Community Action Partnership helps people and changes lives. This statement is especially true for our Representative Payee program. This program proves to be a valuable alternative to guardianship of an individual's financial affairs and provides clients with the empowerment to control some degree of how their money is spent. The ability to have influence over an individual's financial affairs has proven effective especially for our elder clients in a time when other privileges are being restricted.

Payee Testimony

I would like to thank the Chairman and Committee Members for this opportunity to share with you some of the challenges and successes Community Action Partnership has experienced with our Representative Payee program. I would ask for your continued

The CHAIRMAN. Jason, thank you very much.

Before I ask questions of either of you let me turn to my colleague who has joined us, Senator Carper, to see if he has any opening comments to make.

Senator CARPER. Just that I am happy to be here, welcome our witnesses and look forward to asking a question or two. Thanks, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Shirley, again thank you for a helpful update on the Aurora case. Obviously it is one that we are aware of and monitor to some degree as finally its level of abuse reached a level of exposure that triggered the kind of investigation and action that took place.

What other additional recommendations would you make to Congress to make sure that what happened in the Aurora case does not happen again?

Ms. SHEARS. Mr. Gamble set up that organization strictly to be a payee representative. His history was in the banking field rather than public service. From March 1995 until April 1999 he could have only legitimately had a fee of $89,929, so it was not a very prosperous business for that 4-year period to run an office and to pay help and maintaining taxes, and so forth.

The point I am trying to make is that tried-and-true organizations, such as Community Action, mental health, people that have provided services for disabled people, who know their needs, have contact with them and are known in the community should be the only people that should be allowed to be payee representatives as organizations. Fly by-night organizations should not be allowed to be payees. This would eliminate another Greg Gamble.

The need to listen to the recipients when they wish to change payees, and I can say that the Social Security office has improved that greatly since this time. They have taken measures to listen to people and people that I refer there, they have said gladly, just send the payee in and bring them in and we will do the paperwork.

But they need to allow payees to continue, private payees, require better reporting. They need to require bonding and the bonding should be adequate to repay these people. They should not be allowed to handle funds that they do not have bonding to cover.

The CHAIRMAN. Bonding for for-profit organizational payees, not individuals?

Ms. SHEARS. Yes, sir. I believe that some of these measures, and better reporting and better monitoring of these agencies, but they definitely need to listen to the recipients when they come into the office, that they are having problems or other people that inquire.

I think one thing that I will say on behalf of Social Security at the time that this happened with Mr. Gamble, it was a time when a lot of monitoring was going on. You recall the drug and alcohol law that came in about that time and all the people were required to have payees and hundreds of people were coming in seeking payees and it was a hard time for Social Security, too. It was difficult for all of us. We were overburdened with clients.

The CHAIRMAN. Shirley, do you think representative payees are still a viable alternative to a court-appointed guardian, despite some of the problems we have heard about today?

Ms. SHEARS. Yes. Guardianship is very restrictive in most cases and I do not feel that that gives people that are already vulnerable the freedom to do as they should be allowed to do.

The CHAIRMAN. I appreciate that and those comments.

Jason, thank you again for traveling the distance to be with us today to build this important record. Has your agency been able to divert elderly people from full guardianship proceedings by offering a representative payee program? Do you know?

Mr. WILLS. I cannot answer that. I am not entirely sure if we have been faced with that situation directly.

The CHAIRMAN. What is the most challenging aspect of serving as an organizational representative payee?

Mr. WILLS. It would be really detailing out the individual needs of our clients because they are so vast and varied. The one constant is the limited amount of income and in order to stretch that to meet their basic needs, that comes in a variety of forms and that has been the biggest challenge, is getting to know the individuals through their case managers and then developing budgets for them that help them ensure that their basic needs are met.

The CHAIRMAN. But it sounds like you have put a system in place or you operate under a system that is fully accountable and auditable at any time.

Mr. WILLS. Yes.

The CHAIRMAN. What advice would you give other organizational payees in terms of maintaining a high standard of accountability of Social Security monies?

Mr. WILLS. Well, a couple of things. First, to have the understanding of a duty of care, that it is not your money; it is another individual's money and these are our most vulnerable individuals in society—elderly, disabled, young children. Just to have the duty of care and that it is a fiduciary duty, that you are caring for that money on behalf of another individual, to take the time and resources to implement systems that track that accurately and if you have a staff member as a payee that is monitoring this program, initiating this program, doing the necessary background checks on these individuals, doing the necessary follow-up and supervision of these individuals.

If you are subject to an independent audit, inform your independent auditor of it. Let them look at that program and consider it as another safeguard.

The CHAIRMAN. I think you are moving into my next question. That is fine. It was going to be what is the protocol if you receive an allegation from the community that a representative payee program is being misused or abused in one instance? What would your immediate protocol be?

