

**Joint Hearing on Social Security's Representative
Payee Program**

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

AND

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

FEBRUARY 7, 2017

Serial No. 115-SS01

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Joint Hearing on Social Security’s Representative Payee Program

U.S. House of Representatives,
Subcommittee on Social Security and Subcommittee on Oversight,
Committee on Ways and Means,
Washington, D.C

WITNESSES

Marianna LaCanfora
Acting Deputy Commissioner, Office of Retirement and Disability Policy, Social Security Administration

Dr. Paul Appelbaum
Elizabeth K. Dollard Professor of Psychiatry, Medicine & Law, Columbia University

Lindsay Nichols
Senior Attorney, The Law Center to Prevent Gun Violence/Americans for Responsible Solutions

Gale Stallworth Stone
Acting Inspector General, Social Security Administration



WAYS AND MEANS

CHAIRMAN KEVIN BRADY

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

House Ways and Means Social Security Subcommittee Chairman Sam Johnson (R-TX) and Oversight Subcommittee Chairman Vern Buchanan (R-FL) announced today that the Subcommittees will hold a two-part joint hearing series on Social Security’s representative payee program. The first hearing is entitled “Examining the Social Security Administration’s Representative Payee Program: Determining Who Needs Help.” The hearing will focus on the capability determination process used by the Social Security Administration to assess whether an individual needs a representative payee to manage benefit payments on their behalf. **The hearing will take place immediately following a brief Social Security Subcommittee Organizational Meeting on Tuesday, February 7, 2017 in 1100 Longworth House Office Building, beginning at 10:00 AM.**

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

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to make a submission, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Tuesday, February 21, 2017**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any

materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

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

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

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

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

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

The subcommittees met, pursuant to call, at 10:11 a.m., in Room 1100, Longworth House Office Building, Hon. Sam Johnson [chairman of the Subcommittee on Social Security] presiding.

Chairman Johnson. Now, I just want to say good morning, and welcome to the first of our two joint Social Security and oversight hearings on Social Security's representative payee program. In 1939, Congress first authorized Social Security to make benefit payments to another person or organization when it was in the best interests of the beneficiary. The last time Congress made changes to representative payee programs was in 2004, through the Social Security Protection Act. This law increased the oversight of representative payees.

I believe it is now time to take a fresh look. This two-part hearing series seeks to answer the following questions: Is Social Security's representative payee program working the way it should? How is Social Security improving the program to meet today's challenges? And are there changes we should make to ensure that Social Security provides the services Americans expect and deserve? The Social Security Administration will be here for both hearings, helping us to understand the agency's management of the representative payee program, including the challenges it faces. After the two hearings, I want Social Security to send us a report that covers, one, the challenges facing the Agency; two, the improvements Social Security will make; and, three, what legislative changes Social Security needs in their opinion.

We all need to work together to make sure the representative payee program meets today's challenges. It is too important not to get it right. Today's hearing will focus on those who need help and the process Social Security uses to identify them.

About 9 percent of those receiving Social Security benefits get help from a representative payee to manage their benefits. That may not sound like a lot, but with a program of Social Security's size, it means about 5.5 million people have a representative payee, and this doesn't include those receiving Supplemental Security Income, who also have a representative payee. Many folks have a representative payee. For example, children receiving benefits must have a representative payee, as do those who have been declared legally incompetent by a court. But others may need help as well. They, or a loved one, may tell Social Security they need help, or a Social Security employee may notice that the individual could use help managing their benefits.

In this case, Social Security conducts what is called a capability determination to see if the person needs a representative payee. Social Security's field office employees make this decision by reviewing lay evidence and medical evidence. While medical evidence is part of the process, lay evidence is meant to be the deciding factor. Lay evidence is anything other than legal or medical evidence that provides information about whether someone can manage their money. This could be a statement from a family member, a friend, or someone else who knows the person well.

Deciding who needs help managing benefits is an important responsibility, and Social Security has to get it right. However, as we will hear today, the Institute of Medicine, the Social Security Inspector General, and Social Security itself, have all raised some serious questions about how the representative payee program works.

Of serious concern is that Social Security employees routinely fail to follow Social Security's instructions for completing a capability determination. According to a June 2015 Social Security study, more than 70 percent of cases reviewed did not have a documented capability determination, and over 40 percent of the cases were missing lay evidence, even though lay evidence is required, theoretically. It is hard to be sure if decisions that are being made are the right ones when evidence is missing.

Social Security also does not have a way to see if someone's ability to manage their benefits has changed over time. Just because someone doesn't need a representative payee when they first claim benefits doesn't mean they won't need help 20 years down the road. But unless the person comes to Social Security and says, "I now need help," it is hard for them to figure it out. Today we will hear about what Social Security

is doing to move in the right direction. We can all agree that the American people deserve better, and Social Security must take this responsibility seriously. I look forward to hearing from our witnesses, and I thank them for being here today, all of you. I now recognize Mr. Larson for his opening statement.

Mr. Larson. Thank you, Mr. Chairman. I am pleased that we are having this two-part hearing series on the representative payee program at the Social Security Administration. Representative payees serve the most vulnerable of the Social Security Administration's 66 million beneficiaries. Over 4 million minor children, and almost 4 million adults with physical or mental impairments that are so severe, they cannot manage their own benefits. This includes seniors with dementia and disabled adults with severe mental illness or significant intellectual disabilities.

And while it is an important focus on the payee program, I would like to address last week's vote on the House floor that was related to this issue, and exemplified what is bad about the process, and speaks to why so many members on our side are frustrated. Last week, we voted on a Congressional Review Act resolution that eliminated a process for SSA to report to the National Gun Safety Background Check System the names of individuals who are not eligible to buy firearms because of a severe mental incapacity. That is a requirement of existing law. Individuals with severe mental incapacity are not allowed to own guns. Without even holding a hearing, and I know this is not the work of the chairman, the majority put the cart before the horse and used a fast track procedural tactic to weaken the background check system that protects Americans from having firearms fall into the wrong hands.

We have a serious gun violence problem in this country, but we can't even get a vote on commonsense measures to prevent gun violence. That is particularly why our side of the aisle is frustrated. It is why last year in June, we took to the floor, out of frustration that we are not even allowed to have a vote. We recognize that the majority controls the floor, and has the ability to defeat any legislation that we might put forward, and so, it is -- even more, the frustration is compounded when we don't even get an opportunity to express our views and have an up-or-down vote on them, knowing full well that, in fact, we may not prevail. So we felt very strongly, and it is why our concern persists on the floor of the House, that we need to have a vote on issues that are as important as this.

It was most troubling last week -- and I will be honest with all the members on the committee here -- I know that you share the same concerns. I know that, but to pit the disability community against victims of gun violence doesn't get to the solutions that I know this committee and the Congress as a whole is after. We need to demonstrate to the American people, especially in the government program that they respect, admire and count on the most. It is the most essential government program to all of our citizenry, that we get it right.

Passing this resolution I think set us back, and will prevent SSA and all Federal agencies from improving reporting to the NICS background check system in the future. That is why I am so pleased that Lindsay Nichols from the Americans for Responsible Solutions, the organization that former Congresswoman Gabby Giffords founded, is here today.

We asked ARS to testify today to set the record straight about why that reporting was necessary and how it would have protected Americans, while respecting due process rights. I appreciate her coming today. I appreciate all three witnesses who are here today, and look forward to hearing your testimony as well.

SSA appoints a representative payee to ensure that benefits are used to care for beneficiaries. Because these are the most vulnerable of all SSA beneficiaries, it is critically important that SSA gets it right. We understand that SSA has seen a 10-million person increase in beneficiaries due to the baby boomers that are coming through the system. Yet, since 2010, its operating budget has been reduced by 10 percent, adjusted for inflation. Because of funding cuts, the average wait time for disability appeal is now 545 days. That is simply unacceptable. We cannot have any of our citizens wait that long. There clearly is a need to monitor payees to make sure benefits are being used for the care of the recipients.

If there is a problem, SSA needs to be able to change the payee. SSA's monitoring of payees is especially sensitive because there has been some horrific cases of abuses, and I commend the chairman and this committee for making sure that we are always looking at any offense to the Nation's top program. Any person who violates the Social Security law through fraud, abuse, or whatever, needs to be punished and punished directly for the harm they are inflicting on all of American citizens.

So I look forward to working bipartisanship with the chairman, and bicamerally, as we hope we can do, to solve these many problems that we have. Thank you so much.

Chairman Johnson. Okay. Thank you. As is customary, any member is welcome to submit a statement for the hearing record. But before we move on, I want to recognize Chairman Buchanan, who has an opening statement as well.

Chairman Buchanan. Thank you, Mr. Chairman. I want to also thank our witnesses for their time today. The Social Security Administration was created, as we know, in 1935 with a special emphasis on supporting those considered to be of old age. More than 80 years later, the program is administered by an agency that remains vitally important to our seniors and people with disabilities. I represent the Sarasota region, Florida's 16th Congressional District. We have nearly 224,000 people on Social Security out of 700,000, so it is probably one of the top two or three in the State.

Many of the people across the country rely on Social Security Administration every day. It is imperative that the agency functions with care and efficiency, and I think it does in general definitely, but this is an area I think we could make some improvements on ideally. This is particularly true of the Representative Payee Program. As was outlined by Chairman Johnson, the representative payee program was designed to provide assistance to beneficiaries who need help managing their finances. However, the program faces challenges, not the least of which is the subject of today's hearing, how to determine which beneficiary needs help. With more than 8 million beneficiaries enrolled in the program already, clearly the agency has been successful in identifying some of the beneficiaries who need assistance. Yet, research shows that only 9 percent, 9 percent, of eligible people with dementia, have a representative payee. That means 91 percent do not.

While not all may ultimately need a payee, there are real questions about how the agency identifies individuals who are at the higher risk of needing help with managing their finances. And further, once a beneficiary has been identified as possibly needing support, what kind of evidence is the agency considering, and what procedures has the agency undertaken to be certain that the best, most accurate determination is being made?

Those challenges are, unfortunately, visible in my home State of Florida. In 2008, just north of my district in Polk County, a court determined that a 76-year-old elderly adult needed a guardian. In 2013, the woman's daughter, and the court appointed a guardian -- the daughter was from out of State -- and a court-appointed guardian pled guilty to stealing more than \$40,000 from her mother, who was an elderly adult with a disability. Exploiting an elderly person or a person with a disability is a second degree felony. The woman was sentenced to 120 days in jail and 3 years of probation. She is also forced to repay tens of thousands of dollars that she stole from her mother.

While some might call this justice, I find myself wondering what could have been done to prevent this abuse? Is there some way that the exploitation of this senior citizen could have been stopped sooner? Or better yet, not even happened in the first place?

Now, I cannot be certain that the elderly woman in Polk County was receiving Social Security benefits. Based on her age, she absolutely would have been eligible. If so, was the Social Security Administration aware that a judge had deemed this individual totally incapacitated? Was a representative payee appointed for the woman? Was the exploitation assigned as a representative payee? These are questions I do not know the answer to, but what I do know is that 4 years is too long for an elderly woman

with a disability to be financially exploited. Whether it is the Social Security Administration or the State Guardianship Program, someone should have intervened much sooner.

As the Subcommittee Chairman for Oversight, I believe it is our responsibility to stay focused. While I am encouraged by the testimony and reports I have reviewed showing that the Social Security Administration is taking some steps to strengthen the payee program, challenges continue to confront the agency, and we must make sure that we are doing everything we can to find a solution. I look forward to listening to our witnesses today and learning how we can improve the Social Security program to benefit all seniors, especially people with disabilities.

I yield back, Mr. Chairman.

Chairman Johnson. Thank you for your comments, and I would now like to recognize Mr. Lewis for any statement he wishes to make.

Mr. Lewis. Good morning. Thank you, Mr. Chairman. Thank you for holding today's hearing. I would also like to thank all of the witnesses for being here today. This morning, we are studying the Representative Payee Program. Together, we will learn more about how the Social Security Administration provides a person or organization to handle the benefits for another. This program is a saving grace for seniors struggling with dementia, for the mentally and physically disabled, for children who lost a parent, and for those who lose a spouse. This hearing is an important first step in understanding how we can help the agency better serve the most vulnerable among us.

Over the years, many of you have heard me say that Social Security is a sacred trust. It is a trust between the American Government and the American people. It is the greatest example of the beloved community in our country. I hope this committee will not shy away from understanding how Republican budget cuts impact this program and other services. These cuts make it harder for the agency to provide the quality service Americans deserve and expect. I believe in my heart of hearts that the biggest threat to this program is not the retirement of the baby boomers; it is reckless budget cuts. Each and every one of us have a shared duty and obligation to uphold this sacred trust for generations yet unborn. In the regional agency office located in my congressional district, the average waiting time is 619 days to wait for a hearing. Unfortunately, these delays are not limited to disability payments. Can you imagine waiting for almost 2 years, 2 years? America deserves better, much better.

Mr. Chairman, we cannot strengthen this program by starving Social Security. Congress must give the hardworking staff the support and resources they need to serve the most vulnerable among us. Together, we can do better. We must do better. Again, I thank the witness for being here today. I look forward to your testimony.

Thank you, Mr. Chairman, and I yield back.

Chairman Johnson. Thank you. Thank you, again, and as is customary, any member is welcome to submit a statement for the hearing record. Before we move on to our testimony today, I want to remind our witnesses to please limit your oral statements to 5 minutes. However, without objection, all of the written testimony will be made part of the hearing record.

We have four witnesses today. Seated at the table are Marianna LaCanfora, Acting Deputy Commissioner, Office of Retirement and Disability Policy, Social Security Administration; Dr. Paul Appelbaum, Elizabeth K. Dollard Professor of Psychiatry, Medicine & Law at Columbia University; Lindsay Nichols, Senior Attorney, The Law Center to Prevent Gun Violence, Americans for Responsible Solutions; and Gale Stallworth Stone, Acting Inspector General, Social Security Administration.

Ms. LaCanfora, welcome. Thanks for being here. Please proceed.

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

Ms. LaCanfora. Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and members of the subcommittees, thank you for inviting me to discuss how the Social Security Administration determines whether a beneficiary is incapable of managing his or her benefit payments. I am Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy at the Social Security Administration.

Few government agencies touch as many people as we do. Social Security pays monthly benefits to about 62 million individuals. During fiscal year 2017, we expect to pay more than \$940 billion to Social Security beneficiaries. In carrying out these programs, we are exceptionally efficient. Our administrative costs represent about 1.3 percent of benefit payments under the Social Security and SSI programs. In most cases, we send payments directly to our beneficiaries.

We presume that all adults are capable of managing their own benefits, absent evidence to the contrary. However, some of our most vulnerable, including children, need help managing their benefits. We appoint representative payees in those cases. Under our regulations, our field office employees consider three types of evidence to make capability determinations: legal evidence, medical evidence, and lay evidence. If there is an allegation that a beneficiary is legally incompetent, we will seek legal evidence. If a court order establishes that the beneficiary is legally incompetent, we will appoint a representative payee. For all others, if there is a question of capability, we will obtain medical evidence as to whether the beneficiary can manage his or her benefits. We also obtain lay evidence, which is anything other than legal or medical evidence, that gives us insight into someone's ability to manage his or her benefits. Lay evidence includes employee observations of reasoning ability, statements from the beneficiary, and statements from third parties, such as relatives, social workers, and others with direct knowledge of the beneficiary's ability to manage benefits and meet daily needs.

If we determine that a payee is needed, the next step is selecting a suitable payee. We examine the representative payee applicant's relationship to the beneficiary, whether the applicant has custody, all known information about the applicant's past performance as a payee, and any criminal history. We also look to see if the applicant has demonstrated concern for the beneficiary's well-being, is knowledgeable about current and foreseeable needs, or lives with the beneficiary.

We consistently seek to improve upon our policies. To that end, we asked the National Academy of Medicine to conduct a study on our capability determination policy. Notably, NAM agreed that collecting lay evidence is the most reliable basis for making these determinations. The NAM report also provided six recommendations that extend beyond the process for determining capability and also focused on finding ways to respond to changes in capability over time. We have fully implemented one recommendation, and we are evaluating the feasibility of the others.

We also acknowledge the work of our Internal Quality Office and our Office of the Inspector General, both of whom have made valuable suggestions for improving our Representative Payee Program. For example, both organizations recommended that we improve controls to ensure our field office employees document capability determinations properly. We are implementing a four-part strategy to address this concern.

First, we have comprehensively rewritten our policy to strengthen and clarify guidance on documenting determinations. For example, we added questions for field office employees to ask third parties when they are collecting lay evidence.

Second, this April, we will deliver mandatory training throughout the Nation through an interactive video broadcast to all of our field office employees who make capability determinations.

Third, we are making systems changes to ensure that our employees thoroughly document and explain their decisions using pertinent legal, medical, and lay evidence.

And finally, we will continue to measure and evaluate the effects of these changes and make adjustments as needed.

Thank you for the opportunity to describe our efforts to strengthen the Representative Payee Program. I would be happy to answer any questions.



HEARING BEFORE

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

FEBRUARY 7, 2017

STATEMENT

OF

MARIANNA LACANFORA

**ACTING DEPUTY COMMISSIONER FOR RETIREMENT AND DISABILITY POLICY
SOCIAL SECURITY ADMINISTRATION**

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

Thank you for inviting me to discuss how the Social Security Administration determines whether a beneficiary is incapable of managing his or her benefit payments. I am Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy.

Background

As this is the first time that we are appearing before you in this Congressional session, I would like to provide a brief overview of our programs. We administer the Old-Age, Survivors, and Disability Insurance (OASDI) program, commonly referred to as “Social Security.” Individuals earn coverage for Social Security retirement, survivors, and disability protection and benefits by working and paying Social Security taxes on their earnings.

We also administer the Supplemental Security Income (SSI) program, which provides monthly payments to people with limited income and resources who are aged, blind, or disabled. Adults and children under age 18 can receive payments based on disability or blindness. General tax revenues fund the SSI program.

Few government agencies touch the lives of as many people as we do. Social Security pays monthly benefits to approximately 62 million individuals, consisting of 42 million retired workers and 3 million of their spouses and children; 9 million workers with disabilities and 2 million dependents; and 6 million surviving widows and widowers, children, and other dependents of deceased workers. During fiscal year (FY) 2017, we expect to pay more than \$940 billion to Social Security beneficiaries. In addition, in FY 2017, we expect to pay nearly \$55 billion in Federal benefits to a monthly average of approximately 8 million SSI recipients. In carrying out these programs, we are among the most efficient agencies in the Federal Government—our discretionary administrative costs represent about 1.3 percent of benefit payments that we paid under the OASDI and SSI programs.

Overview of the Representative Payee Program

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

It is important to note that we presume adult beneficiaries are capable of managing, or directing someone else to manage, their benefits, unless there is evidence to the contrary. This presumption does not apply to adults who have been determined by a court to be legally incompetent or minor children; under Social Security Administration regulations, we usually

must pay those individuals through a representative payee. In all other situations, we will only consider appointing a representative payee when we learn that a beneficiary has a mental or physical impairment that may prevent him or her from managing, or directing the management of, his or her benefits. In that case, our field office technicians make a formal capability determination, using criteria set forth in our regulations, to see whether it is in the beneficiary's interest to have payments made through a representative payee. Our field office technicians are assigned the responsibility to decide whether a beneficiary is incapable of managing his or her benefits.

Making a Capability Determination

Under our regulations, we consider three types of evidence to make a capability determination.

- *Legal evidence.* If there is an allegation that the beneficiary is legally incompetent, we will seek legal evidence. If a court order establishes that the beneficiary is legally incompetent, no further development is necessary: we will appoint a representative payee.
- *Medical evidence.* If the beneficiary is legally competent, we will obtain medical evidence and consider the beneficiary's physical or mental abilities to manage his or her benefits. Specifically, we obtain an opinion from a medical professional who has examined the beneficiary regarding the beneficiary's ability to manage, or direct the management of, benefits.
- *Lay evidence.* We will also obtain lay evidence. Lay evidence is anything other than legal or medical evidence that shows the extent to which a beneficiary is able to manage his or her benefits. We typically obtain lay evidence from an interview with a beneficiary and from third parties who know the beneficiary and can provide information pertaining to the beneficiary's ability to manage money. In interviewing the beneficiary, we ask a number of questions designed to elicit information about whether the beneficiary recognizes and can provide for his or her needs. We ask about the beneficiary's ability to manage his or her finances, his or her living situation, food, shelter, medical needs, and available support.

Selecting a Representative Payee

Once we learn that a beneficiary requires a payee, we select a person, preferably a family member, or an organization to manage the beneficiary's payments.

To select a suitable payee, we examine certain regulatory criteria, including the representative payee applicant's relationship to the beneficiary, whether the applicant has custody of the beneficiary, all known information about the applicant's past payee performance, and any criminal history. We also look to see if the applicant has demonstrated concern for the beneficiary's well-being, is knowledgeable about the beneficiary's current or foreseeable needs, or lives with the beneficiary.

Appeal Rights

The Social Security Act requires us to send advance notice to any legally competent adult before appointing a representative payee. Once we determine that a beneficiary is incapable and have selected a payee, we send an advance notice of the proposed appointment to the beneficiary before certifying benefits to the proposed payee. The advance notice informs the beneficiary that we have determined that a payee is needed, provides the name of the proposed payee, and explains the beneficiary's right to appeal within 60 days of receipt of the advance notice. The advance notice also advises the beneficiary that if no protest is received within 10 days of the receipt of the advance notice (we allow an additional 5 days for mailing time), we will make payment to the payee named in the advance notice. The beneficiary retains the right to file an appeal during the remaining time in the 60-day appeal period. The beneficiary may contest our capability determination or our payee selection, or both.

If a beneficiary contests either determination, a field office technician who was not involved in making the original capability determination will review the initial determination. This is the reconsideration step of our administrative appeals process. If the beneficiary is dissatisfied with the reconsideration determination, he or she may seek a hearing before an administrative law judge (ALJ), whose decision, in turn, may be reviewed by the Appeals Council. If an individual is not satisfied following these administrative appeals, he or she may request judicial review by filing a civil action in Federal District Court.

Improvements in Our Process for Determining Capability

As with our other workloads, we periodically consider how we can improve our capability determination process. In this area, we have done a number of internal quality reviews. We also asked the National Academy of Medicine (NAM) of the National Academies of Sciences, Engineering, and Medicine to conduct a study of our current policy for capability determinations, compare our process to three similar benefit programs, and provide recommendations for improving the accuracy and efficiency of our policy and procedures for making determinations. The 12-member NAM committee consisted of experts in the fields of psychology, neuropsychology, psychiatry, social work, occupational therapy and rehabilitation, behavioral economics, bioethics, and law.

In its review of similar benefit programs, NAM examined the Department of Veterans Affairs, the Office of Personnel Management, and Service Canada. NAM found no "gold standard" for determining financial capability among the programs. Each program reviewed has unique aspects that the committee considers good practice and that, taken together, can contribute to a more procedurally sound process. Notably, NAM found that our requirement for "lay" evidence in making capability determinations was consistent with their conclusion that evidence of real-world financial performance is the most reliable basis for making determinations. Further, NAM suggested that obtaining lay evidence from professionals and other third parties who have directly observed how a beneficiary manages his or her benefits is the best source of evidence. The NAM report provided six recommendations for how we can improve our capability determination policies and procedures. We continue to evaluate the recommendations and the

feasibility of implementing them, while also considering agency resource constraints. We are already addressing some of these recommendations, as described below.

