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Committee on Ways and Means
Subcommittee on Social Security

Statement for the Record

Ensuring the Integrity of Social Security Programs

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Good morning, Chairman Shaw and members of the Subcommittee. Let me first thank you for the opportunity to appear today and address issues related to fraud, waste and abuse in Social Security programs and operations. As you know, my office has been working to preserve Social Security resources for almost six years now, since our inception in 1995. In that time, we have made great strides in reducing fraud, but there remains much work to be done, and I welcome this Subcommittee's help in performing this critical task.

I'd like to talk very briefly about a few areas in which we have been particularly successful, then address a few areas in which fraud and waste continue to pose challenges. Finally, I'd like to suggest a number of ways in which the Subcommittee can help us in our mission.

Anti-Fraud Efforts and Challenges

One of the first issues we explored as an organization was the payment of benefits to prisoners. In an audit report issued less than a year after SSA independence, we estimated that the annual cost to SSA in erroneous payments to prisoners was $48.8 million, and we recommended that SSA seek legislation to facilitate the exchange of information with Federal, state, and local prison authorities. Such legislation was enacted in 1999, removing the need for computer matching agreements between SSA and prison authorities to be renewed every 18 months. The elimination of this time-consuming process had an overwhelming effect; according to SSA statistics, payments to more than 69,000 prisoners were suspended in FY 2000, based on more than 260,000 prisoner alerts that were received in large part because of that legislation. Progress has been promising and the efficiency of this program should continue to improve.

Another area in which we have focused a great deal of our energy, and in which we have seen dramatic results, is the fugitive felon program. In 1996, Congress enacted legislation making fugitive felons ineligible for Supplemental Security Income, or SSI, payments. The legislation also directed the Commissioner to provide state and local law enforcement officials with locator information about such fugitives to facilitate their apprehension. The Commissioner asked my office to perform this function, and we began working with SSA immediately. To date, we have identified some 28,000 fugitives receiving SSI. We have provided law enforcement officials with the necessary information to locate and apprehend these individuals, and have ourselves participated in more than a thousand of these arrests. Agreements are in place with the U.S.

Marshals Service, the FBI, the National Crime Information Center, twelve states, and three cities to improve the volume and accuracy of the information that we act upon. More agreements are pending, and we continue to expand and refine the processes by which we receive and utilize fugitive information. The primary result is savings—more than $34 million in FY 2000 alone. But perhaps even more important is the removal of potentially violent criminals from the streets, such as the California man we recently arrested, who was wanted for assault with a deadly weapon on a police officer. This is a program in which everyone wins but the felons, and it's limited only by the resources available for this important mission.

Unfortunately, while the law prohibits felons from receiving title XVI payments, it continues to permit fugitives to use title II benefits to finance their flight from justice. This is where we turn from success stories to areas where more can be done. An audit report issued by my office found that the Trust Fund would have saved at least $108 million dollars had the legislation prohibited payment of both title XVI and title II benefits to fugitives from its enactment in 1996 to the audit period in August of 2000. In addition, the report estimated that as of May, 2000, the Trust Fund was paying at least $39 million a year in title II benefits to fugitive felons. As I stated earlier, this waste of Federal funds goes to the heart of our mission, and our inability to stop these payments is frustrating. What is more frustrating to us as a law enforcement organization is that these benefits were paid to some 17,300 fugitives, many of whom could have been apprehended had my office been able to provide law enforcement agencies with felons' addresses. The time has come to turn our attention to these government-financed fugitives.

The representative payee program, the mechanism by which individuals or organizations receive benefits on behalf of those beneficiaries who cannot manage their own funds, has improved, but remains a problem area. A year ago, I testified before this Subcommittee and pointed out weaknesses detected by our audit and investigative efforts. Those weaknesses covered the full spectrum of Agency responsibilities in the representative payee program. We found that the Agency's initial selection and screening process was deficient because it failed to verify the accuracy of the identification, financial, and security information provided by prospective representative payees. We found that the Agency's monitoring and oversight of representative payees also was deficient in that many representative payees failed to submit annual accounting forms and SSA failed to retain necessary documentation when such forms were submitted. And, we found that when fraud did occur, there was insufficient statutory authority to repair the damage already done. I told you about a father who was appointed representative payee for his disabled minor son in 1996, and how two years later, when the child's mother also applied to be the child's representative payee, SSA learned that the father never had custody of the boy. I told you that the more than $10,000 in benefits that the father received was never used for the child's benefit, and that the amount stolen fell below the U.S. Attorney's Office's minimum for criminal or civil action. Finally, I told you that because the child was entitled to the benefits, we could not pursue the father under our existing Civil Monetary Penalty authority, as the father's crime was deemed to be against the child, not against SSA. Moreover, since the benefits were properly paid on the child's account, SSA could not re-issue the stolen benefits, nor could it charge the father's account for the stolen funds. So, the father was able to keep the money he stole, and the child's only recourse would have been to privately sue his own father.

SSA has made strides in this area in the past year, based in part on our recommendations, but much remains to be done, and part of that burden rests with Congress. It is critical that legislation be enacted to enable us to pursue individuals such as the father I just described. Our Civil Monetary Penalty authority must be expanded to include conversion of benefits by a representative payee as a covered offense. And SSA's ability to recoup such converted benefits, and any penalties or assessments, must be expanded to make the representative payee liable to SSA for the converted funds. Finally, SSA must be authorized to reissue stolen benefits to the beneficiary without declaring itself negligent. It is grossly unfair to punish the victims of representative payee fraud, while allowing the perpetrator to profit from his crime. Most representative payees are honest, and act only in the best interests of these most vulnerable beneficiaries, but when this is not the case, we must have the tools we need to act.