Mr. WILLS. If we became aware of this instance first and foremost, it would be to inform my direct supervisor, the Executive Director of the organization, that this is a potential allegation. Beyond that, we would do an internal investigation of this allegation.

Specifically if it was targeted from an actual payee client or if it was our payee system as a whole, that would take on two different venues—inform the board of directors, reassign the payee staff, whether it is administratively, whether it is reassignment to another position in the department, pull them out of that position be-

cause we have the ability to do that through our cross-training through this department. Also, contact an outside accounting firm, if necessary, and our legal counsel, if necessary, if it got to that point, and get in touch with our local Social Security field office and resolve the issue.

The CHAIRMAN. In getting in touch with your local Social Security field office, I guess my last question of you, Social Security Administration has made good progress by all indication in enhancing its oversight of the representative payee program. How would you assess your agency's working relationship with the local regional Social Security offices on their oversight? How do you see it firsthand?

Mr. WILLS. The relationship has been one of joint partnership, realizing that how our program works as a payee service and the Social Security Administration as distributing those funds, I would say our relationship with our local field office, I could not ask for a better relationship. Like I said, we are the advocates for these individuals. If there is a problem, if there is a concern, if there is anything that comes up, we are able to contact them directly and get any potential issues resolved immediately.

The CHAIRMAN. OK. Jason, Shirley, thank you.

Let me turn to my colleague, Senator Carper, for any questions he might have.

Senator CARPER. Thanks, Mr. Chairman.

Miss Shears, the reason why, as you probably know, all of our colleagues are not here is because each of us serve on a variety of committees and we are scattered about with different hearings and mark-ups that are going on right now.

I missed your comments. I heard Mr. Wills's comments but I missed yours and I am going to ask you just to take the first minute and just give me a little thumbnail sketch of what you had to say, maybe what you think is the most important thing that you would want me to remember and us to remember coming out of this hearing.

Ms. SHEARS. That the organizations that have a history of providing services for clients be the only organizations that are considered to be organizational payees, that organizations, businesses that come up just to handle Social Security cases, those should not be allowed anymore, such as the Aurora Foundation, because over a 4-year period it was less than $90,000 that he legally obtained. That is not very much to run a business and pay help and overhead, and so forth.

It takes somebody that is really caring. It is not a lot of money when they do charge a fee for it and it should be people like community action agencies or mental health, and so forth. That was the contents of my statement.

Senator CARPER. Good. Thanks. As I understand it, they are different categories of payee representatives. They include individuals, which are largely families. They would include, I guess, nonprofit organizations, I think you mentioned a number of which could serve in that capacity. They include for-profit businesses? Have I covered the landscape? Are there others?

Ms. SHEARS. I do not know of any, other than individuals.

Senator CARPER. This is a question for Mr. Wills, as well, but either of you. Roughly—Mr. Chairman, maybe you can help me, as well. Do I understand that more than 10 percent of the folks who receive Social Security have those monies received and handled by a payee representative? Does that sound about right.

The CHAIRMAN. I have a lot of nodding of heads in the audience.

Senator CARPER. Let the record show.

The CHAIRMAN. Staff tells us about 13 percent, Senator.

Senator CARPER. OK, good. Out of that 13 percent are most of those family members or individuals, as opposed to nonprofit or for-profit organizations?

The CHAIRMAN. Most of that is, yes.

Senator CARPER. OK.

Ms. SHEARS. I believe they are and I believe that that is a very workable situation, but it also needs to be monitored. Social Security needs to be very vigilant.

Senator CARPER. OK. Of the nonindividuals, generally the non-family members, those who serve as payee representatives be they as part of a nonprofit organization for for-profit organization, do you all have any idea which is the predominant—the nonprofit organizations who do this for a fee or out of the goodness of their hearts or the for-profits who do it for a fee? Which is predominant? Who serves the most Social Security recipients?

Mr. WILLS. I am only aware of our own organization and then also, as you stated, mental health. I am not aware of any actual for-profit organizations, at least in the State of Idaho that are operating as a payee.

Senator CARPER. Talk to me a little bit about your organization, Mr. Wills. Are you nonprofit? Are you for profit?

Mr. WILLS. We are a nonprofit social service organization and we have five main areas of service, including weatherization, housing, children's services, community services, and aging. Our representative payee program grew from our aging department and it kind of is a quasi-department between aging and community services. It is kind of a blend because we have a vast majority—we actually have a blending of clients that are over 60 and under 60—children, disabled, as such.

Senator CARPER. Ms. Shears, are you from West Virginia?

Ms. SHEARS. Not originally but that is where I have lived since the 1960's. I used to work for a community action agency.