In addition to these efforts, we continue to work closely with our Office of the Inspector General (OIG) and the U.S. Government Accountability Office, both of which have made several suggestions for improving our representative payee program. For example, OIG recently audited our capability determination process for disabled beneficiaries receiving direct payment who previously had a representative payee. OIG found that we need to improve controls to ensure we make and document capability determinations for these beneficiaries. We agreed and put a strategy in place (described below) to address this recommendation. In another audit, OIG found that in some cases beneficiaries received direct payment under one program (for example, SSI) while receiving other benefits (for example, OASDI) through a payee. We are using additional systems enhancements (also described below) to prevent this occurrence.

In response to these reports, we have developed a number of initiatives to improve our capability determination process. These initiatives include:

Improve capability instructions in our policy guidance. Specifically, we consolidated and clarified our capability determination policy instructions to better ensure that field office technicians consistently develop and document these determinations. In issuing these instructions, we implemented the NAM study recommendation to provide detailed guidance to third party sources on the feedback they provide to SSA about a beneficiary's financial performance. For example, we added structured questions for field office employees to ask third-party sources. We clarified that third party sources must have direct observation and knowledge of a beneficiary's financial performance to assist us in making a capability determination. We finalized this policy guidance in January.

Increase training frequency and responsiveness. In all situations where policy is revised, we must follow up with training that will familiarize employees with new procedures. For example, we will amplify the release of significant policy guidance by delivering comprehensive training through a nationwide interactive video broadcast to all of our field office employees who make capability determinations. This training will be released by early April 2017.

Enhance our systems for documenting capability determinations. We are developing a robust business process and systems support to facilitate comprehensive decision-making and standardized documentation across our field offices. These enhancements will ensure that field office employees document the pertinent facts from all applicable medical, lay, and legal evidence relied upon to make the capability determination. These enhancements will also satisfy the OIG report recommendation that we improve controls to ensure SSA employees document their capability determinations. Furthermore, these enhancements will systematically enforce our new structured set of questions to third parties about a beneficiary's financial performance, which will greatly improve our collection of lay evidence. We are implementing enhancements to our system in FY 2017 to reinforce proper documentation and accountability. Regarding situations where a beneficiary receives direct payment for one program and has a payee for the other, our electronic representative payee system (eRPS) now requires employees to check all records where entitlement exists.

Provide quality review to verify results. As we make changes to policy, training, and systems processing in order to strengthen the capability determination process, we are also committed to reviewing the results of our actions. Our quality review process will evaluate outcomes, analyzing the effectiveness of our policies, training, and systems revisions.

Conclusion

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

Chairman Johnson. Thank you. I appreciate your testimony. Dr. Appelbaum, welcome. Please proceed.

STATEMENT OF PAUL APPELBAUM, M.D., ELIZABETH K. DOLLARD PROFESSOR OF PSYCHIATRY, MEDICINE & LAW, COLUMBIA UNIVERSITY

Dr. Appelbaum. Thank you, Mr. Chairman, and members of the subcommittees. I am Paul Appelbaum, Dollard Professor of Psychiatry, Medicine & Law at Columbia University. I am grateful for this opportunity to testify about the work of the committee that I chair to evaluate the Social Security Administration's capability determination process for adult beneficiaries. Because the work of the committee concluded when the report was issued last March, my testimony is offered as a private citizen and not as a representative of the National Academy. The committee was constituted at the request of SSA, and charged with providing recommendations to improve the accuracy and efficiency of their procedures for capability determinations for beneficiaries receiving disability benefits. Beneficiaries found incapable by SSA of managing or directing the management of their benefits, as you know, have a representative payee appointed for that purpose.

Given the seriousness of the determination of incapability, the committee believed that it should be best based on the clearest evidence available. The committee concluded that real-world financial performance is the most reliable basis for making determinations of beneficiaries' capabilities. Moreover, lay people, or professionals who are in regular contact with the beneficiary and able to observe the person's behavior, will have better information about real-world performance than a medical professional who sees the person infrequently in a clinic or office setting.

In addition, informants need guidance as to how a beneficiary's financial performance should be assessed if they are to provide useful information to SSA's process. Thus, the committee recommended that SSA provide detailed guidance to professional and lay informants regarding the information that the agency would find most helpful for making capability determinations, and ask informants to provide information to indicate the bases for their judgments.

Given the concern about SSA's overlooking recipients who made need representative payees, something about which we heard a good deal of testimony, another useful approach that the committee endorsed is the development of a model based on existing SSA data to identify predictors of incapability. Such a model could be tested and iteratively refined with the goal of developing screening criteria that have reasonable accuracy in identifying beneficiaries for whom more detailed assessment of capability is indicated.

Another way of improving detection of incapable recipients would be for SSA to exchange data with other Federal benefit programs, such as the VA or the Office of Personnel Management about beneficiaries that each program has already identified as unable to manage their financial affairs, given that some individuals receive benefits from multiple programs.

An additional concern is that performance may change over time, given the progressive or fluctuating nature of many psychiatric and neurocognitive conditions, suggesting the value of periodic reassessment of beneficiaries' capabilities. The committee concluded that SSA's lack of a formal process of reexamination is a significant weakness. Some mechanism for periodic reassessment is needed to ensure that such beneficiaries are classified accurately. Given the large number of recipients involved, reassessment might be targeted most efficiently at those beneficiaries whose conditions are most likely to change.

In some cases, information about a beneficiary's financial performance will be insufficient to determine the need to appoint a representative payee. In such cases, an innovative approach adapted from a model used by the VA, Supervised Direct Payment, may be helpful. Under such a model, benefits are paid directly to the beneficiary, but an individual is designated to supervise those expenditures. After a trial period during which the beneficiary's use of resources is observed and assessed, their capability can be determined more accurately.

The final recommendation of the committee was for the agency to develop and implement an ongoing measurement and evaluation process so that subsequent groups would not get the kinds of responses that we often receive, that data on the functioning of programs was simply unavailable. Thank you for your attention, and I would be pleased to respond to your questions.

**Testimony of Paul S. Appelbaum, MD
to the Subcommittee on Social Security
House Committee on Ways and Means
February 7, 2017**

Good morning. I am Dr. Paul Appelbaum, Elizabeth K. Dollard Professor of Psychiatry, Medicine & Law at Columbia University, and I am grateful for this opportunity to testify regarding the work of the committee that I chaired for the National Academies of Science, Engineering and Medicine: the Committee to Evaluate the Social Security Administration's Capability Determination Process for Adult Beneficiaries (hereafter "the Committee"). The Committee's report was issued in March 2016

(<http://iom.nationalacademies.org/Reports/2016/Informing-Social-Securitys-Process-for-Financial-Capacity-Determination.aspx>). Because the work of the Committee concluded when the report was issued, my testimony is offered as a private citizen, not as a representative of the National Academies.

The Committee was constituted at the request of the U.S. Social Security Administration (SSA), and given the following charge:

1. Familiarize itself with SSA's current policy and procedures for capability determinations for adult beneficiaries;
2. Provide an overview of the capability determination processes in at least three similar benefit programs (at least one government program and one private-sector program);
3. Compare SSA's program to these other programs; and
4. Provide recommendations to improve the accuracy and efficiency of SSA's policy and procedures for capability determinations.

The Committee included members with expertise in psychiatry, neurology, social work, law, bioethics, health policy, neuropsychology, and behavioral science. To inform its report, the Committee took testimony from SSA, relevant experts, and health service and advocacy organizations, and reviewed the relevant research literature.

SSA asked the Committee, in pursuit of its charge, to focus on those beneficiaries receiving disability benefits (i.e., not other types of benefits, such as old age or survivor's benefits). SSA provides vital financial support to more than 17 million disabled Americans. Of that group, approximately 5 million have been deemed—by virtue of youth or mental or physical impairment—incapable of managing or directing the management of their benefits. A representative payee has been appointed to receive and disburse SSA payments for these beneficiaries to ensure that their basic needs for shelter, food, and clothing are met. The importance of creating as accurate a process as possible for incapability determinations is underscored by the consequences of incorrectly identifying recipients either as incapable when they can manage their benefits or as capable when they cannot. On one hand, given the importance of individual autonomy in decision making in a democratic society, deprivation of the right to manage one's money—which ensues from a finding of incapability—represents a serious infringement on liberty that should occur only when absolutely necessary. Conversely, failure to identify beneficiaries who are incapable of managing their funds means abandoning a vulnerable population to potential homelessness, hunger, and disease. Needless to say, neither error is desirable.

After reviewing the evidence that it gathered and the testimony that it took, the Committee made six recommendations that it believed would improve SSA's procedures for determining financial capability and the need for appointment of a representative payee.

Evidence for Determining Financial Capability

The Committee endorsed SSA's requirement for "lay" evidence of beneficiaries' financial performance in making capability determinations as consistent with the conclusion that evidence of real-world financial performance is the most reliable basis for making such determinations. However, the reliability of third-party informants varies. In addition, most informants, including professionals, are not trained specifically in assessment of financial performance and competence and would benefit from detailed direction as to the type of information that is helpful to SSA in making capability determinations. Currently, SSA provides little formal guidance to medical professionals and no formal guidance to other informants. The Committee therefore recommended that: **"The U.S. Social Security Administration (SSA) should provide detailed guidance to professional and lay informants regarding the information it would find most helpful for making capability determinations, including (1) information about specific aspects of beneficiaries' financial performance in meeting their basic needs and, when information about performance is unavailable, about their financial competence; and (2) information that would enable SSA to judge the validity of the evidence provided by the informant."**

With respect to financial performance, SSA's guidance to all informants could be based on the questions it currently provides to field officers. There are times when no or very limited information is available about a beneficiary's financial performance—for example, when the person has had no funds to manage or when no third-party informant with knowledge of the person's performance can be identified. In such cases, evidence of financial skills assessed in a controlled setting may need to be used to inform capability determinations. Guidance pertaining

to financial competence could include questions such as those developed by Canada's Pension Plan, along with requests that the basis for informants' answers be specified.

To enable SSA to judge the validity of information from informants, it is important that evidence provided for capability determinations specify how well and for how long the informant has known the individual and the nature of their relationship. It is also important to specify the extent to which the informant's judgment is based on: (1) observed behavior; (2) the individual's self-report; (3) information from collateral informants, and the perceived quality of these informants; and (4) in the case of professionals, the individual's medical record and the assessments of other health care professionals (including other physicians, psychologists, social workers, and nurses). Such specification of the basis for the evidence provided will allow for greater understanding of the quality of the evidence regarding financial capability.

Systematic Identification of Adult SSA Beneficiaries at Risk for Financial Incapability

Three recommendations addressed the need for and mechanisms by which systematic identification of individuals who are risk for financial incapability could occur.

Risk Criteria

Reliance on diagnostic criteria alone for determining financial (in)capability is inadequate for a number of reasons, including the likelihood of identifying too many people as incapable in some diagnostic categories and missing people in others, a central concern raised by the prior OIG-SSA reports, which indicated a concern about under-identification of beneficiaries in need of representative payees. Identification of easy-to-apply, efficient approaches, including the development of screening criteria, that could be incorporated into the disability application process to identify people at high risk for incapability would be valuable in helping to ensure that

potentially incapable beneficiaries receive further evaluation. In response to this concern, the Committee recommended that: **“The U.S. Social Security Administration should create a data-driven process to support the development of approaches, including screening criteria, for identifying people at high risk for financial incapability.”**

SSA has the opportunity, whether through the development of formal screening criteria or other approaches (e.g., identifying risk markers to inform the judgment of field officers), to improve its ability to identify beneficiaries who may lack financial capability. The committee envisions the development of a model based on existing data, such as age, gender, impairment code assigned by SSA, and education level, to identify predictors of incapability. The resulting model could be refined and its reliability and validity improved through pilot projects involving samples of beneficiaries who would undergo more detailed assessments of capability. Prior to large-scale implementation, the success of the resulting approach in identifying incapable beneficiaries who would not otherwise have been found could be tested.

Dual Beneficiaries

A 2012 SSA-OIG report indicated that more than 6,000 people who were receiving benefits from both the SSI and SSDI programs had been assigned a representative payee in one program but not the other. In addition, SSA beneficiaries also may receive benefits from another federal agency, such as Veterans Affairs or the Office of Personnel Management (OPM). While acknowledging the potential technological, legal, and procedural challenges to data sharing, the committee concluded that sharing information about incapability determinations within SSA and among relevant federal agencies could increase the likelihood of each agency’s identifying potentially incapable beneficiaries. Agencies could then use the information to trigger their own capability assessments of beneficiaries identified in this way. Hence the Committee

recommended that: **“The U.S. Social Security Administration (SSA) should ensure intra-agency communication regarding capability determinations within its different programs. In addition, SSA, the U.S. Department of Veterans Affairs, and other relevant federal agencies should assess the extent of inconsistency in the identification of beneficiaries who are incapable among persons receiving benefits from more than one agency. Based on the findings of this assessment, the relevant agencies should explore mechanisms to facilitate ongoing interagency communication regarding the capability of beneficiaries.”**

OPM, for example, uses computerized matching to identify beneficiaries who receive other federal benefits. Although such matching is used primarily to analyze whether benefits from other programs may affect OPM benefits, a process of this sort can also provide information that indicates whether other programs have identified the beneficiary as having impaired capability.

Responding to Changes in Capability Over Time

Many psychiatric and cognitive conditions are characterized by progression or fluctuation over time in the presence, severity, and nature of symptoms. Such changes suggest the value of periodic reassessment of a beneficiary’s capability. SSA’s lack of a formal process for periodic review of a beneficiary’s capability is a significant weakness. Some mechanism for periodic reassessment is needed to ensure that beneficiaries with fluctuating, deteriorating, or improving financial capability are classified accurately. Accordingly, the committee recommended that **“The U.S. Social Security Administration should develop systematic mechanisms for recognizing and responding to changes in beneficiaries’ capability over time.”**

For disability beneficiaries, SSA procedures call for periodic continuing disability reviews (CDRs). Although CDRs provide an opportunity for capability (re)assessments, their

purpose is to identify any changes (improvements) in the medical basis for a beneficiary's disability award. Thus, even if the CDRs were to occur on schedule, they would not fully serve the purpose of reassessment of financial capability. SSA could apply the same principle used in the CDR process to develop an analogous process for recognizing and responding to changes in capability over time. Reassessments initially could be targeted toward (1) beneficiaries who had been determined to be incapable but who might improve over time as their conditions or environmental supports changed; and (2) beneficiaries who, although capable, were at risk for becoming incapable as their condition progressed or their environment changed. As screening criteria or other systematic methods for identifying people at high risk for financial incapability were developed, they might be used to broaden the target population for periodic reassessment.

In addition, beneficiaries, family members, representative payees, and professionals who were likely to come into contact with beneficiaries could be alerted systematically to notify SSA if they believed that beneficiaries' capability had changed. SSA might also implement a process to survey payees and/or beneficiaries periodically, similar to that of OPM, integrating screening questions that could trigger the need to further investigate the beneficiary's financial capability.

Supervised Direct Payment

By their nature, SSA capability determinations are dichotomous; that is, beneficiaries are either capable or incapable of managing or directing the management of their benefits. As noted, however, a beneficiary's capability may change as a result of progressive or temporary diminution or improvement in his or her financial competence and performance over time. When information available about a beneficiary's financial performance is insufficient to determine the need to appoint a representative payee, the use of a supervised direct payment option may be helpful. Under such a model, benefits are paid directly to the beneficiary, but an individual is

designated to supervise the beneficiary's expenditures. Reassessment after a trial period during which the beneficiary's use of benefits is observed and assessed permits more accurate determination of the beneficiary's capability in indeterminate or borderline cases.

Supervised direct payment may have other advantages. By adopting a supported decision-making model, supervisors can provide guidance and instruction to beneficiaries on managing their benefits and help respond to the challenges posed by the fluctuations in some beneficiaries' financial competence and performance. Supported decision making encourages beneficiaries' expression of preferences, beliefs, and values; allows collaboration in decision making; and provides opportunities for beneficiaries to make independent decisions whenever possible. Appropriate use of this approach may provide a beneficiary with greater control over his or her life than would be the case for someone without such support. Supervised direct payment may enable some beneficiaries who might otherwise require the appointment of a representative payee to manage or direct the management of their benefits to meet their basic needs, thus maximizing their decisional autonomy. For these reasons, the committee recommended that: **“The U.S. Social Security Administration should implement a demonstration project to evaluate the efficacy of a supervised direct payment option for qualified beneficiaries.”**

“Qualified beneficiaries” refers to two groups of individuals. The first is beneficiaries who may be incapable of managing or directing the management of their benefits but for whom there is insufficient information regarding financial performance to render a determination. The second is beneficiaries who are determined by SSA to be incapable, but who either display financial performance in some but not all areas of benefit management or successfully manage their benefits some but not all of the time. The VA's supervised direct payment option for individuals who are determined to be incompetent but able to manage benefits with supervision

provides a model for such an approach. Instead of the VA's appointing a fiduciary for such individuals, they receive their benefits directly but under the supervision of a Veterans Service Center Manager. This approach could provide a model for a demonstration project by SSA.

Program Evaluation

Data are limited on the effectiveness of current SSA processes for identifying beneficiaries who should be evaluated for capability and on the accuracy of capability determinations among those identified for evaluation. Reports issued by OIG-SSA in 2004, 2010, and 2012 suggest that SSA's current capability determination process fails to identify all beneficiaries who would benefit from the appointment of a representative payee. The Committee made a number of recommendations that could increase identification of beneficiaries in need of a representative payee. Without baseline data and ongoing data collection, however, the effectiveness of current policies and the impact of the recommended changes cannot be evaluated. The committee therefore recommended that: **"The U.S. Social Security Administration should develop and implement an ongoing measurement and evaluation process to quantify and track the accuracy of capability determinations and to inform and improve its policies and procedures for identifying beneficiaries who are incapable of managing or directing the management of their benefits."**

The measurement and evaluation process envisioned in the report would need to be designed and carried out by trained experts (whether in house or external) with detailed knowledge of SSA work flow and procedures. Such a process could comprise a variety of steps, including assessments of the interrater reliability of the capability determination process, in-depth assessments of selected beneficiaries to determine the accuracy of earlier determinations, and evaluations of the impact of the Committee's recommendations in this report. A robust

measurement and evaluation process would provide substantial and much-needed insight into what SSA is currently doing well and what it may, at reasonable cost, be able to do significantly better.

Conclusions

Findings of incapability to manage SSA benefits and appointment of representative payees can be enormously helpful—even lifesaving—for beneficiaries who are truly unable to manage their benefits to meet their basic needs. But taking away the right to determine how one’s funds are spent is a substantial intrusion on a person’s autonomy and should be done only on the firmest of evidence. Alternatively, people without representative payees who need them remain vulnerable to undue influence and may not be meeting their basic needs. Hence, there are good reasons for SSA to develop as accurate a process as possible to identify beneficiaries who need a representative payee. Fortunately, there appear to be some fairly straightforward steps that could improve the current process, better protecting both the rights and interests of Social Security beneficiaries.¹

¹ A summary and additional perspectives on the report by several members of the committee is available here: <https://www.ncbi.nlm.nih.gov/pubmed/27363351>.

Chairman Johnson. Thank you for your testimony. Ms. Nichols, welcome. Please proceed.

STATEMENT OF LINDSAY NICHOLS, SENIOR ATTORNEY, THE LAW CENTER TO PREVENT GUN VIOLENCE/AMERICANS FOR RESPONSIBLE SOLUTIONS

Ms. Nichols. Good morning, and thank you, Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and the members of the subcommittee, for the opportunity and honor to testify here today. I am Lindsay Nichols, a senior attorney with Americans for Responsible Solutions, the gun violence prevention organization started by former Congresswoman Gabriel Giffords and her husband, Captain Mark Kelly.

The topic of today's hearing, SSA's Process of Determining Capability, relates to the rule that the SSA finalized in December about reporting to the firearm purchaser background check system known as NICS. The House voted to revoke this rule last week, but I appreciate the opportunity to state for the record why this rule is so important.

The SSA created this new rule to fulfill its legal obligations under the NICS Improvement Amendment Act of 2007. This rule is simply the procedural implementation of that law, which requires Federal agencies to report records of people prohibited from possessing firearms to the background check system. The people who would be reported are already ineligible to possess guns, but without this reporting, records identifying these people are missing from NICS, so these people are able to pass a background check and obtain firearms even though they are legally ineligible.

Ten years ago, the Nation experienced what happens when records are missing from NICS. At Virginia Tech, a man who was dangerously mentally ill, shot and killed 32 people. His records were not in NICS. This tragedy spurred Congress to pass, and President George W. Bush to sign, the NICS Act, a bipartisan compromise bill. Not only does it require reporting to NICS, but it also requires Federal agencies to create programs so that an individual can petition to regain legal eligibility to possess a gun. The SSA's rule fulfills these requirements closely, including detailed and robust due process rights. In order for a person to be reported under this new rule, not only must the SSA have appointed a representative payee, but the SSA must have found that the individual has a mental impairment so severe that the person cannot have any kind of gainful employment. This rule would only apply after the person has received notice, would not apply to retirees, and it would not apply in cases where an individual simply needs a little help managing their funds.

The rule does not permanently remove a person's access to guns. A person who falls within the parameters of the rule can still pass a background check and have guns after a careful evaluation of the person's ability to do so safely as set forth in the rules relief process. The SSA would not be providing medical information to NICS. DOJ regulations strictly restrict access to the names in NICS so they can only be used in a background check when a person seeks a gun. A person at the counter at the gun store can only know that the gun sale is denied. So there is no reason to believe this rule would increase the stigmatization or inaccurate stereotyping of people with mental illness.

This rule fulfills the law on the books. It is also good policy. While people in this category may not generally pose an increased risk of violence toward others, suicides and unintentional shootings must also be taken into account. Families across America have lost too many lives to gun violence. From Tucson to Orlando, in addition, almost 200,000 people have died in gun suicides in the past decade in the U.S. An estimated 90 percent of people who died by suicide had a diagnosable mental illness. Lives can be saved by reducing access to guns when a person's decisionmaking abilities are impaired by a mental condition.

Also, every year, more than 500 people are killed in unintentional shootings. Gun owners must have the mental capacity to properly store and handle their weapons. The background check system is only as

strong as the records that are in it, and revoking this rule will weaken that system and make our communities less safe.

Thank you for the opportunity to testify before this subcommittee.

Testimony

Lindsay Nichols
Senior Attorney
Americans for Responsible Solutions Foundation
The Law Center to Prevent Gun Violence

“Examining the Social Security Administration’s Representative Payee Program”
Social Security Subcommittee
Committee on Ways and Means
United States House of Representatives

February 7, 2017

Good morning. Thank you for the opportunity to testify before the Social Security Subcommittee for the House Ways and Means Committee.

