

**U.S. House of Representatives**  
**Committee on Ways and Means**  
**Subcommittee on Social Security**

**Statement for the Record**

**H.R. 743, The “Social Security Protection Act of 2003”**

**The Honorable James G. Huse, Jr.**  
**Inspector General, Social Security Administration**

**February 27, 2003**

Good morning, Chairman Shaw, Ranking Member Matsui, and Members of the Subcommittee on Social Security. I welcome the opportunity to testify today about the need for legislation to protect the integrity of the Social Security Administration’s (SSA) vital programs.

## **The Representative Payee Program**

SSA provides Social Security and Supplemental Security Income (SSI) benefits to the most vulnerable members of our society—the young, the elderly, and the disabled. Congress granted SSA the authority to appoint representative payees to receive and manage these beneficiaries’ payments. There are currently about 5.4 million representative payees who manage benefits for about 7.6 million beneficiaries.

A representative payee may be an individual or an organization. Individual representative payees are typically relatives of the beneficiary, who are entrusted to use such funds in the best interest of the beneficiary. Although individual representative payees may at times provide services to multiple beneficiaries, they are prohibited from charging fees for such services.

Organizational representative payees, on the other hand, are typically large institutions that provide care and treatment for beneficiaries residing in such institutions (e.g., Department of Veterans Affairs hospitals, State psychiatric institutions, and extended care facilities). Other types of organizational representative payees may include community groups, charitable organizations, and other nonprofit agencies. The Social Security Act allows qualified and authorized organizational representative payees to collect a fee for providing representative payee services.

As I have previously testified before this Subcommittee, not all representative payees properly manage benefits entrusted to them. I have previously recounted several instances in which a representative payee had misused funds intended for a beneficiary in their charge. The effect on the lives of the beneficiaries in those cases was catastrophic. At that hearing, both SSA and my office identified problems and proposed solutions. We worked closely with your staff, and the result was a legislative proposal that provides greater oversight of representative payees as well as additional civil and administrative penalties to allow my office to combat this problem. This bi-partisan legislation came close to passage last session and I am pleased, Mr. Chairman, that you have reintroduced this important legislation this session.

As we have pointed out in audit reports and prior testimony, legislation is needed to ensure the integrity of the representative payee process at several stages: selection of a representative payee, monitoring and oversight, proper accounting when funds are misused, and measures designed to punish and deter such misuse. I believe this legislation makes important strides in each of these areas.

At the outset, closer attention to the initial selection process can resolve many potential problems before they arise, so it is critical that SSA more thoroughly screens potential representative payees. In October 2002, we issued a report that identified 121 individuals whose own Supplemental Security Income (SSI) benefits were stopped by SSA because they were fugitive felons or parole or probation violators. These individuals were also serving as representative payees for others. As you know, current SSA policy permits fugitive felons and parole or probation violators to serve as representative payees. We also stated that we were working on an additional audit concerning the number of representative payees who were fugitive felons regardless of whether they were receiving Supplemental Security Income payments. This audit is currently in draft with the Agency.

Once an appropriate representative payee is selected, it is then incumbent upon SSA to adequately monitor that individual or organization to ensure that the benefits are being used as intended to aid the beneficiary.

In an audit report entitled "Nonresponder Representative Payee Alerts for Supplemental Security Income Recipients" (September 23, 1999) my office recommended that SSA develop procedures for employees to redirect benefit checks to field offices (and require representative payees to provide the accounting forms before releasing the checks) in instances where other attempts to obtain the required forms have been unsuccessful. SSA agreed with this recommendation however, implementation is pending until the legislative changes contained in H.R. 743 are approved. Our most recent financial audits of representative payees continue to show that the receipt and retrieval of annual accounting reports remain a problem. Over the past 2 years, we have requested 474 representative payee reports, but SSA has been able to retrieve only 228, less than 50 percent.

Even with improved oversight, there will always be representative payees unable to resist the temptation to misuse beneficiary funds. When this does occur, two things should happen: the beneficiary's funds should be reissued by SSA and the representative payee who misused them should be liable to repay them. Unfortunately, under current law, SSA has authority to reissue benefits misused by a representative payee only if it finds that it has been negligent to investigate or monitor a representative payee and this results in the misuse of benefits. Not only does this withhold benefits from those who need (and deserve) them, but a finding of negligence can have a catastrophic effect on any ongoing criminal investigation of the representative payee. For example, in the Aurora Foundation case, had SSA made a determination of negligence, the United States Attorney indicated that his ability to prosecute would have been seriously impaired. This legislation eliminates the requirement that benefits can be reissued only upon a finding of SSA negligence, by requiring SSA to reissue benefits, even absent a finding of negligence. Further, this legislation makes the representative payee liable for the amount of benefits misused.

Once the beneficiary's needs have been addressed, attention then turns to punishing and deterring misconduct by representative payees. We have found the Civil Monetary Penalty (CMP) program to be an effective tool against program fraud, in other areas. Unfortunately, as we have reviewed potential cases for enforcement under the CMP program, we have found that the current CMP statutes do not adequately address some of the most egregious situations involving representative payees. To remedy this, we proposed two amendments to the CMP statutes, both of which are included in H.R. 743.

