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September 12, 2003

**U.S. Senate Special Committee on Aging
“Ensuring the Integrity of Social Security Programs:
Protecting Seniors from Representative Payee Fraud”**

September 9, 2003

Panel I:

James G. Huse, Jr., SSA Inspector General

Panel II:

Frederick G. Streckewald, Assistant Deputy Commissioner, SSA

Panel III:

Shirley Shears, Legal Aid of West Virginia

Jason Wills, Finance Director for Community Action Partnership

Chairman Larry Craig (R-ID) was present for the entirety of the hearing and was joined by Senator Thomas Carper (D-DE). Chairman Craig mentioned that the sparse hearing attendance by Senators was due to a number of hearings being held at the same time and that he would have to relay information gleaned from the hearing to his colleagues. He gave a brief opening statement in which he commented that Social Security is often the only source of income for some individuals. He reminded hearing attendees about the May 2000 hearing that was held in order to investigate the problems with the representative payee system. Now, he said, it was time to explore what has been done and what will be done to correct problems that were identified during that May 2000 hearing. “Though the vast majority of payees are trustworthy, some are clearly not,” he stated. He then referred to the case of a woman who murdered her husband for whom she was a representative payee. She murdered him because she just wanted to use his checks without having to provide for his needs.

Panel I

James G. Huse, Jr., SSA Inspector General

Beginning his testimony, Huse informed the committee that there are currently 5.4 million representative payees who manage benefits for millions of beneficiaries. These representatives may be individuals such as family members and friends or organizations. Sometimes, these representative payees end up committing fraud by stealing benefits from those they are supposed to be helping. He provided a few examples of instances in which representatives payees seriously

abused their powers. In one Kansas case, a representative payee admitted to using benefits to pay for a drinking habit and sold beneficiaries' farms for \$70,000. Another notorious organization, called "Payee-R-Us", embezzled over \$107,000 in payments. Investigations conducted from 1997-2003 have helped to identify \$26 million of fraudulently used funds and have resulted in over 600 convictions.

According to Huse, the SSA's "initial selection process" for representative payees could be modified to better identify those who might abuse their positions and fraudulently use beneficiary funds. "As you know, current SSA policy does not prohibit fugitive felons and parole or probation violators who have not been convicted of a crime involving a Social Security program to serve as representative payees." He also stated that when a person is selected, there does not appear to be an adequate monitoring system in place to check on representative payees. They must submit an annual report, but as discovered by audits, SSA was only able to provide 48 percent of the Representative Payee Reports (RPRs) requested. When reports are submitted, "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." Huse also stated that SSA review teams do not always "maintain documentation to support conclusions and recommendations made during site reviews," and that those teams do not always "review the required number of beneficiary records" and report upon those reviews.

Huse expressed his belief that H.R. 743, which is currently before the Senate Finance committee, provides some remedies for the representative payee problem. It would make payees liable for any amounts they misused. It would also allow SSA to re-issue benefits beneficiaries whose funds were mishandled or misspent "absent a finding of negligence" on the part of SSA. Huse also commented that the current Civil Monetary Penalty (CMP) statutes "do not provide for penalties to be imposed for conversion of benefits by representative payees." H.R. 743 is a "step in the right direction" for addressing the CMP problems.

Q & A

Chairman Craig began his questioning of Huse by stating that, "We all recognize the vulnerabilities of those being served." Craig wanted to know how it was possible in the first place that thousands of fugitive felons were allowed to be representative payees. According to Huse, SSA has always focused on finding a payee with the closest relationship to the beneficiary. "Some fugitive felons could be parents or relatives," he commented. It is preferable to have a relative or parent handle payee responsibilities. Chairman Craig then stated that "physically" a parent or relative might be in the most convenient payee position, but they may not have a good track record and may not really have the best interests of the beneficiary at heart. He then asked if SSA believes "service" could still be provided if "fugitive felons" were not allowed to serve as payees. Huse responded that SSA understands the problem of having *some* fugitive felons serve as payees, yet he wanted to point out that a "fugitive felon" is not always wanted for some sort of high-level crime. Many fugitive felons become fugitive felons because they either purposely or unintentionally miss a court appearance or violate the terms of probation for a misdemeanor. Some people classified as "fugitive felons" committed their crimes years ago. If a parent or relative is trying their best to be a good parent and is trying to improve their parenting skills and the "felony" in question is the result of a failed court appearance or something similar, then SSA prefers to work with that person.

After listening to Huse explain the fugitive felon issue, Chairman Craig remarked, “Well, the bureaucracy grinds slowly.” He then asked if the 3,000 payee frauds are the “just the tip of the iceberg”? How did these cases come to light? Huse explained that there is an auditing system and that SSA received complaints from beneficiaries and others within the community. “We know the 3,000 number is not the universe,” Huse stated. “We know that not all abuses are reported.” Chairman Craig then discussed the submission of annual RPRs and why there isn’t some sort of computer system in place to trigger an investigation when an expected report is not submitted. Huse explained that, yes, many reports are not submitted, and that there are not enough resources (time/employees) to investigate the RPRs. The investigations end up being deferred so that employees can handle more pressing issues. Chairman Craig then wanted to know what happens to people when they fail to submit a report. Huse said that there “should be” some kind of intervention at the field office. A field office intervention is a key to the process, but then again, there is a workload issue.