My name is Lindsay Nichols, and I am a senior attorney with Americans for Responsible Solutions Foundation and the Law Center to Prevent Gun Violence.

Americans for Responsible Solutions is the gun violence prevention organization started by former Congresswomen Gabrielle Giffords and her husband, former astronaut Captain Mark Kelly in 2013.

Americans for Responsible Solutions joined forces with the Law Center to Prevent Gun Violence last year in an effort to ensure that policymakers have the best information about approaches to reducing gun violence in this country.

I am here to testify regarding to the rule that was finalized by the Social Security Administration (SSA) this past December regarding reporting to the firearms background check system.

I am here to speak to the way that system works and to the recently finalized rule. The topic of today’s hearing – SSA’s process of determining capability – relates to that rule and is one of two criteria required before SSA reports names. I am glad to hear how SSA has improved the way it makes that determination.

The Social Security Administration created this rule to implement the reporting requirements of the NICS Improvement Amendment Act of 2007.

The NIAA requires federal agencies such as the SSA to report records of people prohibited from

possessing firearms to the National Instant Criminal Background Check System, known as NICS, upon request of the Attorney General. This is the system that gun dealers must access to conduct background checks on gun purchasers under the Brady Act. Under this rule SSA will provide records of certain Social Security recipients who are already presumptively prohibited by federal law from purchasing or possessing guns.

A longstanding federal law says that people who have been adjudicated a mental defective are presumptively prohibited from purchasing or possessing firearms. That term, “adjudicated a mental defective,” is a holdover from the 1960s, but it remains on the books. People who receive Social Security disability benefits based on certain findings and have had a representative appointed to receive disability benefits on their behalf fall clearly within the scope of this presumptive prohibition.

Prior to this rule, records identifying these people were missing from the gun background check system (from NICS).

Without these records, these people are able to pass a background check and obtain firearms, even though they are legally prohibited from doing so.

Ten years ago, the nation experienced what happens when records are missing from NICS at Virginia Tech. In that shooting a man who was dangerously mentally ill, and had been ordered by a court to seek treatment for mental illness, shot and killed 32 people before committing suicide on the Virginia Tech campus. The shooter had passed background checks to obtain the firearms he used in the shooting because the background check system had no record of him. This tragedy exposed the loopholes in reporting of information to the background check system.

This horrible event, and the realization that it could so easily have been prevented spurred Congress to move forward with the most important piece of federal gun legislation over the past decade. The NICS Improvement Amendment Act of 2007, or NIAA, was intended to ensure that states and federal agencies report people who are ineligible to purchase or possess firearms to the NICS background check system.

The NIAA, which Congress passed unanimously and President George W. Bush signed, was a bipartisan compromise bill. Groups like the Brady Campaign and the NRA came together to create a strong law. Not only did it encourage, and in the case of federal agencies, require records to be sent to NICS, but this piece of legislation also required these agencies to create

programs so that an individual who is reported to the background check system on the basis of a mental disorder can petition for eligibility to possess a gun. For many years prior to the NIAA, many people who were reported to the background check system had no way to regain their gun eligibility.

The NIAA set certain standard and procedural requirements for those programs. The standard that these programs must use is that a person can become eligible to possess a gun, despite a mental health adjudication, if the lawful authority finds that “the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.”

The NIAA also provides that if a federal agency denies a petition for gun eligibility, that denial can be appealed to a court.

The NIAA also require federal agencies that report people who have been adjudicated as a mental defective to provide both oral and written notice to the person at the commencement of the adjudication process. This notice must include information about the agency’s program for the person to regain eligibility to possess a gun.

The NIAA also prohibits the reporting of any person based solely on a medical finding of disability, without an opportunity for a hearing by lawful authority.

In addition, a person who is found to no longer suffer from the mental health condition, or has otherwise been found to be rehabilitated may no longer be listed in NICS.

So the NIAA requires federal agencies to ensure that these protections are in place. But they must also do the reporting in accordance with the NIAA. The NIAA imposed these legal obligations on federal agencies like the Social Security Administration.

The Social Security Administration’s rule sets out a process for the Administration to fulfill these requirements, including detailed and robust appeal rights.

It follows the terms of the NIAA very closely.

It only applies to a narrow group of people who have been determined by the Social Security Administration to lack the capacity, on the basis of a mental disorder, to manage their affairs, specifically their benefit payments. The Social Security Administration has limited this rule to

be prospective only. It has also limited it to people who have filed a claim based on disability and have been found to meet a “listings level” of disability, meaning that the mental impairment is severe enough to prevent an individual from doing any gainful activity, AND it has limited to people who have been appointed a representative payee, meaning that their mental impairment prevents them from managing their benefit payments. A pre-existing Social Security Administration regulation also provides that a person has an opportunity to request a hearing before SSA appoints a representative payee.

It does not apply to retirees and it does not apply in cases where an individual simply needs a little help managing their funds.

In accordance with the NIAA the new rule provides that the person will also receive oral and written notice of the proposed adjudication in advance. This notice will inform the person about the effect these determinations might have on his or her ability to legally possess a gun. It will also inform the person of the process for regaining his or her gun eligibility should the SSA decide to appoint a representative payee.

The new rule provides that if a person is determined to no longer need a representative payee to manage these benefits, the SSA will notify NICS so that the information identifying the person can be removed from NICS.

The new rule also creates a process for a person to regain his or her eligibility to possess a gun despite the listings level finding and the appointment of a representative payee. This process uses the standards set forth in the NIAA, and provides that if the Administration denies a petition for gun eligibility, the person can appeal that denial to a court.

This rule fulfills the SSA’s obligations under the NIAA. It enforces the law as it is currently on the books.

It is also good policy.

America has lost too many lives to gun violence. Mass shootings – from Virginia Tech to Aurora to Tucson to Sandy Hook to Orlando – have joined the constant drumbeat of individual gun deaths across the country. These experiences have led many people to the inexorable conclusion that we need to do more to keep guns out of the wrong hands.

Despite the media’s emphasis on mass shootings and violent crime, the most frequent

occurrence that demonstrates the link between mental illness and gun violence is suicide. Suicides account for more than half of all gun deaths each year, and about half of suicides are performed with a gun. In 2014, 15,719 people between the ages of 18 and 65 in the U.S. shot themselves to death in incidents ruled to be suicides. Suicides devastate the families, friends, and communities of the people who are lost.

The sad truth is that many gun suicides are preventable. About 90% of people who die by suicide had a diagnosable mental illness. The evidence shows that suicides and suicide attempts often occur during a time of crisis, and that many suicides are impulsive acts: about 90% of people who live through a suicide attempt do not ultimately die by suicide. Suicide attempts with a gun are much more likely to be fatal than suicide attempts by other methods. More than 90% of all suicide attempts with a firearm, if serious enough to require hospital treatment, result in death.

In addition, every year more than 500 people are killed in unintentional shootings in the U.S. Many, if not most, of these shootings could have been prevented if firearms had been properly handled and stored. So it is extremely important to ensure that gun owners have the mental, emotional, and behavioral capacity to properly store and handle firearms. If a person fails to properly lock up his or her firearms, even just once, a child or other unauthorized person may obtain access to those firearms and tragedy may result.

The new SSA rule is a modest step to reducing the number of these kinds of shootings. While some people who are severely impaired by mental illness or other mental conditions are able to handle the responsibilities of gun ownership without undue risk to themselves or to public safety, others are not. We recognize that people in this category do not generally pose an increased risk of violence towards others. However, the concern that a person will act violently towards others is not the only governmental interest at stake here. The risks of suicide or unintentional shootings must also be taken into account.

Responsible gun ownership requires a certain degree of skill and meticulousness. Unfortunately, our current federal system of gun regulation does not require individuals to undergo training or testing to evaluate their knowledge of basic gun safety practices before they have access to guns. The only significant vetting requirement for gun purchasers in federal law is a background check if the gun seller is a licensed dealer.

Consequently, the new rule makes sense. It will only impact a person if he or she has been determined to be so severely impaired by a mental condition that he or she is unable to

manage his or her own benefits, in which case, he or she is already prohibited from purchasing or possessing guns. The new rule will simply prevent this person from passing a gun purchaser background check only until after an evaluation of their specific capacity to take on the responsibilities of gun ownership.

This rule creates a process that gives the SSA an opportunity to evaluate the person's individual capacity to properly store, handle, and use firearms more carefully at this time. The SSA will only conduct this evaluation if a person requests it, thereby conserving agency resources. Not everyone is interested in owning or possessing a firearm.

Finally, it is important to remember that information in the gun purchaser background check system is kept confidential. The only information SSA will provide to NICS is name, date of birth, gender, and Social Security number – not medical information. This information will be entered only into the NICS Index, a part of the background check system that is used only when a person seeks access to firearms. NICS only provides gun sellers a response of “Approved” or “Denied”, without information about why a person's access to guns has been denied. Community members will not learn of a person's disability through this rule.

There is therefore insufficient evidence to believe that providing a person's identifying information to NICS in any way increases the stigmatization or inaccurate stereotyping of people with mental illness. Its main effect will be preventing suicides and unintentional shootings. This rule is simply the procedural implementation of what is already the law. It only applies to people currently ineligible to possess firearms, and it provides them with a method to regain their gun eligibility in accordance with the NIAA.

Thank you for the opportunity to present this information.

Chairman Johnson. Thank you for being here. Ms. Stone, welcome. Please proceed.

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

Ms. Stone. Thank you. Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and members of both subcommittees, thank you for the invitation to testify today. It is a pleasure to appear before the 115th Congress. As we have heard today, SSA's Representative Payee Program serves a critical need. Some of the most vulnerable Social Security beneficiaries, due to their age or disability, require payees to manage their benefits. The OIG is committed to overseeing how SSA administers the Representative Payee Program. Over the years, our work has shown that SSA could improve the program by strengthening its capability determinations and increasing efforts to identify beneficiaries who may be in need of a payee.

The capability determination process begins when SSA learns the beneficiary has an impairment that might affect their ability to manage benefits. When this occurs, the agency must determine whether a payee is necessary. SSA staff are required to report their decisions in the agency's electronic systems, noting any relevant medical or late evidence. We, however, have found examples in which SSA staff did not document the required capability determinations. For instance, we recently identified about 100,000 disabled beneficiaries who had a mental impairment, previously had a representative payee, but now receive direct payments from SSA. We estimated that SSA did not document a capability determination for about 50 percent of those cases. In fact, that was about 44,000. If these beneficiaries were, in fact, incapable, SSA should not have paid them directly, particularly because SSA had previously determined that they needed a payee. Similarly, an SSA internal review of capability decisions found that about 71 percent of beneficiary reviews did not have a documented determination.

To ensure that employees document capability reviews, SSA could require a second review and approval for all decisions, or develop systems alerts, or better said, systems controls, to require employees to report those determinations. The agency recently issued a plan to improve capability determinations. It calls for SSA to remind staff about relevant policies and procedures, to actually streamline those policy instructions, and to enhance the electronic systems to ensure that its decisions are documented.

Our work has also shown that there are aged and disabled beneficiaries who potentially need a payee but don't have one. SSA should increase efforts to identify these individuals. In one report, we estimated that more than 200,000 disabled beneficiaries with a mental impairment may have been incapable of actually managing their benefits. We also reported that there were about 5 million beneficiaries over the age of 85, but less than 5 percent of these individuals had representative payees.

SSA could identify beneficiaries potentially in need of payees by, one, analyzing agency data and trends; two, increasing program awareness through public outreach; and, three, proactively alerting beneficiaries and their family and friends about the program.

I also note, as stated by others today, that the Institute of Medicine issued a report on the Representative Payee Program, so did the Social Security Advisory Board. Both of them recommended areas of improvement. We agree with both the Advisory Board, and the Institute of Medicine, that this program serves a vital purpose. My written statement for the record includes additional OIG findings and recommendations for improving the program.

To conclude, there are 8 million beneficiaries with representative payees. Thus the oversight of this program presents a unique challenge for the agency. However, it is critical that SSA explore all options to ensure that it meets the needs of some of our most vulnerable beneficiaries. Thank you, again, for the invitation to testify. The OIG will continue to work with SSA and these subcommittees to improve this important program. I will be happy to answer any questions.

United States House of Representatives

Committee on Ways and Means

**Subcommittee on Social Security
Subcommittee on Oversight**



Statement for the Record

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

**Gale Stallworth Stone
Acting Inspector General
Social Security Administration**

Good morning Chairman Johnson, Chairman Buchanan, Ranking Member Larson, Ranking Member Lewis, and members of both subcommittees. Thank you for the invitation to testify today, to discuss the Social Security Administration's (SSA) representative payee program and the agency's beneficiary capability and determination process. It is my pleasure to appear before the 115th Congress and both subcommittees and discuss this vital program.

Some of our most vulnerable citizens—including the young, aged, and disabled—depend on representative payees to receive and manage their Social Security benefits to cover their basic needs and expenses. SSA places its trust in representative payees to manage these payments on behalf of beneficiaries. The Office of the Inspector General (OIG) is committed to overseeing how SSA administers the representative payee program; it is critically important that SSA identify beneficiaries in need of representative payees and appoint trusted individuals to manage their Social Security benefits. My statement will focus on: 1) the many representative-payee-related reviews we have conducted over the years, 2) the recommendations we have made to help SSA improve the capability decision process and identify beneficiaries in need of representative payees, and 3) SSA's responses to our recommendations and the agency's corrective actions.

Determining Beneficiary Capability

SSA currently has about 6.2 million representative payees managing benefits for about 8 million beneficiaries. A representative payee may be an individual or an organization. According to SSA policy, the agency presumes that all adult beneficiaries are capable of managing or directing the management of their benefits unless there are indicators or evidence to the contrary.¹ When SSA learns a beneficiary has a mental or physical impairment that may prevent him or her from managing or directing the management of benefits, it must make a capability determination and decide whether representative or direct payment is in the beneficiary's best interest.

SSA customer service representatives or claims specialists make capability determinations in SSA field offices. SSA staff that make a capability determination must obtain and evaluate evidence from medical providers, family, friends, and other knowledgeable sources. After making a determination, staff must document the decision—whether the beneficiary needs a representative payee—in SSA's Electronic Representative Payee System (eRPS).² Generally, supervisors are not required to approve representative payee determinations.

SSA does not have a schedule to re-evaluate beneficiary capability; however, SSA may evaluate capability during a continuing disability review (CDR) for disabled beneficiaries. SSA may also evaluate capability when it contacts aged beneficiaries to verify they are alive through its Centenarian and Medicare Non-Utilization projects.³ SSA instructs staff to be mindful to changes in circumstances

¹ A representative payee may be needed if the beneficiary has difficulty answering questions, obtaining information necessary for the claim, understanding explanations, or understanding information that needs to be reported to SSA.

² Lay evidence can include direct observation during a face-to-face interview and signed statements from individuals applying to be an individual's representative payee. Although preferred, SSA does not require a face-to-face meeting between an employee and a claimant to determine his or her capability to manage funds. Medical evidence must be based on an examination within the last year.

that may indicate a capability determination is necessary, and agency policy is to re-evaluate a beneficiary's capability when staff receives a valid request for a new determination. Situations in which SSA must consider reviewing capability include:

- CDRs;
- Supplemental Security Income (SSI) redeterminations;
- discovery that a beneficiary manages any other benefit(s) to which he or she may be entitled;
- beneficiary appeal of the appointment of a payee; and
- any other contact with the beneficiary or payee that raises questions about beneficiary capability.

SSA provides initial and ongoing training on representative payee determinations to its employees; it is part of required customer service representative and claims specialist training for entry-level employees and those promoted internally. The initial training consists of at least 40 hours of classroom and on-the-job work and covers all representative payee actions, including determining whether an individual needs a representative payee, evaluating the evidence required to support the determination, and interviewing a representative payee. The training also focuses on documenting the determination and selecting the representative payee in SSA's information systems. The agency conducts periodic refresher training on capability determinations and maintains various representative-payee related training materials on its Intranet site that SSA employees can access anytime.

Improving Capability Determinations

As I noted, according to SSA policy, when there is an indication that a beneficiary's capability has changed, SSA must develop the necessary evidence to make a capability determination and document that decision in eRPS.

As far back as 2004, we reported examples in which SSA did not document capability when there was an indication that the beneficiary could not manage or direct the management of his or her benefits. In that report, we recommended SSA take all feasible steps to ensure vulnerable individuals have representative payees.⁴ However, within the last year alone, our audits have identified several needed improvements with SSA's capability determination processes.

Capability Determinations Not Always Documented

SSA needs to improve controls to ensure it makes and documents all capability determinations. As one of our recent reviews found, in many cases when a capability determination should have occurred, SSA did not document the decision in its electronic systems.

Specifically, in our December 2016 review, we identified about 100,000 disabled beneficiaries who had a mental impairment, previously had a representative payee, but were now receiving direct payments from SSA.

³ Through the Centenarian Project, SSA contacts beneficiaries who are at or near age 100, or the beneficiaries' representative payees, to verify the beneficiary is alive. Through the Medicare Non-Utilization Project, SSA compares its records to data from the Centers for Medicare & Medicaid Services to identify beneficiaries over 90 who have not used Medicare for more than three years, and contacts those beneficiaries to verify they are alive.

⁴ SSA OIG, [The Social Security Administration's Representative Payee Selection Process](#), May 2004.

Based on our review of a sample of these beneficiaries, we estimated SSA lacked a capability determination for 44,000 disabled beneficiaries who had a representative payee but later received direct payment.

If these beneficiaries were incapable, SSA should not have paid them an estimated \$2.8 billion in direct payments; however, if they were capable and SSA simply did not document its capability determinations, the payments to these beneficiaries would have been proper. SSA's determination of these beneficiaries' capability is particularly essential given that the agency previously determined they needed a representative payee and could not manage their benefits. We recommended that SSA obtain evidence of capability and make capability determinations for the beneficiaries identified by our audit.

To prevent this from occurring again, we also recommended that SSA improve controls to ensure agency employees document their capability determinations. For example, SSA could improve controls by requiring a second review and approval of capability determinations, or by establishing a systems alert to ensure employees document their capability determinations. SSA agreed with our recommendations,⁵ but it has not reported whether it implemented them in the two months since we issued our report.⁵

Beneficiaries Receive Direct Payments for One Benefit, Representative Payments for Other Benefit

If a beneficiary is entitled to benefits under the Old-Age, Survivors and Disability Insurance (OASDI) program and the SSI program and is determined incapable, SSA employees should appoint a representative payee for both benefits. Conversely, if a beneficiary is capable, SSA should issue both benefits directly to the beneficiary.

However, in a May 2016 report, we found that for some beneficiaries who were entitled to OASDI and SSI, SSA improperly issued one payment directly to a beneficiary and one payment to a representative payee. In this review, we estimated that 11,000 beneficiaries received approximately \$78 million in direct payments for one of their benefits, and a representative payee received about \$137 million for their other benefit.

This occurred because SSA employees did not correct payment discrepancies when they processed initial benefit awards, and they did not use eRPS, when required, for representative payee actions. We also found that SSA's systems did not produce alerts to identify these payment discrepancies.

To address our findings, we recommended that SSA assess whether it should develop a systems alert and conduct payment-record matches to identify and correct these payment discrepancies. SSA agreed with our recommendations and stated that it is discussing a possible solution to address this issue.⁶

Further, I should note this was the fourth audit since 2006 that the OIG has conducted related to this issue, in which we identified these conditions. In each of our subsequent audits, we found that SSA took

⁵ SSA OIG, [*Disabled Beneficiaries Receiving Direct Payments Who Previously Had a Representative Payee*](#), December 2016.

⁶ SSA OIG, [*Concurrently Entitled Beneficiaries Receiving Representative Payee and Direct Payments*](#), May 2016.

corrective actions for the population of beneficiaries we identified, but the agency did not implement appropriate controls to prevent these payment discrepancies from occurring again.

Incapable Beneficiaries Selected to Serve as Representative Payees

We also reported that beneficiaries that SSA determined were incapable of managing their own benefits were serving as representative payees for other beneficiaries. In an August 2016 review, we estimated that SSA paid \$6.3 million to about 400 incapable beneficiaries who were serving as representative payees for other beneficiaries.

This occurred because SSA employees incorrectly selected incapable beneficiaries as representative payees, and SSA's systems did not always produce alerts when needed. Also, SSA did not always stop beneficiaries from serving as representative payees when it determined they were no longer capable of managing their own benefits.

To address our findings, we recommended that SSA take appropriate action for the incapable beneficiaries identified by our audit. We also recommended that SSA determine if it should develop additional systems controls to prevent incapable beneficiaries from serving as representative payees. SSA agreed with our recommendations and reported that it took corrective action for the beneficiaries in our sample, but it has not completed its review of the larger population of incapable beneficiaries identified by our audit. Finally, SSA stated after it completes its evaluation of the beneficiary cases, it would determine the need for additional systems controls and enhancements.⁷

Benefits Withheld from Presumed Capable Beneficiaries

We have also found that SSA did not always pay beneficiaries who no longer required a representative payee that the agency presumed were capable of managing their benefits. In this September 2016 review, we found that SSA did not pay about \$9.2 million in benefits to an estimated 6,600 child beneficiaries when they attained age 18 and no longer required a representative payee.

This occurred because 1) SSA did not generate a systems alert to identify beneficiaries who should be paid withheld benefits, and 2) employees did not pay withheld benefits when they selected a representative payee or made direct payments to child beneficiaries over age 18.

To address our findings, we recommended that SSA take corrective actions to pay, as appropriate, the beneficiaries identified by our audit and to implement controls to ensure it pays withheld benefits to child beneficiaries when they attain age 18 and no longer need a representative payee. SSA agreed with our recommendations, but it has not reported whether it has taken corrective actions for the beneficiaries identified by our audit. SSA also stated it would evaluate and determine the feasibility of implementing additional controls for paying withheld benefits to child beneficiaries.⁸

⁷ SSA OIG, [Beneficiaries Serving as Representative Payees Who Have a Representative Payee](#), August 2016.

⁸ SSA OIG, [Benefits Payable to Child Beneficiaries Whose Benefits Were Withheld Pending the Selection of a Representative Payee](#), September 2016.

SSA Internal Review of Capability Determinations

These OIG reports followed a June 2015 SSA internal quality review, which found similar problems. In SSA's review, it found that 71 percent of beneficiary reviews did not have a documented capability determination. The review also noted that SSA's capability determinations were underdeveloped, undocumented, or insufficiently documented.

The report included the following recommendations for SSA:

1. Conduct a full review of policy surrounding capability and determine if the policy is too complex and in need of clarification.
2. Provide training to SSA field offices on developing and properly documenting capability determinations after the policy is reviewed.
3. Edit eRPS to make it mandatory for field offices to document capability determinations when a representative payee application is initiated.
4. Add language to eRPS to ensure field office employees include all pertinent facts when documenting a capability determination.⁹

In October 2016, SSA issued an action plan to improve capability determinations. Below are the actions SSA said it would take and the status of those actions.