Senator CARPER. I am originally from Beckley, WV. I was just back in my native State last week visiting some of our family. My mom lives over in Kentucky, in Ashland, not far from Huntington. She is 81 and has Alzheimer's disease and she is doing OK. My sister takes care of a lot of the financial needs of my mom and my sister lives close there to where my mom is.

Give me some idea of concerns that—let me just say the kind of organization, the kind of agency that Mr. Wills is here representing, do you have concerns about the work that they do and their fiduciary responsibility to the people that they serve?

Ms. SHEARS. No, I am a former employee of Community Action agency. I was county director at one time.

Senator CARPER. Where?

Ms. SHEARS. In Mineral County, WV. I think they do a great job and like he says, they have taken care of most of the problems that they had years ago.

Senator CARPER. Are you aware of nonprofit agencies that have not done a great job?

Ms. SHEARS. No, I am not.

Senator CARPER. Are you aware of entities maybe other than nonprofit——

Ms. SHEARS. Excuse me. Except for the Aurora Foundation, which we all know about.

Senator CARPER. Are you aware of, other than Aurora, other organizational pay reps who do not do a good job?

Ms. SHEARS. I do not know of any but we only have one other in our area and that is the mental health agency that I know of.

Senator CARPER. Mr. Wills, could you just explain to me how

them to set this up for us. It is still in the process of being negotiated.

Senator CARPER. Roughly how many people do you serve?

Mr. WILLS. Ninety-four.

Senator CARPER. At some point in time when interest rates go back up—hopefully they will not go up too much but at some point in time when they go back up I would urge you to figure out how to make sure that money is working for the folks that it belongs to.

Mr. WILLS. Absolutely.

Senator CARPER. Legislation has been introduced, I understand, Mr. Chairman, I guess in the last Congress and in this Congress, as well.

The CHAIRMAN. And has passed the House.

Senator CARPER. Is it Senator Bunning's bill? Is it his bill in the Senate? Is he the chief author?

The CHAIRMAN. Yes, it is.

Senator CARPER. I do not know if either of you have any thoughts on the bill that has passed the House or the legislation that been introduced in the Senate by Senator Jim Bunning of Kentucky. If you do, take a moment and just share your thoughts with me, please.

Mr. WILLS. I do not have any questions.

Ms. SHEARS. I do not have any questions.

Senator CARPER. You do not have any thoughts about the legislation?

Ms. SHEARS. I believe it would improve the services. I believe it would give Social Security the authority to enforce payee representatives to stay within the guidelines and I believe it would give them a better—I believe they would have some better laws in effect that would help them and ultimately help the beneficiaries. I believe it is a very much needed bill.

Senator CARPER. Mr. Wills, closing word?

Mr. WILLS. From what I have learned here today, I think that some of the concerns that Senator Craig has regarding the potential felons being allowed to be payees, that is a huge loophole and I would hope that it could be closed.

Senator CARPER. Any closing thoughts, Ms. Shears?

Ms. SHEARS. I appreciate the opportunity to come and speak on behalf of the Aurora Foundation people. One thing I would like to call attention to is that not one penny of this money has been refunded to the clients. As I left town this morning to catch a train, I passed one of the ladies that was sleeping in a car that was in the film and she is still homeless. She was sleeping in a doorway.

Senator CARPER. Thank you both.

Mr. Chairman, thanks.

The CHAIRMAN. Tom, thank you.

Shirley, Jason, thank you very much for your testimony and your insight as to your practical and real experiences in relation to this Social Security program. We thank you. The committee will stand adjourned.

[Whereupon, at 11:20 a.m., the committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR JOHN BREAUX

I would first like to thank Chairman Craig for holding this very important hearing on Social Security representative payee fraud. I would also like to take this opportunity to thank all of the witnesses who have come before us to testify today. Your testimony will be of great value as the Committee works to address some of the critical challenges that exist in ensuring that vulnerable Social Security beneficiaries receive the benefits they are due.

Under current law, the Social Security Administration may designate "representative payees" to accept monthly benefits on behalf of Social Security or Supplemental Security Income recipients who are considered physically or mentally incapable of managing their own funds, or on behalf of children under the age of 18. These representative payees are entrusted with managing the funds of the most vulnerable of individuals. Sadly, sometimes, this trust is betrayed. It has come to light that some representative payees have been misusing, misdirecting and at times stealing beneficiary funds. This can no longer continue. This Committee along with others that I sit on have held hearings and grappled with this issue in the past. We need solutions now. Those individuals, who need their benefits and our protection the most, should have it.

Thank you once again Mr. Chairman for holding this important hearing. I look forward to hearing from our witnesses and working with them to address these serious issues.