

ISSUE BRIEF



Representative Payees: *A Call to Action*

The Social Security Advisory Board (“the Board”) releases this brief as an outline of the issues facing the representative payee program administered by the Social Security Administration (SSA). It lays out the reasons for concern regarding administration of the program and encourages further research. The Board has only begun to examine the problems raised here and plans to continue its work over the coming year, but it is already clear that these issues affect more than just SSA beneficiaries; there are parallels with other government benefit-paying agencies that serve a population of people who may transition into the need for assistance. This paper does not claim there are ready answers to these questions; rather, the Board seeks to highlight the need for more interagency research and collaboration to generate media interest, congressional commitment, and public awareness.



AT THE END OF 2014, 58.6 million Social Security beneficiaries and 5.6 million Supplemental Security Income (SSI) recipients received benefit payments.¹ The vast majority of beneficiaries are capable of managing their funds, but SSA has determined that over 8 million (around 12.5 percent) need assistance in the form of a representative payee. Representative payees or “payees” can be organizations, groups, or individuals. SSA has designated more than 6 million payees.

The decision to appoint a payee currently lies with SSA and there are regulations in place to provide staff with direction on how to make that determination. The appointment of a payee represents the curtailment of certain rights for the

beneficiary and therefore, should be undertaken carefully. Beneficiaries who disagree with the decision to appoint a payee may appeal through the administrative process at SSA (though they rarely do) and then to the federal courts. The majority of court cases addressing payee issues are through class action case complaints. The courts have found that SSA’s procedures meet the due process requirements, providing notice and

► Selected Abbreviations

CMP	Civil Monetary Penalties
FO	SSA Field Office
GAO	Government Accountability Office
NAS	National Academy of Sciences
OASDI	Old-Age, Survivors, and Disability Insurance
OQI	SSA, Office of Quality Improvement
POMS	Program Operations Manual Systems
SDM	Supported Decision-Making
SSI	Supplemental Security Income
SSA	Social Security Administration
SSAB	Social Security Advisory Board

¹ Data is from tables created by the Social Security Administration, Office of Research, Evaluation, and Statistics based on the Master Beneficiary Record and Supplemental Security Record. Note that SSA publishes figures for both numbers of persons receiving benefits and number of beneficiaries. In some cases, beneficiaries could reflect the same person more than once if that person is entitled to more than one Old-Age, Survivors, and Disability Insurance (OASDI) benefit. In 2014, the difference in methodology resulted in a difference of about 400,000. This report uses numbers of persons for all calculations.

an opportunity to be heard. Still, it is important to examine whether claimants understand their appeal rights and whether payees are appointed only when necessary.

Payees are accountable to the beneficiary and to SSA, and in some cases, the commitment may be time-consuming. While most payees volunteer their services because of a family connection, the agency asserts that burdensome reporting responsibilities might drive volunteers away. Whether this assumption is correct should be validated.

Payees are required to determine the needs of the beneficiary and use his or her payments to meet those needs. Also, they are not permitted to commingle personal funds or the funds of other beneficiaries.² Payees must notify SSA if there is a change in a beneficiary's circumstances that will affect benefit amounts, entitlement to those benefits, or the payee's performance of his or her responsibilities. The payee is required to submit an annual accounting of benefits and expenditures. In SSI cases, when beneficiaries are under age 18, payees have the additional responsibility of ensuring those children receive available treatment to the extent considered medically necessary for their underlying impairments.³

In 2014, payees managed the disposition of \$77 billion in benefits program-wide.⁴ Where so much money is involved, great care is essential to ensure funds are spent as intended and adequate protections are in place to minimize potential misuse. Beneficiaries' rights must be protected and there must be oversight built into the program. Again, too many requirements may drive payees away. These conflicting objectives create a daunting administrative challenge. How does a government agency balance the rights of beneficiaries with individual safety and security, and how does that same agency sufficiently supervise payees to assure adequate assistance and minimize misuse without making the process so burdensome that payees refuse to serve?

2 A representative payee spouse, natural or adoptive parent, or stepparent who lives in the same household with the beneficiary is exempt from this requirement as well as some state or local government agencies that SSA has granted an exception. See 20 CFR § 404.2035, https://www.ssa.gov/OP_Home/cfr20/404/404-2035.htm and 20 CFR § 416.635, https://www.ssa.gov/OP_Home/cfr20/416/416-0635.htm.