- Publish an administrative message to provide reminder instructions on the policies and procedures for making and documenting capability determinations in eRPS. **SSA issued a reminder in May 2016.**
- Streamline and improve capability policy instructions to help ensure field office employees consistently develop and document capability determinations. **SSA issued an updated capability determination policy in January 2017.**
- Enhance eRPS with new functionality to ensure that all capability determinations are properly developed and documented. **SSA plans to implement these enhancements in fiscal years 2017 and 2018.**
- Develop a new interactive video training to ensure field office employees understand how to develop and document capability determinations. **SSA has planned a new training course on the topic to broadcast in April 2017.**

⁹ SSA, Office of Budget, Finance, Quality, and Management, Office of Quality Review, *Representative Payee Capability Review Report*, June 2015.

Identifying Beneficiaries Who May Need a Payee

Another significant challenge that SSA needs to address is identifying beneficiaries who—after their initial entitlement to benefits—may have become incapable over time and need a representative payee.

Identifying Aged Beneficiaries in Need

In April 2010, we completed a review to examine a concern that SSA may not be aware of aged beneficiaries who need a representative payee. We conducted this review because medical statistics indicated that up to 50 percent of individuals over age 85 might suffer from Alzheimer’s disease or dementia. However, at the time of our review, 5 million Social Security beneficiaries were over age 85, but only 4.6 percent of those beneficiaries had representative payees.

Based on our review of a sample of aged beneficiaries who did not have a representative payee, we estimated that about 1 million beneficiaries over age 85 might have been incapable and had individuals or organizations managing their benefits without SSA’s knowledge or approval. We also reported that SSA could not ensure these individuals or organizations were suitable and were using the benefits received for the beneficiaries’ needs and best interests.

To address this issue, we recommended that SSA establish additional controls to better identify aged beneficiaries in need of representative payees. In our report, we identified several possibilities for SSA’s consideration. For example, we suggested that SSA:

1. identify Social Security benefits that it sends directly to nursing homes for beneficiaries who do not have a representative payee;
2. match representative payee addresses to beneficiary addresses to determine if they are the same;
3. send periodic mailings or an enclosure with annual Cost-of-Living Adjustment notices to aged beneficiaries and their families to inform them of the representative payee program; and
4. perform educational outreach with the medical community, nursing homes, and retirement communities to inform them of the representative payee program.

SSA did not agree with our recommendation to establish additional controls to better identify aged beneficiaries in need of representative payees. In response to our report, SSA stated implementing the recommendation would require a significant increase in the number of capability determinations, and it could not justify the investment of resources. SSA also stated that targeting aged beneficiaries for capability reviews could be perceived as discriminatory and interfering with the beneficiaries’ rights.

In response to SSA’s comments, we noted that SSA already had plans to review beneficiaries based on age while conducting the Centenarian Project. We also noted the sample of beneficiaries over age 85 that we reviewed had shown that a need for representative payment exists. We acknowledge SSA’s resource challenges and believe that automating some of these actions could help to address this concern. Finally, we noted that our recommendation did not intend to target aged beneficiaries over age

85, but rather to ensure payments to aged beneficiaries—a population expected to increase to about 21 million by 2050—are used for their intended purpose.¹⁰

We are planning a follow-up review of this issue this year to provide updated information concerning the number of beneficiaries over age 85 who may need a representative payee.

Identifying Disabled Beneficiaries in Need

Further, in 2012, we conducted a review to determine whether disabled beneficiaries who had a mental impairment but did not have representative payee were capable of managing their benefits.

For our review, we identified a population of about 895,000 of these beneficiaries. We then contacted a sample of these beneficiaries, observed their living conditions, and interviewed them by asking questions similar to the questions SSA asks when conducting a capability determination. Based on our sample results, we estimated that about 208,000 disabled beneficiaries with a mental impairment who did not have a representative payee received more than \$200 million in monthly benefits, but they may have been incapable of managing those benefits.

We recommended that SSA consider several options to make the public aware of the representative payee program, through mailings, outreach, and other projects.¹¹ In response to our recommendation, SSA added language to the [representative payee page](#) on the agency's website, to make the public aware that a payee may be needed if situations change and an individual becomes incapable of managing or directing the management of his or her benefits.

Other Reviews of the Representative Payee Program

Before I conclude, I want to note that the Social Security Advisory Board (SSAB) in March 2016 issued a report on the representative payee program. The SSAB suggested that SSA should place a higher priority on training employees and developing modeling systems that screen representative payee applications and provide indicators for potential misuse.

The SSAB noted that the representative payee program will only grow and become more complex in the future, thus SSA must address the challenges we have discussed today, as well as others.¹²

Finally, SSA also contracted with the Institute of Medicine (IOM) to review the agency's capability determination process and provide recommendations to improve decision-making policies and procedures. The May 2016 IOM report cited several OIG reports that I have noted above in its review and made several recommendations to SSA. The agency cited the IOM report and its recommendations in its 2016 action plan to improve capability determinations.

¹⁰ SSA OIG, [Aged Beneficiaries in Need of a Representative Payee](#), April 2010.

¹¹ SSA OIG, [Disabled Individuals with Mental Impairments in Need of a Representative Payee](#), September 2012.

¹² Social Security Advisory Board, *Representative Payees: A Call to Action*, March 2016.

Included in the IOM report were recommendations that SSA:

- provide detailed guidance to professional and lay informants regarding the information it would find most helpful for making capability determinations;
- create a data-driven process to support the development of approaches, including screening criteria, for identifying people at high risk of incapability;
- develop systematic mechanisms for recognizing and responding to changes in beneficiaries' capability over time; and
- develop and implement an ongoing measurement and evaluation process to quantify and track the accuracy of capability determinations, and to improve its policies and procedures for identifying beneficiaries who are incapable of managing or directing the management of their benefits.¹³

Conclusion

SSA's representative payee program serves a vital purpose for some of our most vulnerable citizens, and the agency must make the administration of the program a top priority. The OIG has made many recommendations to SSA over the years to ensure it is properly identifying beneficiaries who need representative payees, ensuring the integrity of its decision-making process, appointing and monitoring trusted payees, and making proper payments. As the OIG and other interested parties have recommended, SSA should continue the development and implementation of systems enhancements to ensure all beneficiary capability determinations are thorough, supported with appropriate evidence, and recorded.

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

¹³ Institute of Medicine, *Informing Social Security's Process for Financial Capability Determination*, May 2016.

Chairman Johnson. Thank you. Ms. LaCanfora, in 2013, this subcommittee held a hearing on Social Security's management of the representative payee program. The hearing looked at how Social Security decides who needs help managing their benefits. Since this time, what has the agency done to improve the capability determination process?

Ms. LaCanfora. Thank you for the question. There has been many things that we have done. In fact, we have met with your staff on a bipartisan basis since 2013 every quarter to go over the things that we have been working through. I will mention just a couple that are probably most prominent. One, we talked about the National Academy of Medicine and the report that we commissioned to try to really examine the capability policy and the extent to which it was sound or needed improvement. Based on that report, we have comprehensively rewritten the policy around capability, making it stronger. For example, we have added questions that our field offices can ask to lay persons who provide evidence to ensure that we elicit the right evidence.

The other thing we have done -- now, there is many things, but I will mention another one that I think is very significant, and I think it will be the subject of the second hearing, which is we have launched a 5-year, on-site monitoring contract that will significantly increase the number of on-site reviews that we conduct of representative payees, and it has also significantly broadened the scope of those reviews.

Chairman Johnson. So, you think that Social Security has made improving the capability determination a top priority?

Ms. LaCanfora. Yes, sir.

Chairman Johnson. Okay. I appreciate that. Dr. Appelbaum, as you know, Texas has been a leader in supported decision making. For those that aren't familiar, can you talk about what supported decision making is and why you think Social Security should try it out?

Dr. Appelbaum. Yes, certainly. The notion of supported decision making is that many people with disabilities can, with some assistance, continue to make their own decisions and manage their own affairs. That has the advantage of retaining their autonomous functioning, both in terms of the decisions they make and the actions that they take, and avoiding the necessity of appointing, in this case, a representative payee to oversee their benefits.

It also has the advantage, as far as capability determinations are made, of having an independent, objective person who can provide feedback with regard to the person's ability to manage their benefits on their own. So were the model to be implemented in this context, someone would be appointed as an aide, an assistant, a decision making assistant, support to the person with a disability. The person with the disability would continue to receive their payments directly, but that person would provide assistance and guidance as needed to help them with those decisions. The committee recommended that SSA consider implementing this on a pilot basis to see how well it worked and gain experience with it.

Chairman Johnson. Well, do you think they can do that without adding significantly to Social Security's workload?

Dr. Appelbaum. Well, currently, some percentage of the people who are being evaluated for and receiving representative payees to manage their benefits would probably do just fine with supported decision making. Were those people who are being designated as representative payees instead designated as supports for decision making, you would not need any additional personnel, or, frankly, any additional process to accomplish that.

Chairman Johnson. Do you think it is fair to say that some people who are currently being assigned to representative payees might be better served with supported decision making instead?

Dr. Appelbaum. Yes, I think that is clear. We don't have any idea of the numbers, but I think, in general, yes.

Chairman Johnson. Well, thank you for your testimony, sir. Mr. Larson, you are recognized.

Mr. Larson. Thank you, Mr. Chairman. And I want to, too, thank all the witnesses. My first question, and Mr. Chairman, is there going to be more than one round of questioning, or is this it?

Chairman Johnson. I think with two Subcommittees, we better hold it to one, don't you?

Mr. Larson. One round, yes. So my first question would be to Ms. LaCanfora, Mr. Appelbaum, and Ms. Stone. And I thank you all for your work and service. You raise some questions, and one of the things that is disturbing to me, of course, is, as mentioned in my testimony, an increase of more than 10 million people growing and expanding as the baby boomers come through this process. At the same time, we have seen a reduction in the Social Security administrative budget. How does that square up, especially -- Ms. Stone, you mentioned in your testimony a couple of things, making sure that there were system controls and electronic assistance. When is the last time that Social Security was upgraded in terms of its electronic assistance and its computer and technological capability to deal with this issue? That would be my number one concern.

And, number two, and Mr. Appelbaum, you spent an awful lot of time in your testimony talking about the recommendations that you have in some areas, obviously, where there could be potential savings that accrue, how can we best integrate this in a manner in which, as the chairman mentioned, we do not overburden SSA? And I would like your opinion whether or not, you know, with this influx of 10 million, with baby boomers, is this placing an enormous strain on an agency that I am just going to guess that the administration, just a wild guess on my part, has not been brought up to speed technologically, especially given all of our concerns that we have today about the ability of people to hack into a system.

So if you could get that to me in writing, and I would reserve my question. And again, thank Ms. Nichols for being here and our colleague, Gabrielle Giffords, for the incredible work that they are doing. As I said at the outset, our alarm on this side of the aisle, and frustration of pitting two groups against one another within the context of this payee system, the victims of gun violence and people with disabilities.

Ms. Nichols, do you believe that prohibiting the SSA from ever reporting severely mentally incapacitated individuals through the background check system has made our public safety laws stronger or weaker?

Ms. Nichols. Revoking this rule will make our laws weaker and it will make our communities less safe. I mean, revoking this rule is clearly detrimental to public safety and is a failure to enforce the laws on the books; namely, the NICS Amendment Improvements Act and the Brady Act, and, you know, the gun laws in general. It will cost lives in terms of family members who will be at higher risk of suicide and the increased threat of gun accidents.

American people -- the American people need to -- do recognize that need to keep guns out of the hands of severely mentally impaired individuals, and that is what this rule would do.

Mr. Larson. Well, for -- I don't know if many of our colleagues understand completely the ramifications of a CRA, but because of the nature of what a CRA means, this would prohibit the executive branch and, not only from the standpoint of SSA but other agencies, from issuing any kind of rules with respect to simple regulations that NICS reporting have required. Would you agree with that?

Ms. Nichols. I -- yes. It would prohibit any substantially similar rule in the future.

Mr. Larson. And this is, again, Mr. Chairman, why on our side of the aisle we are so frustrated and upset that we can neither get a vote on the floor of the House with respect to this issue. Now, in a -- before there is an actual hearing on it, there is a vote that not only prevents SSA from ever doing any further regulations on that but other agencies as well. I think it is an egregious fault of this system, and I hope that we can remedy that through legislation.

Chairman Johnson. Thank you, Mr. Larson.

And I will now recognize Chairman Buchanan.

Mr. Buchanan. Thank you, Mr. Chairman.

I want to say, you know, I mentioned I am from the Sarasota region, southwestern Florida. I probably have as many, as anybody does, 224,000 recipients on Social Security. But, in general, I think you guys do an outstanding job. That being said, there is always room for improvement.

I think Mr. Larson -- I think it was his number, a third of Americans get to be 65, and that is all they have got, their Social Security. I also heard another third have something but not enough, so they are counting on Social Security. Of course, it is their money, so that is a big issue.

But let me just lead off with you, Ms. LaCanfora. You know, we touched on, maybe you did or someone did, that only 9 percent of people get a payee representative in terms of -- out of 100 percent in terms of dementia. The other statistic I was reading is that 50 percent of those that are 85 and older -- my wife just went up and got her mother, 97, from Michigan to bring her down to Florida -- but over 50 percent, so we see a lot of those 85-and-olders, have early stages or some stage of dementia. And -- but 9 percent have any kind of support.

You know, where is that at? What are your thoughts on what we can do? I mean, I just can't imagine 91 percent with no support. And, of course, we have got a lot of fraud with phone calls and other things, always trying to figure out a way to get money from seniors, especially in Florida, but I am sure all over the country. Is that alarming? It seems pretty alarming to me.

Ms. LaCanfora. Thank you for the question. Chairman Johnson asked me previously some of the things that we have done since 2013 to improve the program. One of those things is that we commissioned our retirement research consortium, which is a grantee that works with us, to explore this area. And the number that you cited, the 9 percent, comes from the Boston College, they are one of our grantees, a research paper that they recently completed where they looked at people with dementia, a subset of people, and they found that only 9 percent were participating in the rep payee program. But also very interesting, what they found is that the remainder of the people, the 91 percent, by and large, while they didn't have a representative payee, they did have family support that they considered to be reliable and supportive.

We are now embarking on a second phase of that research, and we are going to dig a little bit deeper to look at the outcomes. What are the differences in outcomes with people who have a payee versus those who don't? And the whole purpose of this is to really --

Mr. Buchanan. Let me -- I have got a bunch more questions, and we are all kind of limited to 5 minutes. But let me ask you another question. I mentioned about this woman, 76, disabled, her daughter stole \$40,000, got convicted. How often does that come up? Is that a bigger issue today than it has been or -- and, I guess, what do you do about it?

Ms. LaCanfora. We do detect misuse and abuse in the program, although it is a very small percentage. But I will go back to something that was said earlier about the workload impact. I must admit that our greatest challenge is monitoring the representative payee behavior. We have 6 million representative payees, and

we currently do 2,000 onsite reviews annually, which you can do the math, is not a tremendous number of onsite reviews.

Mr. Buchanan. Then let me move over to Ms. Stone. Thank you. And I hope we will have a chance to visit more on this.

Ms. LaCanfora. Thank you.

Mr. Buchanan. Ms. Stone, I wanted to get your thoughts as the Inspector General's Office. I know you have looked at this payee closely, and I am sure you have identified some challenges and weaknesses. Are they receptive to your thoughts and your ideas in terms of implementation and maybe some things to minimize some of these areas of weakness?

Ms. Stone. That answer would be yes and no. When we directed them -- or pointed them to specific beneficiaries where they should go back and do capability determinations, they have been very responsive. And in many cases, either giving them a new rep payee or determined that the people were capable. However, some of our more strategic type of recommendations, such as outreach and the broader concept of identifying a population of people potentially in need, that has not been as receptive.

Mr. Buchanan. Thank you.

And I yield back, Mr. Chairman.

Chairman Johnson. Thank you.

Mr. Lewis, you are recognized.

Mr. Lewis. Thank you, Mr. Chairman.

Madam Deputy Commissioner, I am very concerned about the Republican cuts to your agency operating budget. And we continue to have people waiting for so long. 560 days. Does the less money, cuts in the budget, affect the services?

Ms. LaCanfora. We have seen an increase in field office wait times, and there certainly is a correlation between our funding and our ability to deliver timely service. Beyond that, I think if you would like us to give you more information about what work we can do within various budget scenarios, we would be happy to do that.

Mr. Lewis. Do you think it is fair for people to wait so long for service that we have made a commitment?

Ms. LaCanfora. No, sir.

Mr. Lewis. So are you saying anything to the majority of the party about what should be done?

Ms. LaCanfora. Yeah. I think we consistently communicate our budget needs, but we also are trying to focus on efficiency and improvements in our business processes, our IT, and any other place that we can strengthen our process to work within the constraints of the budget and at the same time make our needs known.

Mr. Lewis. But in the meantime, people are hurting. People are suffering. It is not fair. It is just not fair. It is not right. There is a sacred trust between the people and the government. What should we be doing? What do you want us to do, appropriate more money?

Mr. Pascrell. I didn't hear the answer.

Ms. LaCanfora. I am sorry. Can you repeat the question?

Mr. Lewis. What should we do? What do you want us to do? I am trying to imply there is a commitment. There is a sacred trust between the government and the people. We should not violate their trust.

Ms. LaCanfora. That is -- I agree with that. This committee has been, certainly, supportive in holding multiple hearings on the topic of representative payee and giving us the support we need to try to create improvements in that process. As I said, there is certainly a correlation between the funding that we get and the services that we deliver. And we have laid out quite extensively our resource needs.

Mr. Lewis. Madam Inspector General, do you have any response to what is happening?

Ms. Stone. Sir, I would actually defer to the agency with respect to their resource needs, but I will hearken back to one of my earlier comments in a question about the need for investment in information technology or systems to actually improve this process. I recognize that that is one of the elements of the agency's capability determination plan, and that will be the critical element that should bring about some efficiency, because that process will help the agency meet the current policy that it has.

Mr. Lewis. Could either of you tell me when was the last time that the system was upgraded?

Ms. LaCanfora. I can speak to that. So we -- I am happy to say we have done a modernization of our representative payee system. We released that software last year, and we will continue to build upon it. That is a major improvement, one of the things we have accomplished since 2013, in improving the rep payee program. We have created a web-based system. It is more agile. We can modify it more easily.

And to Ms. Stone's point, we are building in compliance so that technicians will have to document very extensively the capability determinations that they make. So we have, in fact, released that very significant IT modernization software.

Mr. Lewis. So the bottom line is you need more resources? You need more money, less cuts?

Ms. LaCanfora. Resources are critical to the function of the agency, absolutely.

Mr. Lewis. Thank you.

Mr. Chairman, I yield back.

Chairman Johnson. Thank you.

Mr. Rice is recognized.

Mr. Rice. Thank you, Mr. Chairman. Thank you, Mr. Chairman.

Ms. LaCanfora, this 500-day delay in receiving benefits, when somebody reaches retirement age and applies for their retirement benefits, it takes 500 days for them to get it?

Ms. LaCanfora. No. There are different types of benefits, and so I think the Congressman is referring to, specifically, disability benefits. They are adjudicated before an administrative law judge --

Mr. Rice. So we are talking about the time in which you have to figure out whether they are disabled or not?

Ms. LaCanfora. Correct.

Mr. Rice. Yeah. Okay. With respect to the scope of this hearing and overseeing people's payments who are disabled, I was a tax lawyer, I did a lot of estate planning. Some of the most wrenching things that I dealt with in families are whether somebody is disabled or not, whether a family member may think they are disabled or incompetent, and the subject may not think that they are. So you have one heck of a tough job. Good grief. You have got 6 million people in this category.

If somebody makes a claim, you know -- well, overall, you are mailing out checks to these retirees, 50 million checks a month. You don't ever meet these people. You don't see them face-to-face, right? So how could you possibly determine whether they are disabled or not?

Ms. LaCanfora. Generally speaking, for people who file for retirement benefits, that decision would be made at the point of application. If that person, then, you know, goes off and they are 65 at the time that they filed and then they age beyond that, you are right, we have generally very little interaction with individuals. So we do not have a comprehensive process for tracking a person's capability over time. We rely on individuals and their families --

Mr. Rice. You don't go out and meet with them and interview them face-to-face every 2 years or anything like that?

Ms. LaCanfora. No, sir.

Mr. Rice. So you have got to rely on somebody in the community, whether it be a family member or otherwise, come to you and say, hey, you have got a problem over here, right?

Ms. LaCanfora. That is right.

Mr. Rice. Do you have folks in your local agency offices that have any mental health expertise or are you just using guidelines that you have written for Social Security?

Ms. LaCanfora. To make the capability determinations themselves, we collect evidence, the medical, legal, and lay evidence, and that is how we make those assessments.

Mr. Rice. Okay. But they don't have any mental health experience themselves. They are just doing the best they can to make the best assessment they can, right?

Ms. LaCanfora. That is correct.

Mr. Rice. Now, what happens if you have somebody, you know, a daughter who comes in and says, you know, you are sending checks to my mom, and she is buying things I don't like, and I think she is disabled. And the mom says, well, no, I am not disabled. Surely, you all don't make that determination. Surely, you require some kind of an adjudication of it, right?

Ms. LaCanfora. So the assessment of disability is separate from the assessment of capability. Right? We have an extensive process for determining disability. We use a State agency adjudicator to examine extensive amounts of medical evidence. That is a separate process. The capability process is one where we

are solely trying to determine whether you can manage your funds or direct the management of your funds. And that is an important part.

Mr. Rice. Yeah, but -- but -- but -- but, you are actually taking somebody's property. I mean, this is their property. As a tax lawyer, it would always -- fascinated me that the IRS could come and take money out of people's bank account without a hearing. Right? I mean, they are the only government agency I ever thought that could do that until now. Because, apparently, Social Security can decide, hey, you are not capable of getting your check, even though you might think you are, and route it to somebody else.

Ms. LaCanfora. It is important to remember that we assume capability in all adults, absent evidence to the contrary.

Mr. Rice. But the guy making that determination may not have any -- any mental health background at all. You don't -- I would think you would require some kind of adjudication of competence. You don't?

Ms. LaCanfora. Generally speaking, the individuals for whom we appoint a payee, they do have the ability to appeal the decision, both the capability decision and the appointment of a particular payee, and we do have people take advantage of that appeal process. But by and large, we are really only trying to give a person a payee if they absolutely really need the help managing their money.

And in the case that you noted, if the mom is able to direct the management of her benefits, like she might not be able to do it herself, but she can get help from others doing it, we would not give her a payee. Okay? So if the person can either manage or direct someone that they trust to manage, that would not warrant the appointment of a payee. It is only in those cases where they truly cannot manage nor direct anyone else to manage their benefits where we would appoint.

Mr. Rice. You said that you -- I mean, I -- this is fascinating. I can't imagine how difficult this job is. You said you had 6 million people that have representative payees, and you review 2,000 annually. So if somebody -- if you appoint a representative payee over the person's objection and that person misuses the funds, does Social Security have liability for that?

Ms. LaCanfora. We have the ability to hold the misuser accountable.

Mr. Rice. But if they don't have the money, can the person who was supposed to get the money, you know, the original claimant, can they sue you because you appointed a payee that stole the money?

Ms. LaCanfora. We will make the person whole and then attempt to recover the money from the payee who misused the funds.

Mr. Rice. Thank you. My time has expired.

Chairman Johnson. Thank you.