The first is amending Section 1129 of the Social Security Act to allow the imposition of CMPs for the willful conversion of a beneficiary's funds by a representative payee. For example, the benefits of a disabled child whose mother (as a minor herself) could not serve as her son's representative payee, were instead paid to the father. The father, who did not live with the child and the child's mother converted more than \$10,000 of his child's benefits to his own use. The United States Attorney declined to prosecute the father criminally, and the case was referred to my office for consideration under the CMP statutes. Unfortunately, the current CMP statutes do not provide for penalties to be imposed for conversion of benefits by representative payees. H.R. 743 provides this authority.

These provisions provide much needed legislative relief to improve the integrity of SSA's Representative Payee Program.

## **Additional CMP Authorities**

In addition to the CMP authority concerning representative payees, H.R. 743 closes a loophole that has long existed. Under current law, there is no explicit authority to impose CMPs against individuals who fraudulently obtain benefits by withholding information from SSA, rather than by making an affirmative false statement. The ability to pursue those who, for example, continue to receive and use the benefits of a deceased relative, provides us with a new and important tool for fighting fraud.

I know there has been some concern expressed as to the reach intended by this amendment. I can assure you that my office is aware that many of the individuals with whom we deal have physical and/or mental impairments, may be elderly, or are otherwise incapable of forming fraudulent intent. We do not pursue such individuals under existing authorities, and will not do so should this new authority be enacted. We will, however, enthusiastically pursue able-minded and able-bodied individuals who purposely conceal information from SSA in order to continue wrongfully receiving SSA benefits.

In addition to the amendments to Section 1129 of the Social Security Act (Act), described above, H.R. 743 also amends the other CMP provision of the Act, Section 1140. Section 1140 prohibits the misuse of SSA's program words, letters, symbols, or emblems, in advertisements or other communications, and H.R. 743 amends this statute in two ways:

First, Section 1140 would be amended to require entities to clearly state in their mailing or solicitation that the product or service that they propose to provide for a fee is one which is available directly from SSA free of charge;

Second, the list of prohibited terms in Section 1140 would be expanded to include many of the terms that seniors and others commonly associate with Federal benefits, and SSA programs and benefits in particular.

These amendments will further bolster our successful CMP program and enable us to better protect America's seniors and other vulnerable individuals.

## **Fraudulent Concealment of Work Activity**

We believe that an individual who is receiving Social Security disability benefits should not get credit for a trial work period when the individual has fraudulently concealed the work from SSA. I will briefly touch on the problem caused by the existence of the trial work period as described to me in a letter from a United States Attorney. She wrote to advise me that if SSA did not change its trial work period policy for individuals being investigated and prosecuted for fraud, it could have a serious impact on whether her office took our future cases where SSA granted a trial work period. The United States Attorney noted that her office had several such cases pending at the time of her letter.

In the case that prompted her letter, the suspect received Social Security disability benefits. While receiving these benefits, he began working in the construction industry under an alias using another person's Social Security number (SSN) and failed to inform SSA that he was working. SSA allowed the suspect a trial work period in the construction industry effectively eliminating the overpayment.

In another recent case, SSA gave an individual, under investigation, credit for a trial work period even though he worked as a truck driver under one SSN while receiving benefits under a second SSN.

We have long sought a legislative amendment to eliminate this unintended windfall for those who are convicted in Federal court of fraudulently concealing work activity from the Commissioner, and H.R. 743 provides such relief.

## **Interference with SSA Functions and Protection of SSA Employees**

Like its predecessor, H.R. 743 would also amend existing law to provide a criminal penalty for corrupt or forcible interference with the administration of the Social Security Act. It would impose a fine or imprisonment for interfering with SSA employees acting in their official capacities. It broadly defines an employee as including any SSA officer, employee or contractor, State Disability Determination Service employee, or any individual designated by the Commissioner. On a daily basis, SSA employees interact with members of the public who are undergoing times of great stress, such as after the death or disabling injury of a loved one. This exposes our employees to an increased risk of danger. Enactment of this provision would provide clear authority to our office to investigate any incidents that do occur.

## **Judicial Restitution Authority**

Under section 208 of the Social Security Act, a court may find an individual guilty of stealing Social Security benefits, but cannot, as part of that individual's criminal sentence, order the individual to repay the stolen benefits. Your proposed legislation would close this loophole.

## **Expansion of Fugitive Felon Authorities**

We have always believed that criminals fleeing from justice should not have the support of Federal benefits. Therefore, we support H.R. 743's expansion of the title XVI fugitive felon provisions to the title II programs.

## **Conclusion**

Mr. Chairman, we have called for a number of the measures embodied in H.R. 743 for several years, and I am very pleased to see such strong legislation come out of the starting gate so early in the session.

I am honored to contribute to the ongoing discussion of how we may protect Social Security programs. H.R. 743 is a major step in closing several loopholes that currently exist and will provide greater oversight for representative payees. This along with the enhanced criminal and civil penalties will help to provide greater protection to some of our country's most vulnerable. I applaud your efforts and pledge my support to work with you in the future. Thank you.