Concluding his questioning of Huse, Chairman Craig wanted to know why SSA needs legislation to enact changes—what changes must be legislative and what changes may be purely administrative? Huse replied that some changes may be administrative but that SSA needs a change in law to back their actions up. He mentioned that the fugitive felon issue “may” be an administrative one, but he was later contradicted (pleasantly) by Frederick Streckewald (Assistant Deputy Commissioner, SSA) on that subject. Craig then concluded his questioning by stating that allowing fugitive felons who commit fraud to act as representative payees is “not an acceptable policy. It is a matter of simply finding someone who is trustworthy.”

Panel II

Frederick G. Streckewald, Assistant Deputy Commissioner, SSA

Streckewald made many of the same points that Huse made. He provided more details about the selection and education of representative payees, and he stated there are several new educational initiatives (such as pamphlets, a training kit, and a training video) underway to help representative payees understand their responsibilities. He also told hearing attendees about the background checks that are performed to determine whether or not organizational payees are credit-worthy. SSA conducts “onsite reviews” of fee-for-service representative payees. Fee-for-service organizations must be bonded or licensed and they are subject to “random” reviews.

Streckewald called attention to the Representative Payee System (RPS), which is a computerized system that allows SSA to check on people providing representative payee services. Improvements to the system now allow SSA to store more information about fee-for-service payees.

Concluding his testimony, Streckewald highlighted the important provisions of H.R. 743. “One particularly important provision would restore benefits that have been misused by all representative payees serving 15 or more beneficiaries,” he stated. The restoration of benefits would provide much needed financial help to beneficiaries whose funds have been misused through no fault of their own. One of the provisions within the bill would allow SSA to treat misused funds as “overpayments” to a fee-for-service organization, thus allowing SSA to more

effectively use its overpayment recovery authority. Another provision would allow SSA to redirect Social Security benefits to field offices if the representative payee “fails to provide an annual accounting of benefits.”

Q & A

Chairman Craig began this round of questioning by commending SSA for work that is “effectively done.” He expressed concern about the impending retirement of the baby boom generation and whether or not SSA’s systems can handle the expected rise in representative payee cases. He asked Streckewald how the accuracy of information provided by representative payees is verified. What kind of tracking is done? Streckewald responded that private individuals such as family members and relatives and fee-for-service organizations are treated differently. Family representatives must come into a field office and meet with SSA officials. They must provide information about their own source of income and if they have a criminal record. Most people are honest about their financial situation and their criminal past. Some people even say they’ve been convicted of a felony when, in reality, they have only been convicted of a misdemeanor. Craig commented that he appreciates that amount of staff time it takes to meet with all these people. He then asked Streckewald how a fugitive felon can act as representative payee when the term “fugitive felon” indicates that a person is fleeing law enforcement? Streckewald tried to reinforce the idea that not all “fugitive felons are on the run.” Some do not even know they are fugitive felons. Some of the crimes occurred 10 or 20 years ago.

Once again, Chairman Craig expressed that he was frustrated that annual reports are not more thoroughly followed up on. Streckewald tried to relieve Craig’s frustration by saying that when SSA appoints less-than-desirable representative payees, these individuals must come into the office more often than other payees do. They are placed under more scrutiny. If they do not submit annual reports or if there have been complaints about their services, a “suitability inquiry” will occur.

Just as he asked Huse, Chairman Craig asked Streckewald if legislation is needed or if administrative changes could help ease the representative payee problems. Streckewald stated that the annual report process may be altered by new administrative policies, but law must mandate other provisions. He said that he didn’t believe the fugitive felon problem could be corrected administratively.

Panel III

Shirley Shears, Legal Aid of West Virginia

Shirley Shears provided testimony on the subject of the Aurora Foundation and its mishandling of Social Security benefits in West Virginia. She said, “The local Social Security office routinely told beneficiaries that the Aurora Foundation would be their payee; beneficiaries were not given a choice.” She said that many victims of the Foundation were elderly and mentally disabled. Many of these victims became homeless due to the Foundation’s misuse of their Social Security benefits; some even remain homeless and have not recovered their assets. Though Mr. Gamble (the head of the Foundation) pleaded guilty to one charge of embezzlement, he has no assets from which to pay his 127 victims.

Jason Wills, Finance Director for Community Action Partnership, Lewiston, Idaho

Jason Wills acted as a voice for organizations that act as representative payees. He explained that his organization, Community Action Partnership, represents 94 clients and only 15 of those clients are over the age of 60. At Community Action Partnership, clients are assigned a case manager who evaluates financial requests. “Community Action Partnership’s highest priority for Representative Payee clients is to ensure their basic needs are met with the limited amount of income received.” Wills explained that Community Action Partnership now has stronger internal controls in place to make sure their clients’ funds are being appropriately handled.

Q & A

Chairman Craig only asked Shears and Wills a couple of questions due to time constraints. He asked Shears what could be done to ensure that another “Gamble situation” does not occur again. Shears replied that the Aurora Foundation was a for-profit company. “For-profits should not be payees,” she stated. She also stated that beneficiaries must be listened to more closely, SSA needs to require better reporting, and bonding must cover the total amount of misused funds. Chairman Craig wanted to know what advice Wills would give to other representative payee organizations. Wills stated that organizations must remember that it’s not their money—it belongs to the beneficiaries. Organizations must remember that they have a “duty to care”. Also, organizations must implement tougher monitoring systems for their accounting practices.

Chairman Craig then concluded the hearing.

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