Mr. Schweikert, you are recognized.

Mr. Schweikert. Thank you, Mr. Chairman.

Being someone from Arizona, a dozen years ago, we had some really heartbreaking experiences with a number of fiduciaries. And I know we actually worked on a series of solutions, some were technology. And, Professor, in your testimony, you actually said a couple of things that I found some enthusiasm for. But one, first, our discussion here, if we are all hopefully discussing the same thing, is some of our brothers and sisters out there who are receiving Social Security benefits, who something's wrong, and in making their payment, in covering their obligations, as we heard in testimony, looks like the

majority of that population may be having difficulties, a family member or someone they are living with has stepped in and that seems to be working well. So now we are talking about the population that may not have that type of relationship in their lives.

Professor, when you spoke, you said there might be some ways to identify by looking at payment history. They are missing their utility payment. They missed their water payment. Could you expand on that? And then I would like to move from there onto a technology solution.

Mr. Appelbaum. So there are potential ways in which models can be constructed to identify people at high risk of being incapable. That could be based, in part, on data that Social Security already has: Age, diagnosis, impairment, et cetera.

Mr. Schweikert. Okay. That is an individual model. And then there might be also sort of a -- it is not really crowd source model but an experience model, someone three times a year misses their utility payment or --

Mr. Appelbaum. Right. But then Social Security would need a way of getting that.

Mr. Schweikert. Yeah. I didn't say it is easy. I am just -- I am trying to come up with an elegant tell system. Because, obviously, as you hear from both sides, there is a little bit of discomfort of the nonprofessional, you know, handing someone in just because there is money involved, and whenever there is money involved, there is sometimes incentives that may not be healthy. So if there was some way to have a tell, someone is systematically making missing payments, or on the flip side, being taken advantage of -- and this one drives me -- you know, breaks my heart some of the data I see of seniors that get caught in telephone scams and send out money and things that -- where they have been just taken advantage of.

In your work with the academy, was there any discussion that there might be -- money comes electronically into the account, automatic payment systems, a certain amount of money goes to a caregiver, certain amount of money automatically goes to pay the utility bill, and does that provide sort of a safety shield of systematizing that?

Mr. Appelbaum. Yes, it absolutely does. And that was part of what we envisioned when we talked about a supported decision-making model. That is a person who acts as an adviser to the beneficiary who says, you know, you will be better off. You will never miss your utility bill again if you just have it paid directly from your bank account. And similarly, with your rent, et cetera. That leaves the residual amount, which would be much smaller, for the person to spend on a discretionary basis, but only after necessities are taken care of. So that would, in fact, be a way of protecting many such people.

Mr. Schweikert. Ms. LaCanfora. And how many of us have butchered your name already today?

Ms. LaCanfora. That is okay.

Mr. Schweikert. Trust me, when you have Schweikert, I understand.

In all of the things you have looked at, has a technology solution, an automated payment solution that probably everyone in this room actually uses in their lives, been discussed for this population?

Ms. LaCanfora. Certainly, we haven't closed the door on any of the institute recommendations, and we continue to look at them. We do have a profiling model, if you will, a technology model, that identifies those payees who are at risk of misusing benefits, and that is how we select payees to review. We haven't quite figured out how you might determine those who are at risk for a capability assessment.

Mr. Schweikert. And I need to think that through, because the reality there is sort of two completely datasets, as the professor -- you know, this is my attributes, your certain age, you have had certain types of history that we know. But this one would be almost immediate in saying, for some reason, the copay at a doctor's visit aren't being paid, something -- and I wish there was -- I need to think -- there has got to be some way to see that.

Ms. Stone, in our last like 10 seconds, when you were looking at this, did you ever sort of determine saying, okay, we have 6 million within this sort of fiduciary assistance model, how many are actually going unserved? Was there any guess there?

Ms. Stone. We did look at a very specific population of individuals over the age of 85. Again, that is a very unique population. And in looking at that, we estimated that there are probably about a million people out there that really need to have their capability reassessed.

Mr. Schweikert. Okay. So if we have 6 now, do you think there may be an additional million or --

Ms. Stone. An additional, because these individuals did not have a payee at that time.

Mr. Schweikert. All right.

Mr. Chairman, thank you.

And to Ms. Nichols, if there is ever a chance to sit down with you and buy you a coffee, now is not the time and place, but there are a handful of things that I would love to share with you as ideas and where I think there are some intellectual inconsistency on the issue, and I would love to see if we could ever close that gap.

Mr. Chairman, I yield back. Thank you.

Chairman Johnson. Thank you.

Mr. Pascrell, you are recognized.

Mr. Pascrell. Thanks, Mr. Chairman. This is enlightening today.

Now, let me get this straight. Ms. LaCanfora, let me get this straight. So the SSA evaluates the capability of an individual, mental capacity, et cetera, et cetera. The SSA evaluates whether there is a mental disorder. And you mentioned before some improvements to the entire system, which have taken place.

So, on the other hand, if you are found incapable, mentally incapable, you still can buy a gun. Is that correct? If you are found mentally incapable to handle your Social Security business because of X reasons, which you pointed out in your testimony, you can still buy a gun?

Ms. LaCanfora. The capability determination that we make only affects the receipt of Social Security benefits, no other aspect of one's life.

Mr. Pascrell. Okay. Thank you. Thank you.

So, Mr. Chairman, in light of the House voting on H.J. Resolution 40 last week, which would overturn the Social Security Administration rule that would allow Social Security to report a small subset of individuals with the most severe mental impairments to the National Instant Criminal Background Check System, or to

the NICS, as it is called, the NICS, although it would have been nice to have a hearing before the House, as some have mentioned, we actually did vote on the bill. That is not a good start. That is not a good start.

You talk about how additional regulation or oversight of gun purchases will not reduce gun violence because you claim that our gun laws are not the problem, people -- you know, that is the same we have had for 40 years on our mind, which hasn't solved a damn thing. People kill people, not guns, you know. That is really helpful.

While I strongly disagree with the first claim, I agree with the second, which is why I can't, for the life of me, figure out why some of my colleagues voted to strike down this commonsense rule issued by the Social Security Administration. The Social Security regulation resulted from a law passed unanimously by the Congress, you referred to it before, in 2007 in response to the mass shooting at Virginia Tech where the shooter's mental health prohibitor should have been reported to the NICS but was not reported. You heard Ms. Nichols talk about that.

We cannot state enough that mental illness is not a definitive predictor of violence. It is not. But if an individual is suffering from very severe and long-term mental disorder and his or her lack of mental capacity precludes them from being able to manage their own Social Security benefits, I don't think -- you know, correct me -- I don't think it is unreasonable to think that they should be flagged for the NICS database. I just don't understand that.

Do you understand that, Ms. Nichols?

Ms. Nichols. Not entirely, no.

Mr. Pascrell. They should also be awarded adequate due process rights to appeal this determination, which your regulation allows for. So improving NICS should be part of a balanced approach where Democrats and Republicans work together to find solutions that protect Second Amendment rights while keeping guns out the hands of those who would use them for harm.

You will not allow that person who is ruled incapable to judge his own Social Security rights, but we will allow the person who has been ruled incapable mentally to buy a gun. And let's make it clear, that is what the rule did and confirmed and reaffirmed last week.

Thank you, Mr. Chairman. I yield back.

Chairman Jonhson. Thank you.

Mr. Smith, you are recognized.

Mr. Smith. Thank you, Mr. Chairman Johnson, Chairman Buchanan, for holding this hearing.

I would like my first question to go to Ms. LaCanfora. We are limited on time, so I would really like just yes or no answers because I want to try to hit as many as possible.

When the Social Security Administration assigns someone a representative payee, this means that the individual will no longer receives his or her Social Security payment directly. That means the payee will manage the benefits on the individual's behalf. Is that yes or no?

Ms. LaCanfora. Yes.

Mr. Smith. Yes. Does having a representative payee assigned by the SSA also keep someone from writing a check?

Ms. LaCanfora. No.

Mr. Smith. How about managing their own bank account?

Ms. LaCanfora. No.

Mr. Smith. So to be clear -- how about making decisions about their medical care and having -- setting a doctor's appointment?

Ms. LaCanfora. No.

Mr. Smith. So to be clear, having a representative payee only affects receipt of one's Social Security benefits?

Ms. LaCanfora. Yes.

Mr. Smith. Thank you for clearing that up.

Ms. Nichols, I have a question. Do you believe that laws prevent gun violence?

Ms. Nichols. Yes.

Mr. Smith. Okay. Have you looked at the 20 last mass shootings in the country, the statistics of whether those were in gun-free zones or not?

Ms. Nichols. I --

Mr. Smith. I take it you haven't?

Ms. Nichols. I -- yes. No.

Mr. Smith. I would encourage you, as someone who cares about, quote, "gun violence," that you look that by far the super majority of the mass shootings were in gun-free zones, saying that you were not allowed by law to have a gun, and numerous people lost their lives. So those are laws that basically created more gun violence. So it might be something you would look at.

One further question. This question is for Mr. Appelbaum. My concern here is that if someone is given a payee and they don't need one, SSA will unnecessarily infringe on their autonomy. On the other hand, if they don't have a payee and need one, they may not be able to manage their benefits effectively to address their needs.

Dr. Appelbaum, one of the issues that the Institute of Medicine explored is how to actually define financial capability. Can you talk a little bit about what it means to be financially capable and how this can be assessed?

Mr. Appelbaum. Yes, I would be happy to answer that.

As you heard, SSA's definition of capability is somebody who has the ability to manage or direct the management of their benefits. But the committee broke that down, that rather vague formulation, into essentially three components. We think of people as having some basic financial knowledge. For example, if I give you a \$5 bill for an object -- an item that costs \$2.99, how much change I should receive in return. And financial judgment, which is to say the ability to assess the legitimacy, for example, of offers

that might be too good to be true. And, together, those constitute the foundation blocks, knowledge and judgment, of financial capability.

But there is one more component that needs to be considered, and that is how people use their knowledge and apply their judgment in real life situations. And that we call financial performance. For example, somebody who becomes incredibly anxious and unable to process information when they are on a checkout line may have all the information but lack the capability, because they can't perform with that information. And conversely, somebody who in real life situations has someone to help them make these decisions might do perfectly well, even though they have some impairment in their judgment or knowledge.

Mr. Smith. Does the SSA's capability determination process do a good job at evaluating whether someone is capable of managing his or her benefits?

Mr. Appelbaum. So, unfortunately, we don't know the answer to that question in any objective sense. That is, SSA has not, as best we can determine, systematically evaluated the accuracy of their determination process, also one of our recommendations.

Mr. Smith. Thank you, Mr. Chairman.

Chairman Johnson. Thank you.

Mr. Kelly, you are recognized.

Mr. Kelly. Thank you, Mr. Chairman. And thank you all for being here.

Whenever you hear that somebody's incapable of doing this, how do you hear that? I know you are saying the model about people who can't pay their bills. I have a lot of friends who are very sharp, but they just don't pay their bills on time. So when it comes to these folks, what triggers that?

Ms. LaCanfora, maybe you can help with that. Because I know a lot of these things -- so who is it that makes the call to Social Security that says, hey, you know, my mom's lost it, and I think I should be get -- how does it start? I am really curious.

Ms. LaCanfora. So, essentially, we presume that all adults are capable, first and foremost.

Mr. Kelly. Right.

Ms. LaCanfora. One of the ways that the issue of incapability arises is when someone is going through the disability determination process and a State agency disability examiner is reviewing the medical evidence, that examiner may come across evidence that suggests that there could be a capability problem, and they will flag that for our field offices. Our field offices will then take the input from the disability examiner and couple that with lay evidence, which is that evidence of the real world knowledge of financial oversight by people who know that person well, and the body of that evidence will shape the decision.

Mr. Kelly. Okay. And I know you have legal evidence, medical evidence, and then lay evidence. Then the question becomes that person that we are questioning their ability to determine, do we do a face-to-face with them to determine?

Ms. LaCanfora. By and large we do, although there are circumstances where we don't think it is appropriate to compel the person to come to an office because of their own personal circumstances. But by and large, we do try to do a face-to-face interview in all cases. We also take the statements of the individuals themselves and anyone who knows them, who has working, daily, recent knowledge of the

individual's ability to meet their daily needs, to pay their rent on time, to feed themselves, and to do all those things that we would expect.

Mr. Kelly. So I am now -- then the question would come, so these people that are doing the interviewing, their backgrounds -- I mean, how do you find these folks to do these interviews? I mean, do they have the education to do it? Are they -- they are so well trained? I really -- I look at this, because when you start playing with people's income and determining whether they are capable or not capable -- as I said earlier, I have a lot of friends who are very capable but just don't pay any bill on time. And people would say, listen, that person's irresponsible. They don't know when to pay their bills. But you don't -- you know, you don't take their benefits from them.

I am really curious about this. And I think -- it seems to me that this is such a gray area. The definition -- I think Ms. Stone talked about documented determination. I mean, who documents? Who determines? Who defines? And does it vary from person to person? I think there is so much in there that would be flexible and up to the individual doing the interview, and did they have a good day before they got to the office.

Ms. LaCanfora. I agree that it is a difficult job. The statute requires that the commissioner determine whether it is in the interest of an individual to have a payee, and that is the statutory construct. From there, we have so many beneficiaries, as you well know --

Mr. Kelly. Yeah.

Ms. LaCanfora. -- 62 million people. The task at hand can't be done by just a few people. So we task our field offices, by and large, to examine all of these various pieces of evidence, and we try to provide very detailed, concrete questions to ask both the individual and anyone else who provides lay evidence. We have a particular form that goes to medical providers to elicit their input. And the totality of all that evidence helps the adjudicator to decide whether the person needs a payee.

Mr. Kelly. Now, just for all of you, if you can, because I think sometimes when we see a check that comes from the government, we assume that it was actually the government that supplied the revenue. Just to clear it up, where does the revenue come from for Social Security?

Ms. LaCanfora. From the taxpayers.

Mr. Kelly. And not just taxpayers, but it is actually wage taxes, right?

Ms. LaCanfora. Yes.

Mr. Kelly. Okay. So if we are looking for revenue, and we are talking about budgets and budget cuts, and we have a -- we don't have the rate of participation we need in the labor force. I know we are looking for money all the time, but I think I will go back to a healthy economy and a labor force that is actually working at full capacity provides every single penny. Not just, by the way, the person who is the employee, but also by the employer, right? It is a 6.2 percent matched by a 6.2 percent, or 12.4 percent of every pay that goes to Social Security up to \$118,500.

So as we look to where we are going to find the money, I think it is easy to say, hey, look, we just have to devote more money. But I think it really is important to go back and find out, where does the revenue start? Where is the source of all this revenue? As opposed to saying, we need to put more money into it. I would like to find out how can we make the actual revenue source healthier that we can do this?

And I think sometimes we get wrapped around the axle and all of these things about the government does this, the government does that. The government doesn't do a damn thing on its own. It is all by hardworking American taxpayers. And in this case, every single penny comes from a gal or guy who gets

up every day and goes to work and puts 6.2 percent of his or her paycheck, max -- matched by their employer with 6.2 percent. I think it is really incredibly important that we understand just whose back we are riding on.

So I appreciate everything you all are doing. I know it is complicated, but I worry about this. I have friends who are going through this process, and it worries me that somebody can determine whether they are capable or incapable, and then it is like, well, who was it that did that and what was -- what was the determination based on?

Chairman, I thank you very much.

And thanks so much for being here. You guys do a great job. Thank you.

Chairman Johnson. Thank you.

Mr. Davis, you are recognized.

Mr. Davis. Thank you very much, Mr. Chairman. And I also want to thank all of our witnesses. I found this discussion to be tremendously interesting as well as important.

Commissioner, could you explain a little more in detail what kind of training or what it is that you really do for those who have to ultimately make the determination?

Ms. LaCanfora. Sure. As I mentioned before, the population that we serve is vast. Right? It is pretty much every American. And the number of beneficiaries we pay every month is 62 million people. So we have got to rely on our network of field office employees across the country to help us adjudicate these cases. What we do is provide all of those entry-level professionals with about 3 months of extensive training, 40 hours of which is specific to the rep payee process, and the adjudication of capability is part of that, and we provide ongoing training. As I mentioned, this upcoming April, we will be doing mandatory training for all field office employees on the capability policy.

Mr. Davis. Thank you very much.

Ms. Nichols, let me ask you -- and I have a great deal of appreciation for the work that you and the organization that you are with does, especially given the fact that it was created not necessarily by government, but it was created by individuals who had a great interest in the issue.

One of the things that strikes me is the issue of suicide. It appears that there are more suicide decisions that individuals make themselves, and one of the weapons or one the means that they use is a gun. And there are other approaches to suicide that people also use, but it seems that those -- that they commit or do using a gun is more effective in terms of the person ultimately dying or simply not being -- fear of being good.

The determination that one is capable of handling or making use of or not making use of a gun -- and suicide, I think we know to be kind of when the mood hits you, that there are times when the people are impulsive and they make the decision they shouldn't. Would it not seem that there would be no use hardly at all for an individual with those conditions to have access to a gun? Would you -- how would you respond to that?

Ms. Nichols. I think the rule that is -- that the Social Security Administration promulgated is very narrow so that it does apply to only the people that would be in -- at a higher risk of being in that kind of situation and making the wrong, impulsive decision.

You are exactly right in pointing out that, you know, that suicides are often decisions that are made very quickly and when I -- when I -- when all -- the person is under duress. And when people don't have access to guns, the risk goes down significantly. When a person lives through a suicide attempt, they are -- there is -- 90 percent of the time, they don't go on to die by suicide.

So the -- reducing the gun during a particular time can have a tremendous effect at saving lives.

Mr. Davis. I know that there are people who express interest and concern about due process rights just as individuals express concern about Second Amendment rights. And do you believe that due process rights are overwhelmingly important to the extent that we don't make the adjustments for individuals who are simply mentally impaired and are unable to make rational decisions?

Ms. Nichols. Due process is extremely important, yes.

Mr. Davis. Thank you very much.

Mr. Chairman, I yield back.

Chairman Johnson. Thank you.

Mrs. Walorski, you are recognized.

Mrs. Walorski. Thank you, Mr. Chairman. Thank you to the panel for being here today.

Dr. Appelbaum, in your testimony, you mentioned that the SSA current evidence collection process does not provide clear instructions to guide SSA employees as they assess the reliability and/or quality of the evidence they receive. SSA also doesn't ask those providing evidence for information that might help employees in assessing the reliability. For instance, the medical evidence form doesn't ask how often a provider sees a beneficiary or if those interactions give the provider an adequate window into their financial capability.

This concerns me, because we are not just talking about assessing the fitness of a person to make decisions for themselves. We are also talking about a decision that affects their dignity. It is alarming to me that such a consequential decision could be arrived at without high-quality evidence that can be verified as relevant and factual, especially when it comes to vulnerable populations that could be targeted and probably are by bad actors.

So, Dr. Appelbaum, my question is, are you similarly concerned with this, and how can the SSA improve their own processes to address this problem? It really comes down to the issue of quality of evidence.

Mr. Appelbaum. Thank you. Yes, I am concerned. More importantly, the committee was concerned, the committee that I chaired for the National Academies. But it is a process that can be improved.

It can be improved in two ways. One is by providing structure to informants, whether those are physicians like me, whether they are lay people, family members, friends, other professionals, clergy, people who come into contact with the individual, as to what information they should be considering and providing to the agency. For example, does this person pay their bills regularly? Has this person ever missed a rent check? Who buys this person's groceries? And how adequate is their ability to supply themselves with food and clothing? These kinds of directives can improve the quality of the evidence that SSA obtains by focusing people on what is really relevant to a financial capability determination.

The second thing that could be improved, that could be changed is the information source could be specified, which is to say, for example, currently, the form that physicians fill out asks for a judgment by

the physicians and, in general terms, the basis for that judgment regarding financial capability. But the form doesn't ask where the physicians get the information from nor how frequently they see the patient and how intense their relationship is. If we knew from each informant how often are you in contact with this person, and what is your basement -- your judgment based on? Is it based on observation or third-party reports or review of records of somebody who you saw once a year ago but haven't seen since? That would improve SSA's ability to judge the quality of the evidence.

And I would just add that my understanding is, although I haven't seen them yet, that SSA has taken steps towards specifying the information that they desire. It is not clear to me that they have done the second part of that yet.

Mrs. Walorski. So let me bounce over to you, Ms. LaCanfora. So given how important this is and the direct connection it has to the dignity of people, so has SSA walked through this -- these suggestions, this model, or what are you doing to improve that quality of evidence?

Ms. LaCanfora. Yes. I think Dr. Appelbaum stated it correctly. We have fully implemented the recommendation that the committee made to create a more robust set of instructions for our offices who gather evidence. So, for example, the questions that he just posed about, you know, do you pay your bills on time, and -- we have an entire list of those questions in our policy now so that we don't leave it up to field office adjudicators to think of them. We are actually giving them a script, so to speak, so that they are, in fact, collecting the appropriate evidence from lay parties.

The second part we are in the process of working on, which is, we have a special form that medical providers complete, and it asks them a host of questions about their assessment of an individual's ability to manage benefits. We are in the process of making that form more robust in some of the ways that the committee suggested.

Mrs. Walorski. And I just have a real quick follow-up question to something you were speaking earlier with Chairman Johnson. When you talk about kind of like accountability and transparency with SSA employees as they look in this large process that they are looking at, do you use these onsite contractors as third-party verification kind of folks to make sure that these -- the employees are following the regs and the changes that SSA is making? Do you use onsite contractors to kind of help look in and make sure that is happening?

Ms. LaCanfora. No. The onsite contract that I was referring to is our monitoring contract. So that is the contract we use to go out and do site visits and look at the performance of payees to ensure that they are not, in fact, misusing or abusing the beneficiaries whom they serve. With respect to our own employees and the performance thereof, we have internal quality reviews in addition to, you know, the report that we commission with the National Academies and our IG reviews. We have our own internal quality assessment to help us to track and measure the effectiveness and the compliance with our own policies.

Mrs. Walorski. I appreciate it.

Mr. Chairman, I yield back. Thank you.

Chairman Johnson. Mr. Renacci, you are a recognized.

Mr. Renacci. Thank you, Mr. Chairman. I want to thank both you and Chairman Buchanan for holding this hearing. I want to thank the witnesses as well for their testimony. I apologize that I wasn't here for the entire hearing. I was actually at a budget discussion where we are talking about the sustainability of Social Security. But that is a whole other issue for another day and another time.

But the GAO recently found that 62 percent of retirees above the age of 75 rely on Social Security for more than half of their household income. Additionally, Social Security benefits make up the largest component of household income for most retirees. It goes without saying that the ability for a retiree to properly manage their Social Security check is critical to their retirement security.

As someone who ran numerous businesses for 25 years, many of those -- I was in the healthcare business and the nursing home business, I ran into many individuals who had Social Security and had representative payees as well. So I am interested in learning more about how the Social Security Administration field offices determine if a Social Security recipient should have a representative payee.

So, Ms. LaCanfora, which field office employees are making determinations for their representative payee program, and what are the qualifications to be hired for that position?