3 20 CFR § 416.635, https://www.ssa.gov/OP_Home/cfr20/416/416-0615.htm.

4 SSA, *Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews*, FY 2014, <https://www.ssa.gov/legislation/2014RepPayeeReport.pdf>.

► Background

The payee program was created by the 1939 amendments to the Social Security Act, which added two new categories of benefits: payments to the spouse and minor children of a retired worker and survivor benefits paid to the family of a prematurely deceased worker. The program was intended to protect physically or mentally impaired beneficiaries or minor children who could not manage their benefits. The use of such services greatly increased with the expansion of Social Security benefits to include disability insurance, first paid in 1958.

The four main functions SSA must perform in administration of the payee program are outlined in this brief. Congress and the courts have “weighed in” on the agency's approach and have sought to refine it over time, usually in response to instances where payee conduct was found to be detrimental to the well-being of beneficiaries. For example:

- In the late 1980s, a particularly heinous case came to light in Sacramento California, where the bodies of several murdered beneficiaries were found buried in the back yard of Dorothy Puente, their landlady and payee. Following congressional hearings and media attention, in late 1990, Congress passed several payee reform provisions through an omnibus budget reconciliation, P. L. 101–508. The law set new and much stricter requirements concerning the standards for and required investigation of potential payees. It required SSA to pay benefits to people while a search for an appropriate payee is ongoing.⁵ It allowed for payment of limited fees to organizational payees, but prohibited a beneficiary's creditor from acting as his/her payee. The law required SSA to notify the beneficiary if they are determined to be in need of a payee and required SSA to repay a beneficiary whose payee had stolen or misused the original funds, among other provisions.
- Ten years later, SSA's payee program was back in the spotlight when the president of the Aurora Foundation, an organizational payee in Martinsburg, West Virginia, plead guilty to embezzlement of the benefit payments meant to support older adults and those with disabilities in his care. SSA's response was to beef up its

5 Except for some limited circumstances, SSA may suspend a beneficiary's payment for only one month while a suitable payee is located.

oversight of organizational payees through policy and regulation. A few years later, in 2004, Congress passed the Social Security Protection Act, P.L. 108–203. The Act established the re-issuance of benefits when an organizational payee misused a beneficiary’s funds, disqualified a person convicted of an offense that resulted in incarceration for more than a year from being a payee, and required forfeiture of fees when a payee misused funds. In addition, it authorized the imposition of civil monetary penalties up to \$5,000 per violation in cases of payee misuse of funds or withholding of material information pertaining to eligibility and other aspects of benefit receipt, among other provisions.

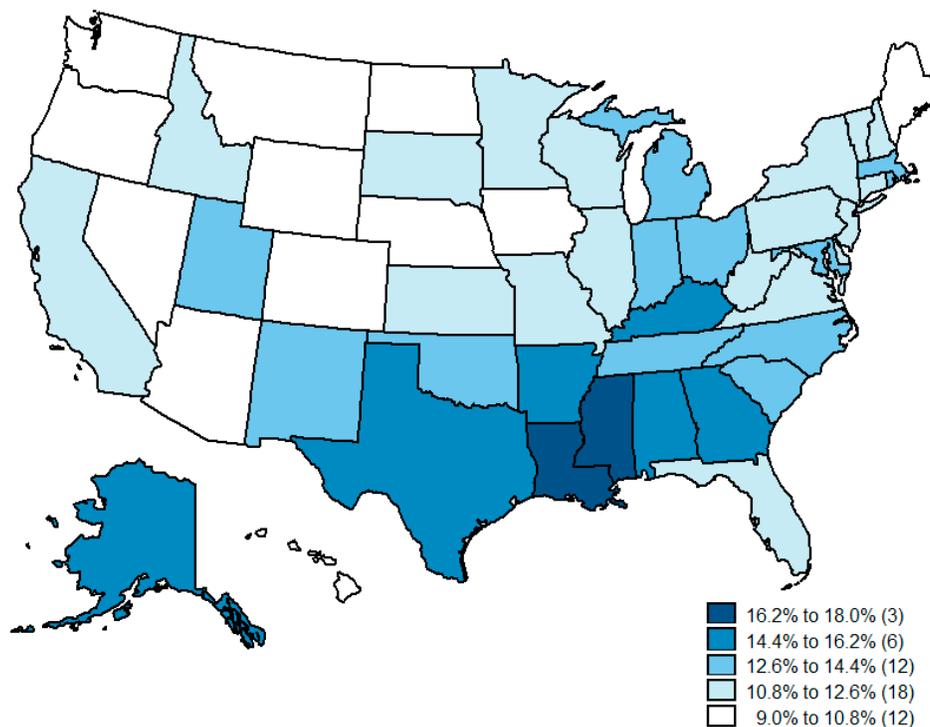
- Most recently, in 2009, an organizational payee, Henry’s Turkey Service was found to have abused 31 men in its employ, paying them far below the minimum wage and misusing their benefit payments. The discovery of those misdeeds led SSA, with support and funding from Congress, to undertake a much more rigorous program of oversight for organizational and other payees.

