



# Social Security Advisory Board

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Nancy Berryhill  
Acting Commissioner  
Social Security Administration  
6401 Security Boulevard  
Baltimore, Maryland 21235

**Re: Notice and Request for Comments on “Review and Reassessment of the SSA’s Representative Payee Selection and Replacement Policies, 83 Fed. Reg. 64422 (December 14, 2018), Docket No. SSA-2018-0048**

Dear Acting Commissioner Nancy Berryhill:

The Social Security Advisory Board – a bipartisan, independent federal agency that advises the president, Congress and Commissioner of Social Security – has a long history of examining and making recommendations to improve the representative payee program. Following its 2016 *Call to Action* report, in 2018, the Board recommended that SSA “research and evaluate the order of preference for payee selection.” Soon after, Congress enacted the *Strengthening Protections for Social Security Beneficiaries Act of 2018* (P.L. 115-165); Section 204 requires the Commissioner to conduct a review and reassessment of how payees are selected and replaced. The Board now offers the following public comments in response to SSA’s request in the Federal Register.

As the population is aging, family size is shrinking, and family structure is changing, current payee preference lists may well have become outdated – these lists have been largely unchanged since at least the 1960s. The Board is aware of no empirical research on what preference ordering would be optimal. The Board appreciates that the agency has begun to articulate necessary questions to aid this examination. These questions include: Is the current order of preference appropriate? Should creditor status be incorporated in the preference lists? Does the agency effectively determine when to change a payee that has a higher order of preference to a payee that has a lower preference? And, is there any evidence of difficulty in finding suitable payees over time or in various circumstances? Such questions form a basis for an agency learning agenda on the payee program.

In addition to public response on the structure of payee preference lists, answers to the questions proposed in this request should be informed by agency data. Momentum for evidence-based policymaking is building across the federal government. This month, the *Foundations for Evidence-*

*Based Policymaking Act of 2018* was signed into law. The bipartisan Commission on Evidence-based Policymaking envisioned a future where rigorous evidence is created efficiently as a routine part of government operations and used to construct effective public policy. The Board believes this goal is plausible – particularly when addressing questions about the payee program like those mentioned above.

As noted in the request for comment, SSA considers the individual applicant’s relationship to the beneficiary and the type of organization in setting the order of selection in the preference lists. However, SSA captures payee-related data that, while similar, do not match the sequence of categories specified on the preference lists. Therefore, it is difficult to associate payee performance with payee types on the preference lists – a necessary first step in an assessment of existing payee selection policies.

In addition, the preference lists do not incorporate creditor status (although SSA policy outlines when creditor applicants can be appointed or appointed conditionally). At a September 2018 forum hosted by the Board, panelist and attendee feedback indicated that SSA does not track the creditor status of payees. This raises the question of how SSA would determine whether it should incorporate creditor status into its preference lists when it does not know which payees are creditors.

A reasoned analysis would look at the performance of payees through monitoring on the “back-end” to inform the selection of payees on the “front-end.” The Board is concerned that SSA is missing an opportunity to collect needed data during its annual monitoring of payees. Section 101 of the *Strengthening Protections for Social Security Beneficiaries Act of 2018* established a new program with each state’s Protection & Advocacy system organization conducting onsite reviews of individual and organizational payees. SSA created a new tool to aid that process. Unfortunately, it appears the tool does not generate substantive performance information that could be useful in making changes to the preference lists. A database on payee performance would help SSA improve its predictive models, which it uses to flag potential cases of misuse by payees for additional review and which provide actionable information on how selected payees perform in practice.

If SSA lacks data necessary to answer these key questions, it should move expeditiously to collect it. That means developing electronic systems that can accommodate such information – the electronic Representative Payee System for field office employees who make selection decisions and the new Representative Payee Management Tool for contractors who monitor those payees annually. Consistent with federal initiatives to improve federal evidence-based policymaking, we strongly urge SSA to strengthen its capacity to collect and use all appropriate programmatic data to inform and support decisions about the representative payee program including changes to the selection and replacement process for payees.

Sincerely,



Kim Hildred  
Chair