We have also identified problems with payment of benefits to deceased beneficiaries. In a draft report issued by our Office of Audit, we matched all 11.7 million auxiliary beneficiaries against SSA's Death Master File and found that SSA had paid an estimated 881 deceased auxiliary beneficiaries $31 million in OASDI benefits after their dates of death. On average, these deceased individuals continued to be paid for some 63 months after death. This study also revealed significant error rates in SSA's death matching process, and another draft report examines the system SSA uses to keep its death records up-to-date. Both audits indicate that while progress has been made, much remains to be done in ensuring that benefits do not continue to be paid to the deceased. We are pleased that SSA is proactively addressing other systems deficiencies identified by our independent auditor, PricewaterhouseCoopers, by doing more than what is minimally required under the Federal Financial Management Improvement Act of 1996 and the Government Information Security Reform Act. Our recently awarded contract for the FY2001 financial statements provides for our independent auditor to provide opinion-level assurance on the Agency's compliance with FFMIA and GISRA. We believe that providing this opinion will assist the Agency to identify and address critical vulnerabilities within its systems environment.

These areas—prisoners, fugitive felons, representative payees, and payments to deceased beneficiaries—represent four areas in which the OIG and SSA are working together to improve payment accuracy and minimize fraud and waste. All but the first are areas in which the additional legislation I have already described would prove invaluable. But there are other areas in which legislation could be a boon to my office in its fight against Social Security fraud, and I'll close by pointing out just a few of these areas.

Legislative Needs

First and foremost, my office has been seeking statutory law enforcement authority almost from the moment we were established. For six years, we've operated under a discretionary, revocable, and limited deputation agreement from the Department of Justice. This tenuous authority does not include the authority to cross-designate state and local law enforcement officers, and carries with it a time-consuming and unnecessary administrative burden. Our Special Agents have conducted themselves with the same degree of professionalism and devotion to duty as any other Federal law enforcement officers, and the time has come to grant them the same legal status.

In the same vein, our unique status as an independent law enforcement organization that is tied to a Federal agency creates occasional conflicts in laws and regulations. Two of these conflicts concern the treatment of SSA records, which are tightly controlled by the Privacy Act and SSA's own privacy statute. While I am adamant that my employees observe all applicable laws and regulations and even take additional policy steps to protect Americans' private information, my office is also charged with waging the war against Identity Theft. When a law enforcement official is investigating an individual for the commission of a felony, he or she will frequently contact my office to determine if the suspect's name and Social Security number match SSA's records. SSA agreed with us that it was in everyone's best interests to use this early detection tool to prevent Identity Theft, but under current law, SSA could only agree to permit us to provide law enforcement with this information if the individual in question was suspected of committing a crime involving a Social Security number. Our authority to assist in the investigation of all felony crimes, while at the same time detecting Identity Theft in its earliest stages, should be a statutory authority and a statutory obligation.

Similarly, as an independent law enforcement organization, my office must have control over its own investigative files and other records. Under regulations promulgated by the Social Security Administration, only the SSA Freedom of Information Officer may determine whether or not an SSA record is released to the public—that includes investigative and other records of my office. While we have worked together with SSA to ensure the integrity of our records for the past six years without significant incident, we have not been able to convince SSA to amend the regulations to give the OIG final control over its own records. This is contrary to the OIG's statutory independence and at odds with the practices of many Federal departments and agencies.

Turning to the program area, judges and United States Attorneys' Offices have expressed frustration with respect to the Trial Work Period provision of the Social Security Act. Under existing law, disability beneficiaries may return to work and continue to receive benefits while working for nine months or more. Designed to encourage rehabilitation, and in most cases accomplishing just that, the Trial Work Period becomes an unexpected jackpot for those individuals whose very receipt of benefits is fraudulent. Under current law, there is no way to avoid paying benefits during the Trial Work Period to unscrupulous beneficiaries who feigned their disability or concealed the fact that they were working. When caught, they are permitted to keep thousands of dollars in stolen benefits because of this loophole in the law. Prosecutors rightfully regard this with disdain and in some instances, refuse to prosecute such cases. That loophole must be closed.

We would also like to see judicial restitution authority added to the felony provisions of the Social Security Act. Under existing law, a Court may find an individual guilty of stealing Social Security benefits, but cannot, as part of that individual's criminal sentence, order her to repay the benefits she has stolen.

Finally, our civil monetary penalty program has been highly successful. We have completed 66 successful cases under Section 1129 of the Social Security Act for making false statements in connection with benefit determinations, imposing over $2 million in penalties and assessments. We have penalized 8 companies under Section 1140 for using SSA's good name in misleading

advertising campaigns, imposing over $1.85 million in penalties. Both programs need a legislative boost. Under Section 1129, as I discussed earlier, we need authority to pursue representative payees for conversion—the current system allows far too many of them to fall through the cracks. We also need explicit authority to treat an omission of a material fact as if it were an affirmative false statement. And under Section 1140, two fixes are needed. First, we need to require any company that charges a fee for performing a service that SSA provides free of charge to conspicuously state this on their advertisements. And second, we would suggest a technical change to Section 1140 to ensure that the OIG has the critical tools and permanent authority to wipe out deceptive mailers who target SSA beneficiaries.

The Office of the Inspector General, the Social Security Administration, and the Congress have made enormous progress in combating fraud, waste, and abuse in the few years since SSA independence. Hearings such as this are evidence that more work remains to be done, and that we all remain committed to this critical mission. Thank you, and I'd be happy to address any questions.