Ms. LaCanfora. So by and large, it is the claims representatives who work across the country interacting with the public, taking retirement disability claims and the like. Those individuals are generally, you know, college graduates, entry-level professionals. They do not have medical training, but they do undergo significant training to learn the Social Security programs, including the representative payee program.

Mr. Renacci. So in an individual's life, there are clearly changes in medical condition, there are changes in life history, life habits. What role do the supervisors play in overseeing the capability of the determination process?

I am big into process. I believe my success in the business world was about adhering to process. Sometimes I wish us -- all of us in Washington would follow a process. We would probably be better off.

But what capability determining processes do they have to sign off on these decisions? Where are supervisors involved?

Ms. LaCanfora. So supervisors -- there are so many decisions that are made, hundreds of them every day in field offices, that supervisors are not signing off on every decision. But as Ms. Stone said, one of the things that the IG recommended and that we are in the process of implementing that we think will get at the issue of ensuring both consistency and compliance with the policy are the systems changes that we are making to require those individuals to fully document and explain what evidence they used and how they adjudicated that evidence to make their determination.

The problem that we have is that our IG, our own quality reviewers, pointed out, and rightfully so, that the documentation around those decisions is lacking. And that right now is job number one to ensure that the documentation is done and that we are complying with policy.

Mr. Renacci. Ms. Stone, do you have any additional suggestions to improve the training process that SSA should consider?

Ms. Stone. I do not. Based on our work, I would not say that training was the main issue that we identified. It was more compliance with the existing policy that the agency had.

Mr. Renacci. Thank you.

I want to thank you, again, all of you. It is important for the Social Security Administration to continue to work to really improve the representative payee program, and I look forward to further work on this important issue.

I yield back my remaining time.

Chairman Johnson. Thank you.

Today's hearing focused on how Social Security decides who needs help managing their benefits. And while Social Security has made some changes, there is still work to be done.

The next hearing in this series will focus on who provides that help and how Social Security makes sure that they are doing a good job. Social Security's representative payee program is too important not to get it right. And I look forward to working with Social Security stakeholders and all of my colleagues to make changes, if necessary.

Thanks to our witnesses for their testimony. And I thank you also, to our members, for being here.

With that, the committee stands adjourned. Thank you to all of the witnesses for being here as well.

[Whereupon, at 11:56 a.m., the subcommittees were adjourned.]

MEMBER QUESTIONS FOR THE RECORD

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

February 23, 2017

Dr. Paul Appelbaum
Dollard Professor of Psychiatry, Medicine and Law
New York State Psychiatric Institute
1051 Riverside Drive, Box #122
New York, NY 10032

Dear Dr. Appelbaum:

Thank you for your testimony before the Committee on Ways and Means at the February 7, 2017 Social Security and Oversight joint hearing entitled “Examining the Social Security Administration’s Representative Payee Program: Determining Who Needs Help.” In order to complete our hearing record, we would appreciate your responses to the following questions:

1. Is the plan developed by the Social Security Administration (SSA) to improve the capability determination process sufficient to address the concerns raised by the Institute of Medicine (IOM)?
2. One of the recommendations made by the IOM report is to create a data-driven process to identify people at high risk for financial incapability. Can you discuss what sort of screening criteria you would suggest to help identify these high-risk individuals? Why do you believe having a data-driven approach is important for the representative payee program?
3. Why is it important for the SSA to evaluate and track the accuracy of capability determinations on an ongoing basis?
4. In what ways can an ongoing measurement and monitoring program be used to identify high-risk beneficiaries?

Questions from Rep. Carlos Curbelo:

1. Can you discuss how Social Security beneficiaries’ financial capability may change over time, for example due to aging or disability?

2. One recommendation in the IOM report was to develop a mechanism for identifying changes in beneficiaries' capability over time. Can you discuss how such a mechanism might operate?

We would appreciate your responses to these questions by **March 9, 2017**. Please send your response to the attention of Amy Shuart, Staff Director, Subcommittee on Social Security, and Rachel Kaldahl, Oversight Counsel, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, 2018 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response in Microsoft Word format to mm.russell@mail.house.gov.

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

Sincerely,



Sam Johnson
Chairman
Subcommittee on Social Security



Vern Buchanan
Chairman
Subcommittee on Oversight



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TO: Rep. Sam Johnson, Chair, Subcommittee on Social Security
Rep. Vern Buchanan, Chair, Subcommittee on Oversight
House Committee on Ways and Means

FROM: Paul S. Appelbaum, MD

DATE: February 27, 2017

RE: Questions posed in your letter of February 23rd

Thank you for the opportunity to testify before your subcommittees on February 7, 2017. I am pleased to respond to your additional questions below.

1. Is the plan developed by the Social Security Administration (SSA) to improve the capability determination process sufficient to address the concerns raised by the Institute of Medicine (IOM)?

Response: Our IOM committee made 6 recommendations for actions by SSA, including: providing guidance to informants on the information that SSA needs to determine whether a beneficiary is financially capable; creating screening criteria to identify beneficiaries at high risk for financial incapacity; coordinating with other federal agencies to identify dual beneficiaries who have been determined by one agency but not others to be unable to manage financial affairs; developing mechanisms to assess changes in beneficiaries' financial capability; pilot testing a supervised direct payment option; and developing a process for systematic evaluation of the process of determining financial capability. To date, I am told that SSA has begun acting on the first recommendation: developing guidance for informants of the kind recommended by the IOM committee; however, the adequacy of that guidance will need to be evaluated when it is publicly available. I am unaware of any progress by SSA on the other 5 recommendations.

2. One of the recommendations made by the IOM report is to create a data-driven process to identify people at high risk for financial incapability. Can you discuss what sort of screening criteria you would suggest to help identify these high-risk individuals? Why do you believe having a data-driven approach is important for the representative payee program?

Response: An initial step in developing a process for identifying high-risk beneficiaries could involve utilizing data already in SSA's possession to derive a model for predicting incapability.

Variables that might be incorporated in an initial model include age, sex, marital status, disabling condition, and physician rating of financial capability. The initial model could be tested on a sample of beneficiaries whose status as capable or incapable was objectively confirmed. Depending on the accuracy of a model incorporating data already routinely collected by SSA, it might be desirable to include additional variables that are not currently obtained but could be easily acquired and are likely to correlate with financial capability, e.g., education, prior occupation, age of onset of disabling condition, etc. If they materially improve the predictive accuracy of the model, SSA could collect them routinely in the disability evaluation process.

A data-driven approach to the identification of beneficiaries who lack financial capability will be responsive to the challenges that face SSA in the determination process today, including the large number of beneficiaries and the cost of carefully screening each of them for financial incapability. Identification of persons at high risk for incapability should allow SSA to focus its resources most efficiently, while reducing the number of beneficiaries whose incapacities currently may be overlooked.

3. Why is it important for the SSA to evaluate and track the accuracy of capability determinations on an ongoing basis?

Response: Today, in the absence of an evaluation system to determine the accuracy of the capability assessment process, it is impossible to say with any degree of confidence how well SSA carries out this responsibility. For SSA itself and for oversight bodies to know the accuracy of the current process, systematic evaluation is essential. In addition, to the extent that the recommendations of the IOM committee or other innovations are implemented, their impact on the accuracy of the determination process similarly will remain opaque in the absence of an evaluation system.

4. In what ways can an ongoing measurement and monitoring program be used to identify high-risk beneficiaries?

Response: Among people with disorders that may impair financial capability, including psychiatric and neurologic disorders, conditions often change over time. Some people's conditions will improve, e.g., as a person recovers from a traumatic brain injury or stroke; other conditions may inexorably worsen, e.g., Alzheimer's disease and other neurodegenerative conditions. Without means of periodic reassessment, errors in the determination of financial capability—both false positives and false negatives—will increase over time.

An ongoing program aimed at monitoring beneficiaries' financial capability could most efficiently be targeted at persons with conditions that are highly likely to evolve, i.e., either to improve or to worsen, as time passes. SSA already has a system for Continuing Disability Reviews (CDRs) to ascertain whether persons found to be entitled to SSDI remain disabled. A similar process could be set up for periodic review of beneficiaries whose financial capabilities are likely to change, and it could be combined with CDRs for persons subject to them.

In addition, both payees and beneficiaries could be asked to respond to regular (perhaps annual) brief questionnaires, with questions that probe significant changes in beneficiaries' financial performance. For beneficiaries without a representative payee, have bills been paid on time or overlooked? Does the person run out of money before the end of the month? Are basic needs (e.g., food, shelter, clothing, medical care) being met? For beneficiaries with a

representative payee, does the person's capacity to make financial decisions seem to be improved? How does the person handle funds disbursed to him or her on a discretionary basis? When indicated, responses could trigger a formal reevaluation of financial capability.

Finally, beneficiaries and those in regular contact with them (e.g., representative payees, family members, medical professionals) could receive periodic reminders to notify SSA of perceived changes in beneficiaries' capability to manage their financial affairs.

Questions from Rep. Carlos Curbelo:

1. Can you discuss how Social Security beneficiaries' financial capability may change over time, for example due to aging or disability?

Response: As noted in response to question 4 above, many of the conditions that may impair financial capability, especially neurologic and psychiatric disorders, can change over time. Dementias, such as Alzheimer's disease, are progressive, with increasing loss of function. When first deemed too impaired to work, a beneficiary may nonetheless retain sufficient capability to manage finances, but that too will be lost as the disease process continues to unfold. In contrast, someone with chronic schizophrenia that has resulted in work-related disability may recover sufficient function as a result of a new, more effective medication so as to become capable of managing payments from SSA. Whether a condition is improving or deteriorating, without periodic reassessment, accurate determination of financial capability will not be possible.

2. One recommendation in the IOM report was to develop a mechanism for identifying changes in beneficiaries' capability over time. Can you discuss how such a mechanism might operate?

Response: Please see my response to question 4 above.

I would be pleased to respond to any additional questions that the Subcommittees or their members may have. As you may already be aware, the Social Security Advisory Board (SSAB) is sponsoring a Policy Forum on the representative payee system on March 27th. I will be speaking during the day, along with a number of other presenters (<http://ssab.gov/FORUM2017-Rep-Payee-Home>).



SOCIAL SECURITY
Office of Retirement and Disability Policy

April 17, 2017

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

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

Dear Chairman Johnson and Chairman Buchanan:

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

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

Sincerely,

Marianna LaCanfora
Acting Deputy Commissioner for
Retirement and Disability Policy

Enclosure

1. How many capability determinations does the Social Security Administration (SSA) make in a given year?

We do not identify the discrete number of capability determinations we make in a year because we often make them in the course of completing other types of interaction we have with the public. Furthermore, capability determinations do not always result in the appointment of representative payees. For instance, we may consider a person's capability in the course of adjudicating his or her application for disability benefits. When assessing a beneficiary's capability, we will not appoint a representative payee if we find the beneficiary capable of managing or directing the management of benefits.

We plan to implement systems updates for our representative payee system in two phases. These updates will strengthen documentation and tracking of capability determinations related to representative payee applications. In June 2017, we will strengthen our system to enforce documentation of capability determinations. The next step, which is dependent on the availability of systems resources, will require collection of more information, and will enable enhanced tracking.

In calendar year 2016, we completed 1,918,938 representative payee applications. Of those, 343,345 involved beneficiaries for whom we were selecting a representative payee for the first time.

On average, how many does an individual field office employee make in a given year?

We also do not identify the discrete number of capability determinations made by a given employee in a year.

2. Do the field office employees responsible for making capability determinations review medical evidence regularly in their other job functions?

No, the field office employees responsible for making capability determinations generally do not review medical evidence regularly in their other job functions. In the context of making a capability determination for representative payee purposes, technicians look for medical evidence in the form of a statement from a beneficiary's own medical source (doctor, psychologist, etc.) based on his or her examination of the beneficiary. We have a form designed specifically for this purpose (SSA-787). The SSA-787 is a clear, concise vehicle for obtaining necessary medical information of capability. I have enclosed a copy for your reference (Enclosure 4).

However, I want to reiterate that we base our capability determination not only on medical evidence, but also on lay evidence (e.g., does this person pay bills on time) and any legal evidence. In addition, our State Disability Determination Services (DDS) employees regularly review medical evidence in determining whether an applicant is blind or disabled. DDS employees will notify our field offices when medical evidence suggests a capability issue.

- 3. What initial training and continuing education does the SSA provide field office employees to make capability determinations? Is this training focused solely on the representative payee program or part of other training? How frequently do the SSA employees receive training on making capability determinations? Is this training mandatory?**

We provide new customer service representatives and claims specialists training on making capability determinations as part of their training on the representative payee program. This training is mandatory and consists of a minimum of 40 hours of classroom instruction, as well as on-the-job training. The objectives of the initial training include:

- how to evaluate whether an individual needs a representative payee;
- how to evaluate the evidence required to support a capability determination;
- how to document the interview and determination, and how to select the representative payee using our online system; and
- how and when to issue advance notices of payee determinations.

On the job training provides more experience on the practical application of policy and procedures, with the help of a mentor.

With regard to continuing education, we periodically provide refresher training and make available tools, such as desk guides, to reinforce our training and our policy guidelines. For example, with the release of our updated policy instructions concerning capability development, we are providing comprehensive training through a nationwide interactive video broadcast to all of our field office employees who make capability determinations.

- 4. At a June 5, 2013 hearing before the Subcommittee on Social Security, the SSA discussed the formation of a strategic team to improve the representative payee program. What is the status of this strategic team? Who is in charge of the team and how often does the team meet?**

We created a temporary intra-agency strategic team that met from 2013 to 2014 to develop recommendations for improving the representative payee program. We have since implemented many of those recommendations, including a bar on a person who has been convicted of certain crimes from becoming a representative payee, a demographics study that estimated the number of individuals who might need a payee in the future, an Attorney Pro-Bono pilot, and an improved misuse information sharing process with the Department of Veterans Affairs (VA).

We executed these initiatives via a separate 10-person team solely devoted to the oversight of representative payee policy. This team continues to work on projects designed to strengthen the representative payee program, including systems enhancements, policy revisions, and potential legislative changes.

- 5. The Office of the Inspector General (OIG) has conducted numerous audits of the representative payee program. For OIG recommendations that the SSA agreed to and that remain unaddressed, please provide a timeline for implementation.**

Please see Enclosure 2 for this information.

6. How does the SSA use information from state and local courts in identifying beneficiaries who may need a representative payee?

We require legal evidence when there is an allegation that a beneficiary is legally incompetent. We review court orders from State and local courts to determine if there is a finding in place that an individual is incompetent. If the beneficiary is legally incompetent, we appoint a representative payee without conducting further capability development.

We may use a court order as evidence even when it does not establish legal incompetency. We will weigh the order along with all the other evidence in our capability determination if it describes the beneficiary's ability or lack of ability to manage money.

7. Five years ago, in 2011, the Government Accountability Office suggested information sharing among federal agencies and between federal and state agencies. Why has the SSA not taken action pursuant to this recommendation? What obstacles stand in the way of sharing such information?

Since that time, we have worked with other agencies to share information. For instance, we established a process for sharing information with the VA. When either the VA or SSA investigates misuse of benefits by someone serving as both a representative payee for us, and as a fiduciary for VA, one agency shares that information with the other. We also are exploring expanding our data sharing with the VA to include other information we might use in our capability determination process.

8. Are there any privacy concerns with sharing data between the SSA and other federal and local entities? Please list any concerns and whether there are legislative or regulatory solutions to address them.

Yes. When we consider sharing data with any entity, we must determine whether the sharing arrangement would be consistent with applicable privacy laws, such as the Privacy Act of 1974, and our privacy regulations. Our legal authority to disclose information depends on the entity involved, the type of data to be disclosed, and how the recipient entity intends to use the data.

Separately, we have worked to provide clear guidance to our employees concerning our existing authority to disclose. For example, we recently updated our policy instructions to clarify a technician's authority to disclose information to a State or Local Protective Service Agency when he or she suspects abuse or neglect of an individual or when the State or Local Protective Service Agency requests information from us. We are also developing clearer guidance for use by our employees to assess disclosure authority in circumstances involving disclosures made to a legal guardian versus a representative payee.

Questions from Representative George Holding:

- 1. Please describe the process by which an individual can appeal the SSA's capability determination.**

Please see the enclosed document titled “Representative Payee Appeal Rights Policy Overview” (Enclosure 3), which provides an overview of the process by which a person can appeal either our determination that he or she needs a representative payee or our selection of the representative payee. This document also provides information that responds to the following two numbered groups of questions.

- 2. How much time is the individual afforded to appeal the SSA's capability determination?**

The decision to appoint a representative payee (the capability determination) is an initial determination that is subject to our administrative appeals process. Under that process, the beneficiary has 60 days to appeal the determination.

Prior to implementing this initial determination, we send the beneficiary an advance notice advising him or her that we have determined that he or she needs a representative payee, the name of the proposed payee, and the beneficiary's right to appeal. The notice also advises the beneficiary that if we do not receive a protest within 10 days of the date the beneficiary received the notice, we will make payment to the representative payee as stated in the notice. It also explains the 60-day reconsideration period.

- 3. What happens to the beneficiary payments after the SSA has been notified of an individual's intent to appeal? Are the payments sent to the beneficiary? Are the payments sent to the representative payee?**

Please see Enclosure 3 for this information.

Questions from Representative Pat Meehan:

- 1. A June 2015 report by the SSA's Office of Quality Review found that most capability determination decisions are "underdeveloped, undocumented, or insufficiently documented." Please describe the steps taken by the SSA to address recommendations by the Office of Quality Review and the OIG to improve the documentation of capability determination decisions. Please include the dates on which these recommendations were or will be implemented.**

In response to these reports, we have developed a number of initiatives to improve our capability determination process. These initiatives include:

Improve capability instructions in our policy guidance. Specifically, we consolidated and clarified our capability determination policy instructions to better ensure that field

office technicians consistently develop and document these determinations. In issuing these instructions, we implemented the National Academy of Medicine’s study recommendation to provide detailed guidance to third-party sources on the feedback they provide to us about a beneficiary’s financial performance. We added structured questions for field office employees to ask third-party sources. We also clarified that third-party sources must have direct observation and knowledge of a beneficiary’s financial performance to assist us in making a capability determination. We published this policy guidance in January 2017.

Increase training frequency and responsiveness. We will reinforce the release of the policy guidance discussed above by delivering comprehensive training through a nationwide interactive video broadcast to all of our field office employees who make capability determinations.

Enhance our systems for documenting capability determinations. We are developing systems enhancements to implement a robust business process for comprehensive decision-making and standardized documentation across our field offices. These enhancements will ensure that field office employees document the pertinent facts from all applicable medical, lay, and legal evidence relied upon to make the capability determination. They will also satisfy the OIG report recommendation that we improve controls to ensure our employees document their capability determinations. Furthermore, these enhancements will systematically enforce our new structured set of questions to third parties about a beneficiary’s financial performance, which will greatly improve our collection of lay evidence. Beginning in Fiscal Year 2017, we are implementing phased enhancements to our system to reinforce proper documentation and accountability. Regarding situations where a beneficiary receives direct payment for one program and has a representative payee for another, our electronic representative payee system (eRPS) now requires employees to check all records where entitlement or eligibility exists.

Provide quality review to verify results. As we make changes to policy, training, and systems processing in order to strengthen the capability determination process, we are also committed to reviewing the results of our actions. Our quality review process will evaluate outcomes, as we analyze the effectiveness of our policies, training, and systems revisions.

2. I understand the SSA consolidated and clarified its capability determination policy instructions to better ensure that field office technicians consistently develop and document these determinations. Please describe when these instructions were finalized and how they have changed.

We made the revised policy instructions available to our field office technicians in January 2017. The instructions now include:

- structured questions field office technicians can use to obtain information from a third party that will help determine whether a beneficiary is capable;
- comprehensive guidance for documenting capability determinations; and

- streamlined organization to remove duplication and improve clarity and user understanding.

3. What steps will the SSA take to monitor and assess the changes to the documentation process, specifically, how will the SSA assess whether the changes achieve its intended effect?

As I noted in response to a related question above from the Chairmen, as we make changes to policy, training, and systems processing in order to strengthen the capability determination process, we are also committed to reviewing the results of our actions. Our quality review process will evaluate outcomes, as we analyze the effectiveness of our policies, training, and systems revisions.

Audit	Recommendations	Status as of March 2017
OIG Final Report, "Individual Representative Payees Who Do Not Have a Social Security Number Recorded on the Social Security Administration's Payment Records"	Recommendation 1: Take appropriate action for the 77 beneficiaries whose representative payees' Social Security numbers (SSN) are not on the Master Beneficiary Record (MBR)/Supplemental Security Record (SSR), as identified by our audit.	We agree. We anticipate completion in June 2018.
	Recommendation 2: Evaluate the results of its actions for the 77 beneficiaries and determine whether it should review the remaining population of 224,164 beneficiaries we identified.	We agree. We anticipate completion in September 2018.
	Recommendation 3: Improve controls to ensure (a) it records representative payees' SSNs on the MBR/SSR and (b) its systems generate alerts when there is a discrepancy between representative payee information in the Electronic Representative Payee System (eRPS) and the MBR/SSR.	We agree. We expect completion in August 2017. In addition to considering recommended controls, we are currently developing requirements for new functionality within eRPS that will include a monthly review of those applications ready to be processed.
OIG Final Report, "Active Representative Payees Who Are Not in the Social Security Administration's Representative Payee System"	Recommendation 1: Take appropriate action to establish in eRPS, records for the representative payees of the 91 beneficiaries identified by our audit.	We agree. We anticipate completion in March 2018.
	Recommendation 2: Evaluate the results of its corrective action for the 91 beneficiaries and determine whether it should take appropriate action to address the remaining population of beneficiaries identified by our audit.	We agree. Once we evaluate our results from recommendation 1, we will determine what, if any, additional actions are necessary. We anticipate completion of our analysis by June 2018.

Audit	Recommendations	Status as of March 2017
	Recommendation 3: Remind employees to retain paper applications as required.	We agree. We plan to release an Administrative Message in June 2017.
OIG Final Report, "Disabled Beneficiaries Receiving Direct Payments who Previously had a Representative Payee"	Recommendation 1: Take appropriate action to obtain evidence of capability and make capability determinations for the 76 beneficiaries identified by our audit.	We agree. We anticipate completion in August 2017.
	Recommendation 2: Evaluate the results of its corrective action for the sample of beneficiaries and, if a substantial number are incapable of managing or directing the management of their benefits, determine the appropriate action it should take for the remaining population of 99,458 beneficiaries.	We agree. We will need to evaluate the results of the actions taken for recommendation 1, before determining appropriate action for this recommendation. OIG previously agreed that if we find that a substantial number of the cases in recommendation 1 are documentation errors only, they would not require us to take action on the remaining 99,458. Our evaluation of the results of recommendation 1 will be completed by the end of calendar year 2017.
	Recommendation 3: Improve controls to ensure Social Security Administration employees document their capability determinations.	We agree. Implementation of an update that will require field office employees to document their capability determinations prior to selection is scheduled for June 17, 2017.
OIG Final Report, "Benefits Payable to Child Beneficiaries Whose Benefits Had Been Withheld Pending the Selection of a Representative"	Recommendation 1: Take appropriate action to resolve the benefits withheld from the 55 beneficiaries identified by our current audit.	We agree. We anticipate completion by June 30, 2017.
	Recommendation 2: Evaluate the results of its actions for the 55 beneficiaries and determine whether it should review the remaining 11,927 beneficiaries identified by our current audit.	We agree. Once we complete the actions for recommendation 1, we will determine a course of action to address recommendation 2. We expect to have the results of the 55 cases evaluated and a plan of action for the population, if needed, by the end of FY 2017.