- Throughout the period, the federal courts have provided additional interpretation of statute, including upholding that SSA’s determination of the need for a payee is consistent with a person’s right to due process, but also requiring the agency to do more to protect the rights and welfare of beneficiaries determined in need of a payee.

► The Current Payee Universe

The map in *Figure 1* shows variation in the percent of beneficiaries with payees across states. Some variations evident on the map may be due to geographic patterns in the percentage of beneficiaries who are children (nearly all of whom have a payee). SSA’s data (not shown here) indicates that the percent of all beneficiaries with payees also varies across field offices (FOs). While variation across offices may be due to differences in the characteristics of the beneficiary population, SSA needs to analyze these data to understand if any of the factors accounting for variation are due to program management.

Figure 1. Number of OASDI/SSI Beneficiaries with Representative Payees as a Percentage of State Beneficiary Population, 2014



Source: Data tables created by the Social Security Administration, Office of Research, Evaluation, and Statistics based on the Master Beneficiary Record and Supplemental Security Record, 100 percent data

► Administration of the Payee Program

Determination of Need for a Payee

Payees are routinely assigned on behalf of minors under the age of 18 and for adult beneficiaries found judicially to be “incompetent.” They can also be appointed in cases where someone alleges that a beneficiary is in need of help and an agency investigation validates that claim. Thus, payees are appointed for not only minor children and adults that have been found to be incompetent after a full judicial hearing, but also for other adults through an administrative decision by an SSA field office (FO) employee.

There is also a subset of beneficiaries who may need assistance, but not necessarily a designated payee. Over the last 30 years or so, disability advocates have sought to reorient the support services provided to people with disabilities from a more paternalistic approach, to one that preserves an individual’s autonomy to the maximum extent possible. One such approach is called supported decision-making (SDM). The SDM model preserves the rights of individuals to make and implement their own decisions, with support received formally or informally. Formal mechanisms include use of a limited power of attorney, while informal support may come from family and friends. While this approach came about primarily as a means to assist people with disabilities, it could be used for older adults as well. SSA has begun to recognize self-directed models of support, such as SDM, as a viable alternative to appointment of a payee.⁶

As stated earlier, courts have upheld that SSA’s process for determining that a beneficiary needs a payee is not a violation of due process. Further, beneficiaries who are deemed incapable of managing their own benefits have a right to challenge and appeal that decision.⁷ Still, the number of protests is small.⁸ In light of the profound nature of this action, SSA needs to research, design, and then train staff on how to make payee determinations. This process should also include a method for identifying existing supports like SDM that would provide a person the assistance

they need—short of appointing a payee. SSA’s effectiveness in recruiting, selecting, and training new payees, oversight of current payees, and assessment of the beneficiary’s ongoing need for a payee also needs to be evaluated.

In addition to the payee determinations made at the point that benefits are awarded, the need for assistance may also emerge after a fully competent person on SSA’s rolls gradually becomes incapable of handling his or her funds. SSA does not routinely re-evaluate beneficiaries’ capability once they are on the rolls, but will do so when alerted “to changes in circumstances that might indicate the need for a new capability determination.”⁹ Competent beneficiaries typically have no need for face-to-face contact with SSA after they are awarded benefits, making it that much more difficult to identify someone whose needs have changed. This problem must be addressed, especially since the percentage of the population over age 85 is increasing. The agency estimates that *under current administrative practices*, the number of retired worker beneficiaries with a payee will increase from 519,780 in 2013 to over 1 million by 2035.¹⁰ Note that this estimate is conservative; it is based on the assumption that current age-specific rates of payees will not increase in the future and that there will be no new initiatives to identify initially competent beneficiaries who have lost competencies over time.