Audit	Recommendations	Status as of March 2017
<p>Payee"</p>	<p>Recommendation 3: Conduct analysis to determine which of the 4,233 beneficiaries identified by our prior audit need to receive an underpayment notification.</p>	<p>We agree. We will take action to re-evaluate the 4,233 cases to determine if we need to send an underpayment notification to the beneficiary. Our operational, policy, and system components are working together to develop a plan to conduct analysis on this population in FY 2018 to identify and notify those beneficiaries who have likely been underpaid based on agency withholding due to the pending selection of a representative payee.</p>
	<p>Recommendation 4: Pay the 214 beneficiaries in current pay on another record as identified by our prior audit.</p>	<p>We agree. We anticipate completion in April 2017.</p>
	<p>Recommendation 5: Implement controls to ensure it pays withheld benefits to child beneficiaries.</p>	<p>We agree. Our operational and systems components are having continuing discussions to determine the feasibility of implementing additional controls for paying withheld benefits to child beneficiaries. We are unable to provide an exact timeframe for completion of this action.</p>
<p>OIG Final Report, "Benefits Payable to Child Beneficiaries Whose Benefits Had Been Withheld Pending the Selection of a Representative Payee"</p>	<p>Recommendation 2: Take appropriate action to verify and correct the representative payees' SSNs, establish a Representative Payee System (RPS) record, obtain a paper application, or correct the type of payee for 50 beneficiaries identified by our audit.</p>	<p>We agree. We anticipate completion in December 2017.</p>
	<p>Recommendation 3: Evaluate the results of its review for the sampled beneficiaries and take appropriate action to address the remaining populations of beneficiaries identified by our audit.</p>	<p>We agree. We will develop a plan of action by the first quarter of FY 18.</p>
	<p>Recommendation 4: Determine whether it should develop additional systems controls to prevent incapable beneficiaries from serving</p>	<p>We agree. Once we evaluate the results of the cases from recommendation 2, we will identify the root cause of the issue and work to develop additional systems controls.</p>

Audit	Recommendations	Status as of March 2017
	as representative payees and ensure it accurately records representative payees' SSNs on the MBR/SSR/RPS.	
OIG Final Report, "Concurrently Entitled Beneficiaries Receiving Representative Payee and Direct Payments"	Recommendation 1: Assess whether it should develop a systems alert to identify when discrepant information is on the MBR and SSR.	We agree. We are currently conducting analysis and exploring our options.
	Recommendation 2: Conduct timely MBR and SSR matches to identify and correct discrepant payment information.	We agree. We anticipate completion of this action in FY 2018.
OIG Final Report, "Agency Actions Concerning Misuse of Benefits by Organizational and Volume Individual Representative Payees"	Recommendation 2: Implement policy to timely reissue misused funds to the estates of deceased beneficiaries.	We agree. We published a policy change in January 2017 that instructed staff to timely reissue misused funds to the deceased beneficiary's estate.
OIG Final Report, "Representative Payees and Beneficiaries Who Were Residing in Different States"	Recommendation 3: Determine whether additional oversight is required for representative payees who reside in a State different from the beneficiaries they represent based on any action taken in response to Recommendations 1 and 2.	We agree. We released the first phase of eRPS in April 2016. We have not determined a release date for the next phase

Audit	Recommendations	Status as of March 2017
OIG Final Report, "Representative Payee Selections Pending in the Representative Payee System"	Recommendation 3: Determine whether it should modify the RPS clean-up operation to ensure it does not improperly change representative payee selections to a non-selected status.	We agree. We are in the process of re-writing the RPS clean-up operation and anticipate completion in September 2017.
OIG Final Report, "Accumulated Funds Payable to Beneficiaries or Their Representative Payees"	Recommendation 2: Develop a cost-effective method for identifying and paying, as appropriate, Title II beneficiaries who have unpaid accumulated funds.	We agree. We are currently exploring the feasibility of developing a cost-effective method for identifying and paying, as appropriate, Title II beneficiaries who have unpaid accumulated funds.

Representative Payee Appeal Rights Policy Overview

The appeal process for a capability determination or representative payee selection includes a reconsideration (by the field office), hearing (before an administrative law judge), Appeals Council review, and Federal court review. The first three steps are the “administrative” review process; SSA administers all three steps. If an individual is not satisfied with our decision, he or she may request “judicial” review by filing a civil action in Federal District Court.

SSA provides advance notice to any legally competent adult individual before appointing a representative payee. Once a determination of incapability is established and we have selected a representative payee, we send an advance notice of the proposed payee appointment to the beneficiary prior to certification of benefits to the proposed payee. The advance notice informs the beneficiary that SSA has determined that a representative payee is needed, provides the name of the proposed representative payee, and explains the beneficiary's right to appeal within 60 days of receipt of the advance notice. The advance notice also advises the beneficiary that if we do not receive a protest within 10 days of the receipt of the advance notice (we allow an additional 5 days for mailing time), we will make payment to the representative payee named in the advance notice. The beneficiary retains the right to file an appeal during the remaining time of the 60-day appeal period.

SSA will investigate and resolve any response or inquiry received from a beneficiary concerning the advance notice. A field office technician who was not involved in the original decision will review the initial capability determination. If the beneficiary disputes the representative payee selection, we will resolve the dispute before we process the representative payee appointment. If we have not yet made the representative payee appointment and the issue cannot be resolved immediately, we initiate direct payment to the beneficiary, if possible. However, there are exceptions. We cannot make direct payment to beneficiaries who are legally incompetent, are under age 15, or receive disability benefits and have a drug addiction or alcoholism condition. For these beneficiaries, we must suspend benefits pending representative payee selection. Additionally, if we determine that paying a beneficiary directly would cause substantial harm, we may suspend benefits for one month based on the finding of substantial harm.¹ After the one month has expired, we must pay the beneficiary directly while representative payee development continues.

(Policy References: GN 00504.105 Direct Payment to Incapable Beneficiaries When Further Payee Development is Needed, GN 00503.100 Advance Notice, GN 00503.120 Response Received to Advance Notice)

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

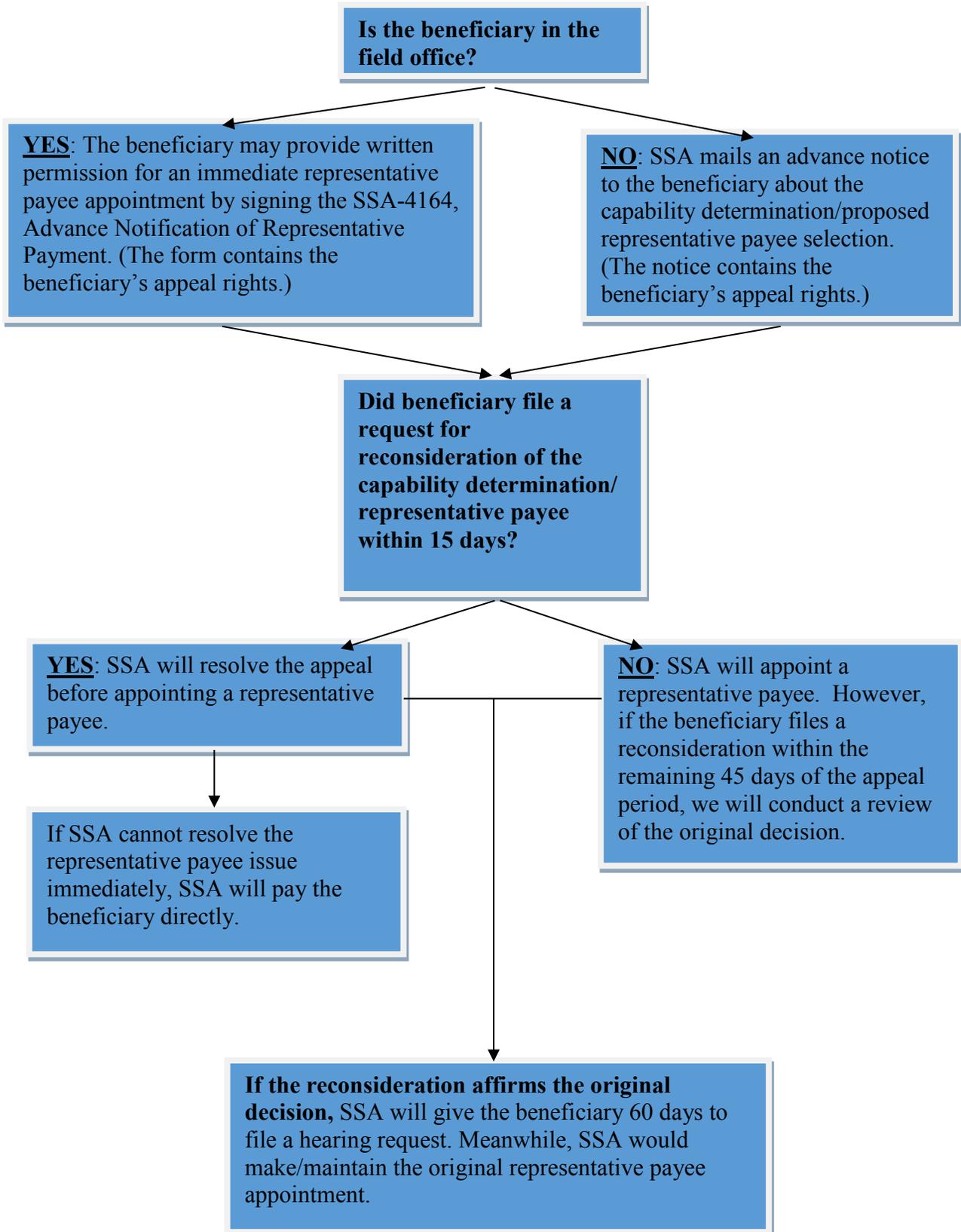
Flow Chart Narrative

**Individual is a legally competent adult, determined incapable,
who was appointed a representative payee**

- If the beneficiary is in the office at the time of the representative payee appointment, the beneficiary may provide written permission for an immediate representative payee appointment, via the SSA-4164, Advance Notification of Representative Payment. This form contains information about the beneficiary’s appeal rights.
- If the beneficiary is not in the office at the time of the representative payee selection, we mail an advance notice to the beneficiary about the capability determination and proposed representative payee selection. The advance notice contains the beneficiary’s appeal rights.
- If the beneficiary files a request for reconsideration of the capability determination or representative payee selection within 15 days of when we send the advance notice, we will resolve the reconsideration request before appointing a representative payee. If we cannot resolve the issue immediately, we will pay the beneficiary directly.²
- If the beneficiary does not file a request for reconsideration of the capability determination or representative payee selection within 15 days of when we send the advance notice, we will appoint a representative payee. However, if the beneficiary files a request for reconsideration in the remaining 45 days of the appeal period, we will conduct a review of the original decision.
- If the reconsideration affirms the original decision, we will give the beneficiary 60 days to file a hearing request. Meanwhile, SSA would make/maintain the original representative payee appointment.

² If we determine that paying an adult legally competent beneficiary directly would cause the beneficiary substantial harm, we may suspend benefits for up to one month based on the finding of substantial harm. Suspensions based on “substantial harm” do not apply to residents of California, unless the beneficiary is receiving disability benefits and drug addiction and/or alcoholism is material to the disability determination.

Appeal Process on Representative Payee Appointment



Social Security Administration

Form Approved
OMB No. 0960-0024

**PHYSICIAN'S/MEDICAL OFFICER'S STATEMENT OF
PATIENT'S CAPABILITY TO MANAGE BENEFITS**

	In replying, use this address: SOCIAL SECURITY ADMINISTRATION
	TELEPHONE NUMBER (Including Area Code)
	DATE
	SSA CONTACT

IDENTIFYING INFORMATION (SSA Only)
If different from patient

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON	SOCIAL SECURITY NUMBER
---	------------------------

PATIENT'S NAME

PATIENT'S SOCIAL SECURITY NUMBER	PATIENT'S DATE OF BIRTH
----------------------------------	-------------------------

PATIENT'S ADDRESS (Number and Street, City, State, and ZIP Code)

YOUR HELP IS NEEDED

The patient shown above has filed for or is receiving Social Security or Supplemental Security Income payments. We need you to complete the back of this form and return it to us in the enclosed envelope to help us decide if we should pay this person directly or if he or she needs a representative payee to handle the funds. Please Note: This determination affects how benefits are paid and has no bearing on disability determinations; SSA will NOT pay for this information. Thank you for your help.

WHO IS A REPRESENTATIVE PAYEE

A representative payee is someone who manages the patient's money to make sure the patient's needs are met. The payee has a strong and continuing interest in the patient's well-being and is usually a family member or close friend.

WHO NEEDS A REPRESENTATIVE PAYEE

Some individuals age 18 and older who have mental or physical impairments are not capable of handling their funds or directing others how to handle them to meet their basic needs, so we select a representative payee to receive their payments. Examples of impairments which may cause incapability are senility, severe brain damage or chronic schizophrenia. However, even though a person may need some assistance with such things as bill paying, etc., does not necessarily mean he/she cannot make decisions concerning basic needs and is incapable of managing his/her own money.

PLEASE COMPLETE THE INFORMATION ON THE REVERSE OF THIS FORM

PATIENT'S NAME

PATIENT'S SOCIAL SECURITY NUMBER

PATIENT'S DATE OF BIRTH

PATIENT'S ADDRESS (Number and Street, City, State, and ZIP Code)

1. Date you last examined the patient _____

2. Do you believe the patient is capable of managing or directing the management of benefits in his or her own best interest?
By capable we mean the patient:

- Is able to understand and act on the ordinary affairs of life, such as providing for own adequate food, housing, clothing, etc., and
- Is able, in spite of physical impairments, to manage funds or direct others how to manage them.

Yes

If "Yes", please omit question 3, but be sure to sign and date the form.

No

If "No", please provide a brief summary of the findings that led to this conclusion. Also, complete question 3.

Unsure

If "Unsure", please explain.

3. Do you expect the patient to be able to manage funds in the future (for example, the patient is temporarily unconscious)?

Yes No

If yes, please explain.

NAME OF PHYSICIAN/MEDICAL OFFICER (Please print.)

TITLE

ADDRESS (Number and Street, City, State, and ZIP Code)

TELEPHONE NUMBER (Include Area Code)

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge. I understand that anyone who knowingly gives a false statement about a material fact in this information, or causes someone else to do so, commits a crime and may be subject to a fine or imprisonment.

SIGNATURE OF PHYSICIAN/MEDICAL OFFICER

DATE

Privacy Act Statement
Collection and Use of Personal Information

Sections 205(a) and 205(j) of the Social Security Act, as amended, authorize us to collect this information. We will use the information you provide to make a determination regarding the beneficiary's need for a representative payee.

Furnishing us this information is voluntary. However, failing to provide us with all or part of the information may prevent an accurate and timely decision on any claim filed.

We rarely use the information you supply us for any purpose other than to make a determination regarding management of benefits. However, we may use the information for the administration of our programs including sharing information:

1. To comply with Federal laws requiring the release of information from our records (e.g., to the Government Accountability Office and Department of Veterans Affairs); and,
2. To facilitate statistical research, audit, or investigative activities necessary to ensure the integrity and improvement of our programs (e.g., to the Bureau of the Census and to private entities under contract with us).

A list of when we may share your information with others, called routine uses, is available in our Privacy Act System of Records Notices 60-0089, entitled Claims Folders Systems; and, 60-0222, entitled Master Representative Payee File. Additional information about these and other system of records notices and our programs is available online at www.socialsecurity.gov or at your local Social Security office.

We may also use the information you provide in our computer matching programs. Matching programs compare our records with records kept by other Federal, State, or local government agencies. Information from these matching programs can be used to establish or verify a person's eligibility for federally funded or administered benefit programs and for repayment of incorrect payments or delinquent debts under these programs.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 10 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE. You can find your local Social Security office through SSA's website at www.socialsecurity.gov. Offices are also listed under U.S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213 (TTY 1-800-325-0778).** *You may send comments on our time estimate above to: SSA, 6401 Security Blvd, Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.*

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

March 13, 2017

Ms. Marianna LaCanfora
Acting Deputy Commissioner
Retirement and Disability Policy
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Acting Deputy Commissioner LaCanfora:

Thank you for your testimony before the Subcommittee on February 7 at its hearing on “Examining the Social Security Administration’s Representative Payee Program.” In order to complete the record for the hearing, please respond to the following questions:

- 1) Over the last decade, SSA has seen a 10 million increase in beneficiaries due to the aging of the baby boomers. Yet since 2010, its basic operating budget has been reduced by 10%, adjusted for inflation. What have been the consequences of this squeeze between more people relying on SSA’s services, and less money to deliver them?
- 2) Improving information technology systems requires money. In light of SSA’s reduced administrative budget, is there any way SSA could undertake an agency-wide improvement and modernization of its information technology systems to deal with the increasing number of beneficiaries it will be serving over the next several years and into the next decade? Can this be accomplished simply by “prioritizing projects and initiatives”?
- 3) Dr. Appelbaum suggested that some of the individuals who were being designated as representative payees could instead be designated as part of a supportive-decision making team, without requiring any additional personnel or processes at SSA. Do you agree? Why or why not?

I would appreciate receiving your response to these questions by March 31, 2017. Please send your response to the attention of Kathryn Olson, Democratic Staff Director, Subcommittee on Social Security, Committee on Ways and Means, 2017 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your

March 13, 2017

Page 2

response to Kathryn.Olson@mail.house.gov and to the Subcommittee clerk at MM.Russell@mail.house.gov.

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

Sincerely,



John B. Larson
Ranking Member
Subcommittee on Social Security

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



SOCIAL SECURITY

Office of Retirement and Disability Policy

May 11, 2017

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

Dear Mr. Larson:

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

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

Sincerely,

Marianna LaCanfora
Acting Deputy Commissioner for
Retirement and Disability Policy

Enclosure

QUESTIONS FOR THE RECORD

Ranking Member John B. Larson

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

February 23, 2017

Gale Stallworth Stone
Acting Inspector General
Office of the Inspector General
Social Security Administration
6401 Security Boulevard
Woodlawn, MD 21207

Dear Acting Inspector General Stone:

Thank you for your testimony before the Committee on Ways and Means at the February 7, 2017 Social Security and Oversight joint hearing entitled “Examining the Social Security Administration’s Representative Payee Program: Determining Who Needs Help.” In order to complete our hearing record, we would appreciate your responses to the following questions:

1. The Office of the Inspector General (OIG) has conducted numerous audits of the representative payee program. Of the Inspector General’s recommendations that the agency has agreed with over the last 10 years, how many have been implemented? How many are still outstanding? Please provide a list of the outstanding recommendations along with the title and date of the associated report.

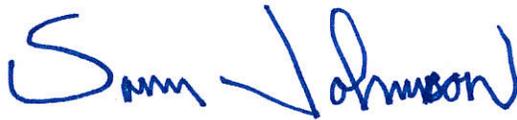
Questions from Rep. Carlos Curbelo:

1. In 2010, the OIG conducted a review that found that the Social Security Administration (SSA) may not be aware of some older beneficiaries who need a representative payee. Has OIG undertaken any more recent reviews of this challenge to determine whether the SSA has made progress since the 2010 report? If so, please explain.
2. In 2016, the OIG identified cases where Disability Insurance beneficiaries who had previously been assigned a representative payee now no longer had one. Can you discuss what the OIG found and what steps, if any, the SSA has taken to address these concerns?

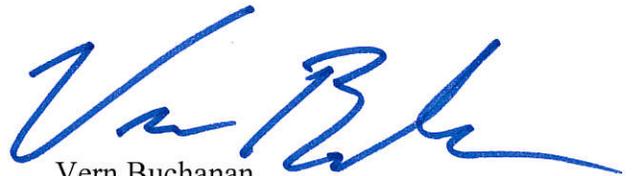
We would appreciate your responses to these questions by **March 9, 2017**. Please send your response to the attention of Amy Shuart, Staff Director, Subcommittee on Social Security, and Rachel Kaldahl, Oversight Counsel, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, 2018 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response in Microsoft Word format to mm.russell@mail.house.gov.

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

Sincerely,



Sam Johnson
Chairman
Subcommittee on Social Security



Vern Buchanan
Chairman
Subcommittee on Oversight

response to our findings, SSA stated it had developed a Capability Action Plan that includes planned changes to its electronic Representative Payee System that will enforce the mandatory documentation of capability determinations.

If you have any questions, please call me, or have your staff contact Walter Bayer, Congressional and Intra-governmental Liaison, at (202) 358-6319. I am sending a similar letter to Congressman Vern Buchanan, Chairman, Subcommittee on Oversight.

Sincerely,



Gale Stallworth Stone
Acting Inspector General

Enclosures (2)

response to our findings, SSA stated it had developed a Capability Action Plan that includes planned changes to its electronic Representative Payee System that will enforce the mandatory documentation of capability determinations.

If you have any questions, please call me, or have your staff contact Walter Bayer, Congressional and Intra-governmental Liaison, at (202) 358-6319. I am sending a similar letter to Congressman Sam Johnson, Chairman, Subcommittee on Social Security.

Sincerely,



Gale Stallworth Stone
Acting Inspector General

Enclosures (2)

Social Security Administration, Office of the Inspector General
Unimplemented Representative Payee Recommendations
January 2007 through December 2016

Report Title	Issue Date	Recommendation
Accumulated Funds Payable to Beneficiaries or Their Representative Payees	12/11/2012	Develop a cost-effective method for identifying and paying, as appropriate, Title II beneficiaries who have unpaid accumulated funds.
Representative Payee Selections Pending in the Representative Payee System (RPS)	2/27/2014	Determine whether it should modify the RPS clean-up operation to ensure it does not improperly change representative payee selections to a non-selected status.
Representative Payees and Beneficiaries Who Were Residing in Different States	8/27/2014	Determine whether additional oversight is required for representative payees who reside in a State different from the beneficiaries they represent.
Agency Actions Concerning Misuse of Benefits by Organizational and Volume Representative Payees	2/25/2016	Implement policy to timely reissue misused funds to the estates of deceased beneficiaries.
Concurrently Entitled Beneficiaries Receiving Representative Payee and Direct Payments	5/5/2016	Assess whether it should develop a systems alert to identify when discrepant information is on the Master Beneficiary (MBR) and Supplemental Security Record (SSR).
Concurrently Entitled Beneficiaries Receiving Representative Payee and Direct Payments	5/5/2016	Conduct timely MBR and SSR matches to identify and correct discrepant payment information.
Beneficiaries Serving as Representative Payees Who Have a Representative Payee	8/10/2016	Take appropriate action to verify and correct the representative payees' Social Security Numbers (SSN), establish a RPS record, obtain a paper application, or correct the type of payee for 50 beneficiaries identified by our audit.
Beneficiaries Serving as Representative Payees Who Have a Representative Payee	8/10/2016	Evaluate the results of its corrective action for the sampled beneficiaries and take appropriate action to address the remaining populations of beneficiaries identified by our audit.
Beneficiaries Serving as Representative Payees Who Have a Representative Payee	8/10/2016	Determine whether it should develop additional systems controls to prevent incapable beneficiaries from serving as representative payees and to ensure it accurately records representative payees SSNs on the MBR/SSR/RPS.