The issues raised in this section are key to preserving the rights and dignity of beneficiaries. However, it is important to recognize that SSA’s primary responsibility is to calculate benefits accurately, pay them to the right person, and to do so on time. Attrition and budget cuts have strained the agency and inhibited its ability to perform core functions. Even if administrative budgets were considerably larger, SSA is neither staffed nor structured to perform extensive social welfare functions. The outreach and coordination needed to implement some of these duties successfully would also be a significant stretch for the agency. The Board plans to explore possible strategies to divert beneficiaries in need of support to appropriate sources outside SSA or to have the agency work closely with those

6 Program Operations Manual Systems (POMS) GN 00502.020(A) (5), <https://secure.ssa.gov/poms.nsf/lnx/020.050.2020>.

7 POMS GN 00503.110, <https://secure.ssa.gov/poms.nsf/lnx/020.050.3110>.

8 The number of appeals (including both capability determination and selection of a particular payee) were 803 in 2013 and 489 in 2014, according to data SSA provided to the Board on 1/28/2015.

9 POMS GN 00502.020(A)(6), <https://secure.ssa.gov/poms.nsf/lnx/020.050.2020>.

10 Chris E. Anguelov, Gabriella Ravida, and Robert R. Weathers II, “Adult OASDI Beneficiaries and SSI Recipients Who Need Representative Payees: Projections for 2025 and 2035,” Social Security Bulletin Vol. 75 No. 2, 2015, <https://www.ssa.gov/policy/docs/ssb/v75n2/v75n2p1.html>.

sources to identify an appropriate payee. Findings will be reported in the future.

Selection of a Payee

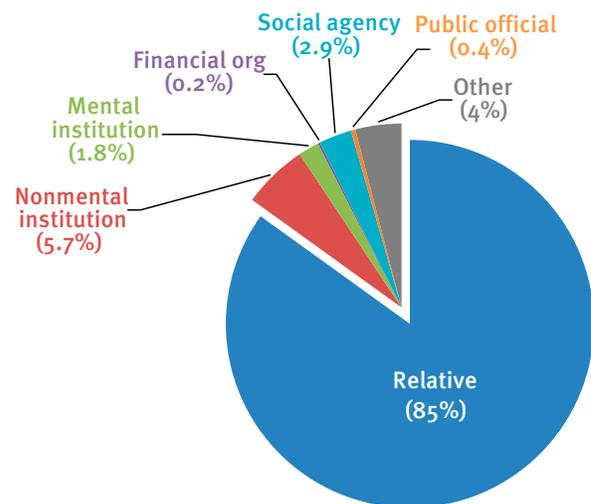
The statutory authorization and broad discretion in determining beneficiaries who need a payee reside with the Commissioner of Social Security.¹¹ The agency establishes the procedures for making such determinations and SSA FOs are responsible for implementation. FO staff decide if a payee is needed and designate the person or organization best suited to serve as a payee. FO staff are required to keep a list of local payees, but frontline service needs often outweigh a local office's ability to develop ongoing, cooperative relationships with community social service providers. Research is needed to determine how an effective process of payee selection could be preserved as SSA incorporates more online interaction.¹²

For adult beneficiaries, SSA has defined 11 classes of potential payees in order of presumed desirability. The most favored group for adults includes "a spouse, parent, or other relative with custody or who shows strong concern for the beneficiary's well-being."¹³ Most payees act out of familial concerns for those whom they serve. In 2014, 6.8 million beneficiaries with payees (85 percent) were represented by relatives (see *Figure 2*)¹⁴. Relatives include parents or children (natural, adoptive, or step), spouses, grandparents, or other family members.

The least favored group for adults is an organization that charges a fee for its service. FO staff are directed to use the preference lists as

developmental guides and may deviate from this list if another person or organization is best suited to serve as payee.¹⁵ Such flexibility is essential, but it introduces an additional element of variability. The difficult cases often involve situations in which, for one reason or another, an obvious candidate for payee is ill-suited to perform the assigned task, such as when a parent has a serious substance abuse problem or those in charge of a group home have an interest that may conflict with the interests of the residents in that home.

Figure 2. Distribution of Beneficiaries with Payees, December 2014¹⁴



Source: Data tables created by the SSA, Office of Research, Evaluation, and Statistics based on the Master Beneficiary Record and Supplemental Security Record, 100 percent data.

Training of Payees

SSA instructs newly appointed payees that funds must be used for a specified list of purposes and that they will have to file an annual financial statement. Historically, there has been little training for individual and organizational payees beyond the statement of those basic expectations. While SSA has made progress in recent years by adding training modules, including videos and more pamphlets to its website, it is not clear how effective these are or how often they are accessed.¹⁶

11 Social Security Act Sec 807. [42 U.S.C. 1007] (a), https://www.ssa.gov/OP_Home/ssact/title08/0807.htm. In General.—If the Commissioner of Social Security determines that the interest of any qualified individual under this title would be served thereby, payment of the qualified individual's benefit under this title may be made, regardless of the legal competency or incompetency of the qualified individual, either directly to the qualified individual, or for his or her use and benefit, to another person (the meaning of which term, for purposes of this section, includes an organization) ... referred to as the ... "representative payee."

12 Current regulations require a face-to-face interview with a payee applicant unless impracticable. See 20 CFR § 404.2024, https://www.ssa.gov/OP_Home/cfr20/404/404-2022.htm and 20 CFR § 416.624, https://www.ssa.gov/OP_Home/cfr20/416/416-0624.htm.

13 POMS GN 00502.105, <https://secure.ssa.gov/apps10/poms.nsf/lnx/020.050.2105>. For minor children, the most favored choice is a natural or adoptive parent with custody while the last choice is "Anyone not listed above who shows strong concern for the child, is qualified, and able to act as payee, and who is willing to do so." Beneficiaries who have a substance abuse diagnosis are subject to a different priority list.

14 An example of a "financial organization" is a personal financial services company; an example of a "public official" is a county public guardian.

15 POMS GN 00502.105, <https://secure.ssa.gov/apps10/poms.nsf/lnx/020.050.2105>.

16 The Consumer Financial Protection Bureau also posted guidance for representative payee and VA fiduciaries on its website in 2013. See *Managing Someone Else's Money: Help for Representative Payees and VA Fiduciaries*, http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_representative.pdf.

Monitoring of Payees

Perhaps the most worrisome aspect of the payee program is the absence of serious monitoring of the performance of payees. Payees are required to submit a short form every year that shows expenditures in two broad categories: 1) food and housing, and 2) personal spending (such as clothing), and then asks how much was saved.¹⁷ If this form is submitted with the expenditures matching the benefit amounts, then the payee's annual accounting is considered complete.¹⁸

The average disabled worker benefit in July 2015 was \$14,000 per year.¹⁹ Thus, an individual payee serving 14 people could handle \$196,000 per year or even more; an organizational payee serving 49 people could be handling nearly \$686,000 a year or more. Payees serving more clients—individual payees with 15 or more clients and organizational payees with 50 or more clients—handle even more money. Of the 6 million payees in 2014, almost 36,000 were organizational payees serving approximately 1.2 million beneficiaries.²⁰

In 2007, a National Academy of Sciences (NAS) committee conducted an examination of the SSA payee program. One of the major recommendations listed in its final report was that SSA “redesign the annual accounting form to obtain meaningful accounting data and payee characteristics that would facilitate evaluation of risk factors and payee performance.”²¹ Some of the potential risk factors identified by the committee include whether 1) the payee's zip code differs from the beneficiary's, 2) the payee also receives government benefits, and 3) the payee has had multiple address changes during the past two years. However, SSA declined to follow this recommendation, with the statement:

Instead of using the payee accounting form to collect payee characteristics, we believe it is more efficient to continue to collect this information at the time of payee selection and appointment, rather than on a form that the payee completes annually.²²

The agency did not provide any reasoning or evidence as to the efficiency of the current method.

Prior to 2004, SSA was only processing the mandatory annual accounting forms and conducting onsite reviews of state mental institutions, as well as discretionary onsite reviews of some individual and organizational payees. In 2004, the Social Security Protection Act added mandatory periodic onsite reviews for 1) individual payees serving 15 or more beneficiaries, 2) organizational payees serving 50 or more beneficiaries, and 3) fee-for-service payees.²³ Congress required SSA to report the onsite review results annually.