**Social Security Administration, Office of the Inspector General
Unimplemented Representative Payee Recommendations
January 2007 through December 2016**

Report Title	Issue Date	Recommendation
Benefits Payable to Child Beneficiaries Whose Benefits Were Withheld Pending the Selection of a Representative Payee	9/23/2016	Take appropriate action to resolve the benefits withheld from the 55 beneficiaries identified by our current audit.
Benefits Payable to Child Beneficiaries Whose Benefits Were Withheld Pending the Selection of a Representative Payee	9/23/2016	Evaluate the results of its actions for the 55 beneficiaries and determine whether it should review the remaining 11,927 beneficiaries identified by our current audit.
Benefits Payable to Child Beneficiaries Whose Benefits Were Withheld Pending the Selection of a Representative Payee	9/23/2016	Conduct analysis to determine which of the 4,233 beneficiaries identified by our prior audit need to receive an underpayment notification.
Benefits Payable to Child Beneficiaries Whose Benefits Were Withheld Pending the Selection of a Representative Payee	9/23/2016	Pay the 214 beneficiaries in current pay on another record as identified by our prior audit.
Benefits Payable to Child Beneficiaries Whose Benefits Were Withheld Pending the Selection of a Representative Payee	9/23/2016	Implement controls to ensure it pays withheld benefits to child beneficiaries.
Disabled Beneficiaries Receiving Direct Payments Who Previously Had a Representative Payee	12/12/2016	Take appropriate action to obtain evidence of capability and make capability determinations for the 76 beneficiaries identified by our audit.
Disabled Beneficiaries Receiving Direct Payments Who Previously Had a Representative Payee	12/12/2016	Evaluate the results of its corrective action for the sample of beneficiaries and, if a substantial number are incapable of managing or directing the management of their benefits, determine the appropriate action it should take for the remaining population of 99,458 beneficiaries.
Disabled Beneficiaries Receiving Direct Payments Who Previously Had a Representative Payee	12/12/2016	Improve controls to ensure SSA employees document their capability determinations.

Audit Report

Disabled Beneficiaries Receiving
Direct Payments Who Previously Had
a Representative Payee

A-09-17-50205 / December 2016

MEMORANDUM

Date: December 12, 2016

Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Disabled Beneficiaries Receiving Direct Payments Who Previously Had a Representative Payee (A-09-17-50205)

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration had adequate controls to ensure it made capability determinations for disabled beneficiaries who previously had a representative payee.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.



Gale Stallworth Stone

Attachment

Disabled Beneficiaries Receiving Direct Payments Who Previously Had a Representative Payee

A-09-17-50205



December 2016

Office of Audit Report Summary

Objective

To determine whether the Social Security Administration (SSA) had adequate controls to ensure it made capability determinations for disabled beneficiaries who previously had a representative payee.

Background

SSA appoints representative payees to receive and manage the payments of those beneficiaries who cannot manage or direct the management of their own benefits because of their youth or mental and/or physical impairments.

When SSA learns a beneficiary has a mental or physical impairment that may prevent him/her from managing or directing the management of benefits, it must make a capability determination as to whether representative or direct payment is in the beneficiary's best interest.

If SSA employees subsequently determine a beneficiary does not need a representative payee, they must document their capability determination in the Electronic Representative Payee System (eRPS).

For our review, we identified 99,658 disabled beneficiaries who had a mental impairment, previously had a representative payee, and were receiving benefits directly as of July 2015.

Findings

SSA needs to improve controls to ensure it makes and documents capability determinations for disabled beneficiaries who previously had a representative payee. Based on our random sample, we estimate that, for 44,348 disabled beneficiaries who previously had a representative payee, there was no evidence of SSA's capability determination of whether the beneficiaries were capable of managing or directing the management of their benefits. If SSA determined these beneficiaries were incapable, it should not have paid the estimated \$2.8 billion in direct payments it paid to these beneficiaries. Conversely, if SSA found they were capable and it simply did not document its capability determinations, the payments to these beneficiaries would have been proper.

This occurred because SSA employees (1) did not make capability determinations or (2) made capability determinations but did not document those determinations in eRPS. In addition, there were no controls to ensure SSA employees had documented their capability determinations.

Recommendations

We recommend that SSA:

1. Take appropriate action to obtain evidence of capability and make capability determinations for the 76 beneficiaries identified by our audit.
2. Evaluate the results of its corrective action for the sample of beneficiaries and, if a substantial number are incapable of managing or directing the management of their benefits, determine the appropriate action it should take for the remaining population of 99,458 beneficiaries.
3. Improve controls to ensure SSA employees document their capability determinations.

SSA agreed with our recommendations.

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ABBREVIATIONS

DIG	Diagnosis Code
eRPS	Electronic Representative Payee System
MBR	Master Beneficiary Record
OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SDIG	Secondary Diagnosis Code
SSA	Social Security Administration
U.S.C.	United States Code

OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) had adequate controls to ensure it made capability determinations for disabled beneficiaries who previously had a representative payee.

BACKGROUND

The Old-Age, Survivors and Disability Insurance (OASDI) program provides monthly benefits to retired and disabled workers, including their dependents and survivors.¹ SSA appoints representative payees to receive and manage the payments of those beneficiaries who cannot manage or direct the management of their own benefits because of their youth or mental and/or physical impairments. SSA selects representative payees when representative payments would serve the beneficiaries' interests.²

According to SSA policy, it presumes that all legally competent, adult beneficiaries are capable of managing or directing the management of their benefits unless there are indicators or evidence to the contrary. When SSA learns a beneficiary has a mental or physical impairment that may prevent him/her from managing or directing the management of benefits, it must make a capability determination as to whether representative or direct payment is in the beneficiary's best interest.³

When an adult beneficiary requires a representative payee and none is immediately available, SSA must initiate a search for a suitable representative payee and make interim direct payment to the beneficiary unless it would cause physical or mental injury to the beneficiary, or the beneficiary is legally incompetent or under age 15. If direct payment to an incapable beneficiary would cause the beneficiary physical or mental injury, SSA can generally suspend benefits for a maximum of 1 month while developing for a representative payee. In cases where direct payment to an incapable beneficiary is required, SSA employees must follow up after 90 days to determine how the beneficiary is handling his/her benefits. If SSA has not located a representative payee, it must follow up in another 90 days and reassess how the beneficiary is handling his/her benefits. If SSA has not located a representative payee after a second follow up, it must follow up a third time in another 90 days and continue direct payment without further review if it appears the beneficiary used the benefits to meet his/her needs. Otherwise, SSA must continue follow-up contacts until a representative payee is appointed. SSA policy states that it must document its follow-up contacts and decision to continue direct payment. If SSA

¹ The *Social Security Act*, § 201 *et seq.*, 42 U.S.C. § 401 *et seq.*

² SSA, POMS, GN 00502.001 (March 16, 2011) and GN 00502.010 (February 25, 2003).

³ SSA, POMS, GN 00502.010 (February 25, 2003) and GN 00502.020.A.1 (April 15, 2016).

employees subsequently determine a beneficiary does not need a representative payee, they must document their capability determination in the Electronic Representative Payee System (eRPS).⁴

For our review, we identified from the Master Beneficiary Record (MBR) 99,658 OASDI beneficiaries who had a mental impairment, previously had a representative payee, and were receiving benefits directly as of July 2015. Table 1 summarizes the beneficiaries in our population by disability diagnosis (DIG) and secondary diagnosis codes (SDIG).⁵ We selected these diagnosis codes because of the severity of the disability and potential need for representative payment.

Table 1: Disabled Beneficiaries in Direct Pay Who Had a Prior Representative Payee

Diagnosis Code	Description	Beneficiaries
DIG 2950	Schizophrenic, Paranoid, and Other Psychotic Disorders	54,738
DIG 2940	Organic Mental Disorders	31,018
DIG 3010	Personality Disorders	5,672
SDIG 3030	Substance Addiction Disorders (Alcohol)	4,332
SDIG 3040	Substance Addiction Disorders (Drugs)	3,898
Total		99,658

From this population, we selected a random sample of 200 beneficiaries for review (see Appendix A).

RESULTS OF REVIEW

SSA needs to improve controls to ensure it makes and documents capability determinations for disabled beneficiaries who previously had a representative payee. Based on our random sample, we estimate that, for 44,348 disabled beneficiaries who previously had a representative payee, there was no evidence of SSA’s capability determination of whether the beneficiaries were capable of managing or directing the management of their benefits. If SSA determined these beneficiaries were incapable, it should not have paid the estimated \$2.8 billion in direct payments it paid to these beneficiaries. Conversely, if SSA found they were capable and it simply did not document its capability determinations, the payments to these beneficiaries would have been proper (see Appendix B).

⁴ SSA, POMS, GN 00502.055 (January 21, 2005) and GN 00504.105 (April 15, 2016).

⁵ For our review, we selected beneficiaries with DIG codes of 2940, 2950, and 3010 regardless of SDIG codes. We then selected beneficiaries with SDIG codes of 3030 or 3040.

This occurred because SSA employees (1) did not make capability determinations or (2) made capability determinations but did not document those determinations in eRPS. In addition, there were no controls to ensure SSA employees had documented their capability determinations.

SSA's Policies and Procedures for Making Capability Determinations

According to SSA policy, when there is an allegation or indication that an incapable beneficiary may have become capable, SSA must develop lay evidence in every case and medical evidence when possible.⁶ Medical evidence is a medical professional's opinion based on an examination of a beneficiary. Lay evidence is anything other than medical evidence that gives insight into a beneficiary's ability to manage or direct the management of his/her funds. Lay evidence includes SSA's observations during an interview with a beneficiary and signed statements from a beneficiary's relatives and friends, social workers, and community services groups describing the beneficiary's ability to manage funds. SSA employees must evaluate both lay and medical evidence when making a capability determination.⁷ If SSA employees subsequently determine a beneficiary does not need a representative payee, they must document in eRPS their capability determination and facts or evidence they used to support their capability decision.⁸

Beneficiaries May Be Incapable of Managing Their Benefits

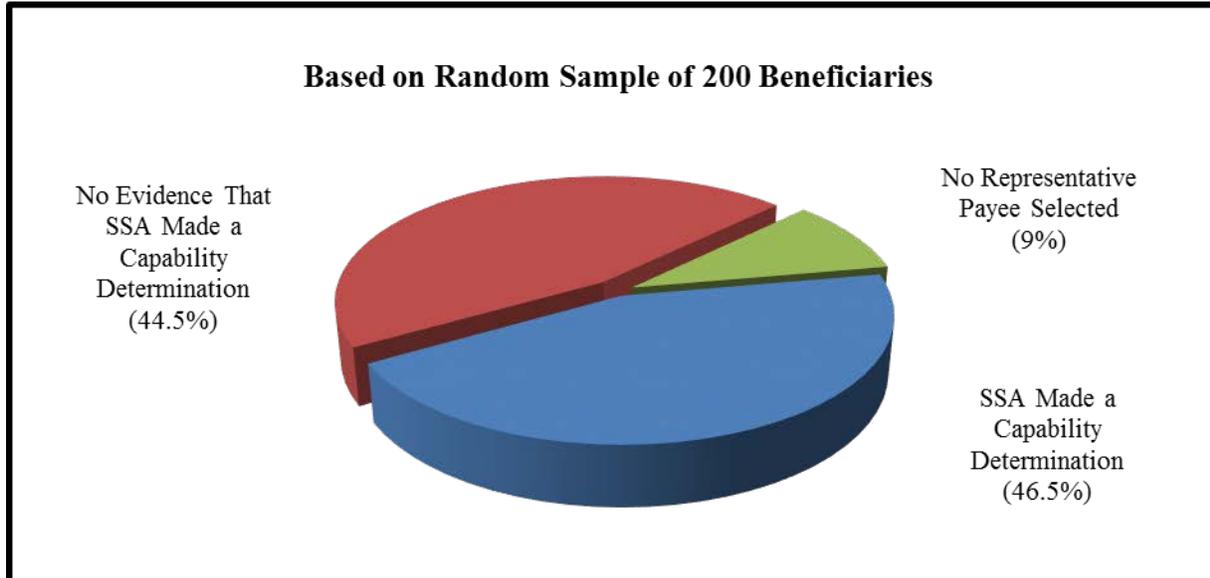
Of the 200 beneficiaries in our sample, there was no evidence that SSA made a capability determination for 89 (44.5 percent). SSA paid these beneficiaries approximately \$5.6 million in direct payments. This included 42 beneficiaries for whom there was no evidence of capability and 47 for whom there was lay or medical evidence but no capability determination. For 93 (46.5 percent) beneficiaries, SSA employees made and documented their capability determination. According to eRPS, the remaining 18 (9 percent) beneficiaries never had a representative payee. Figure 1 summarizes the results of our review.

⁶ SSA, POMS, GN 00502.020.B (April 15, 2016).

⁷ SSA, POMS, GN 00502.025 (January 18, 2012) and GN 00502.030 (April 15, 2016).

⁸ SSA, POMS, GN 00502.060.B (April 15, 2016).

Figure 1: Disabled Beneficiaries Who May Need a Representative Payee



The 89 beneficiaries had a representative payee for an average of 6.7 years before SSA paid benefits directly.⁹ Of the 89 beneficiaries, as of November 2016, SSA had selected representative payees for 5, terminated 4 for death, and determined 3 were no longer disabled. In addition, one beneficiary was suspended for imprisonment and therefore no longer needed a capability determination.¹⁰ Therefore, as of November 2016, SSA needed to take action to make and/or document capability determinations for 76 of the 89 beneficiaries. Our review found no evidence to determine whether SSA made interim direct payments and followed up, as required, to determine whether beneficiaries were properly managing their benefits. In addition, we found no evidence to indicate whether SSA had established direct payments because it determined they were capable of managing their benefits and no longer needed a representative payee.

For 42 beneficiaries, there was no medical or lay evidence of capability or evidence of SSA's capability determination. For 47 beneficiaries, SSA had obtained some evidence of capability, but there was no evidence of its capability determination. We found that SSA had obtained lay and/or medical evidence indicating the beneficiaries may have been capable of managing their benefits. Of the 47 beneficiaries, 36 had medical evidence only, 1 had lay evidence only, and 10 had both medical and lay evidence.¹¹

⁹ The mean was 6.7 years. The median was 5.5 years.

¹⁰ If this individual starts receiving benefits again after he is released from prison, SSA will need to determine whether he is capable of managing his own benefits.

¹¹ Of the 47 beneficiaries, 6 had conflicting medical and lay evidence where 1 indicated the beneficiary was capable of managing the benefits and the other indicated the beneficiary was incapable.

For example, in December 1992, SSA determined a beneficiary with a mental disorder was incapable and selected a representative payee to manage his benefits. In August 2009, the beneficiary requested direct payment, and SSA began paying him benefits directly. However, we found no evidence that SSA had obtained evidence of capability or made a capability determination to support direct payment to the beneficiary. As of August 2016, SSA had paid the beneficiary \$131,807.

CONCLUSIONS

SSA needs to improve controls to ensure it makes and documents capability determinations for disabled beneficiaries who previously had a representative payee. Based on our random sample, we estimate that, for 44,348 disabled beneficiaries who previously had a representative payee, there was no evidence of SSA's capability determination of whether the beneficiaries were capable of managing or directing the management of their benefits. If SSA determined these beneficiaries were incapable, it should not have paid the estimated \$2.8 billion in direct payments it paid to these beneficiaries. Conversely, if SSA found they were capable and it simply did not document its capability determinations, the payments to these beneficiaries would have been proper (see Appendix B).

In May 2016, SSA issued a reminder to its field offices on the policies and procedures for making capability determinations, including the required documentation in eRPS. Although SSA provided its employees guidance, we believe additional actions are necessary to ensure they obtain evidence of capability and document their capability determinations. For example, SSA could improve controls by requiring a second review and approval of capability determinations or establishing a systems alert to ensure employees document their capability determinations. Such actions are particularly important for beneficiaries who had a representative payee and were previously determined to be incapable of handling their benefits.

RECOMMENDATIONS

We recommend that SSA:

1. Take appropriate action to obtain evidence of capability and make capability determinations for the 76 beneficiaries identified by our audit.
2. Evaluate the results of its corrective action for the sample of beneficiaries and, if a substantial number are incapable of managing or directing the management of their benefits, determine the appropriate action it should take for the remaining population of 99,458 beneficiaries.
3. Improve controls to ensure SSA employees document their capability determinations.

AGENCY COMMENTS

SSA agreed with our recommendations. The Agency's comments are included in Appendix C.

A handwritten signature in black ink that reads "Rona Lawson". The signature is written in a cursive style with a long horizontal flourish at the end.

Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

We obtained from the Social Security Administration's (SSA) Master Beneficiary Record (MBR) a data extract of beneficiaries who were in current pay and had representative payee information on the MBR as of July 2015. Using this information, we identified a population of 99,658 beneficiaries who had mental, schizophrenic, paranoia, psychotic, or substance addiction disorders who received direct payments between January 2005 and July 2015. From this population, we selected a random sample of 200 beneficiaries for review.

To accomplish our objective, we

- reviewed the applicable sections of the *Social Security Act*, the United States Code, and SSA's Program Operations Manual System;
- interviewed SSA employees from the Offices of Operations, Systems, and Retirement and Disability Policy;
- reviewed queries from SSA's MBR, Electronic Representative Payee System, Claims File Records Management System, Payment History Update System, and Treasury Check Information System; and
- determined whether SSA had obtained evidence of capability and made capability determinations for disabled beneficiaries receiving direct payments who previously had a representative payee.

We determined whether the computer-processed data from the MBR were sufficiently reliable for our intended purpose. We tested the data to determine their completeness and accuracy. These tests allowed us to assess the reliability of the data and achieve our audit objective.

We conducted audit work in Richmond, California, and Baltimore, Maryland, between June and November 2016. The entity audited was the Office of Operations under the Office of the Deputy Commissioner for Operations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – SAMPLING METHODOLOGY AND RESULTS

From the Social Security Administration’s (SSA) Master Beneficiary Record (MBR), we obtained a data extract of beneficiaries in current pay who had a representative payee and were receiving benefits directly as of July 2015. Using this information, we identified a population of 99,658 beneficiaries who had mental, schizophrenic, paranoia, psychotic, or substance addiction disorders who received direct payments between January 2005 and July 2015. From this population, we selected a random sample of 200 beneficiaries for review. For each beneficiary, we determined whether (1) the beneficiary received benefits directly and (2) there was evidence of SSA’s capability determination.

Of the 200 beneficiaries in our sample, there was no evidence of SSA’s capability determination of whether the beneficiaries were capable of managing or directing the management of their benefits for 89. SSA paid these beneficiaries about \$5.6 million in direct payments. Projecting our sample results to the population of 99,658 beneficiaries, we estimate that if SSA determined they were incapable, it should not have paid them as much as \$2.8 billion in direct payments. Conversely, if SSA found they were capable and it simply did not document its capability determinations, the payments to these beneficiaries would have been proper.

The following tables provide the details of our sample results and statistical projections.

Table B–1: Population and Sample Size

Description	Beneficiaries
Population Size	99,658
Sample Size	200

Table B–2: Beneficiaries Who May Have Been Incapable of Managing Benefits

Description	Beneficiaries	Direct Payments
Sample Results	89	\$5,625,915
Point Estimate	44,348	\$2,803,337,136
Projection – Lower Limit	38,435	\$2,272,574,934
Projection – Upper Limit	50,383	\$3,334,099,337

Note: All statistical projections are at the 90-percent confidence level.

Appendix C – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: December 1, 2016

Refer To: SIJ-3

To: Rona Lawson
Assistant Inspector General for Audit

From: Frank Cristaudo /s/
Counselor to the Commissioner

Subject: Office of the Inspector General Draft Report, "Disabled Beneficiaries Receiving Direct Payments Who Previously Had a Representative Payee" (A-09-17-50205)--INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“DISABLED BENEFICIARIES RECEIVING DIRECT PAYMENTS WHO
PREVIOUSLY HAD A REPRESENTATIVE PAYEE” (A-09-17-50205)**

General Comments

We appreciate OIG’s efforts in reviewing disabled beneficiaries receiving direct payments who previously had a representative payee. Representative payees play a significant role in many beneficiaries’ lives. We have approximately 6.2 million representative payees managing annual benefits for approximately 8 million beneficiaries. We take our responsibility very seriously to ensure that our beneficiaries can properly handle their own benefits or to select the most qualified representative payee available.

We are always exploring ways to better identify, screen, and appoint representative payees. We have developed a Capability Action Plan that provides a roadmap of future representative payee systems enhancements. For example, we are currently working on a screen change in the electronic Representative Payee System (eRPS) that will enforce the mandatory documentation of capability determinations.

While we believe that every representative payee decision is an important one, we note that the total potential universe of beneficiaries covered by this audit represents less than 1.25 percent of all beneficiaries with representative payees.

Recommendation 1

Take appropriate action to obtain evidence of capability and make capability determinations for the 86 beneficiaries identified by our audit.

Response

We agree. After further review of the 86 cases, we found 10 on the list no longer require any action. We already selected a new payee for three individuals. Additionally, three individuals are now deceased, and four individuals are not in current pay. We request OIG update this recommendation to reflect the change in the number of cases needing further action. We will take action to make and/or document capability determinations on the remaining 76 beneficiaries identified by the audit.

Recommendation 2

Evaluate the results of its corrective action for the 86 beneficiaries and, if a substantial number are incapable of managing or directing the management of their benefits, determine the appropriate action it should take for the remaining population of 99,458 beneficiaries.

Response

We agree. As noted in our response to recommendation 1, we request OIG change the number of records needing review from 86 to 76. In addition, we request that OIG reword the recommendation to “Evaluate the results of its corrective action for the sample of beneficiaries and, if a substantial number are incapable of managing or directing the management of their benefits, determine the appropriate action it should take for the remaining population of 99,458 beneficiaries.” We believe that this change will accurately reflect OIG’s analysis and our actions to address the recommendation. After we review the 76 beneficiaries, we will determine if the errors were documentation or capability determination errors. If a “substantial” number are capability determination errors, we will evaluate the value in completing a review of the remaining 99,458 beneficiaries. Based on prior discussions with OIG, if a “substantial” number of the 76 cases are documentation errors, OIG will not require us to take action to review the remaining 99,458.

Recommendation 3

Improve controls to ensure SSA employees document their capability determinations.

Response

We agree. As documented in our Capability Action Plan, we have a strategy in place to address this recommendation and will continue actions to implement the plan. We will consider making modifications to our plan as needed.

[OIG Note: As of November 2016, SSA had taken corrective action on 13 of the 89 beneficiaries identified by our audit. Therefore, we updated the report accordingly.]

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