SSA is mandated to conduct periodic onsite reviews of payees and report the results of these reviews to Congress annually. These onsite reviews are divided into two categories: mandatory periodic onsite reviews and discretionary onsite reviews based on predictive models of misuse. In 2012, SSA's Office of Quality Improvement (OQI) developed a predictive model for targeting cases with a higher likelihood of misuse. The predictive model includes independent variables that represent 14 of the 15 potential misuse characteristics identified in the NAS study and it targets categories of payees not included in the mandatory reviews: 1) individual payees serving fewer than 15 beneficiaries as well as organizations serving between 5 and 49 beneficiaries.

However, budget constraints limit the number of discretionary site reviews that SSA is able to conduct. Only 894 cases were reviewed in fiscal year 2014.²⁴ According to OQI, while the model is identifying cases more likely to be subject to misuse than random selection, the number of cases SSA is able to investigate is still too small to perform a full assessment of how the model is performing.

SSA also conducts discretionary onsite reviews of payees that have been brought to their attention through other means, such as media attention or allegations of misuse by a beneficiary or other

17 The Social Security Act exempts state institutions from annual accounting and instead requires periodic (every three years) onsite reviews, 42 USC 1007. Annual accountings can be submitted either online at <https://www.ssa.gov/> or by mail using SSA-623 (or SSA-6230 for child beneficiaries and SSA-6233 if a dedicated account is involved).

18 Annual accountings can be submitted either online at <https://www.ssa.gov/payee/form/index.htm> or by mail using SSA-623 (or SSA-6230 for child beneficiaries and SSA-6233 if a dedicated account is involved).

19 SSA, Monthly Statistical Snapshot, July 2015, https://www.socialsecurity.gov/policy/docs/quickfacts/stat_snapshot/2015-07.html.

20 *Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews*, *supra* note 4, at 2.

21 National Research Council, National Academy of Sciences (NAS), *Improving the Social Security Representative Payee Program: Serving Beneficiaries and Minimizing Misuse*. Committee on Social Security Representative Payees, Division of Behavioral and Social Sciences and Education. Washington: The National Academies Press, 2007.

22 SSA progress report on the NAS recommendations, provided to the Board in July 2015.

23 Social Security Protection Act SEC 102. [42 U.S.C. 405], <https://www.gpo.gov/fdsys/pkg/BILLS-108hr743enr/pdf/BILLS-108hr743enr.pdf>.

24 *Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews*, *supra* note 4, at 5.

party. Between the mandatory and discretionary reviews, SSA conducted 2,377 onsite reviews in fiscal year 2015—a small fraction of the universe of 6 million payees.²⁵

▶ **Payee misuse of funds**

Even with the best procedures in place, some misuse will occur. SSA must address payees who, either negligently or maliciously, misuse funds. When identified misuse rises to the criminal level, SSA works with law enforcement to assist with prosecution. SSA's Office of Inspector General may seek civil monetary penalties (CMPs) under Section 1129 of the Social Security Act. CMPs allow SSA to impose fines against misusers without needing to prove criminal intent.

Under the Bipartisan Budget Act of 2015, Congress raised the maximum CMPs from \$5,000 to \$7,500 per instance. SSA must deposit CMPs into the Social Security trust fund from which the benefits were paid, while some federal agencies are able to keep all or a portion of judgments won in litigation to finance further investigations and prosecutions. More research is needed to evaluate the implications of giving SSA authority to finance investigations in this manner.

In cases where SSA was negligent in investigating or monitoring the payee, SSA is required to reimburse the individual whose benefits were misused.²⁶ Congress also requires SSA to make a good faith effort to obtain restitution from the payee who misused the benefit to repay the trust funds (OASDI) or the general fund (SSI).²⁷

▶ **The Central Administrative Challenge**

In a 2013 report, the U.S. Government Accountability Office (GAO) found that the agency “struggles to effectively administer its Payee Program, despite steps taken to address its challenges in identifying, selecting, and monitoring payees...” and that “SSA has done little to position itself for the long term,” despite projected growth in the aged population as well as increases in the incidence of dementia in coming years.²⁸

The payee program is not a high priority in FOs that are inundated with initial applications and post-entitlement work. However, more attention could be given to preventing mishandling of funds, by both training staff and creating predictive modeling systems that screen payee applications and provide indicators for potential misuse.

SSA recently published a study that used statistical modeling to project the growth in the need for payees for adults, finding:²⁹

...the growth in the need for payees will be driven primarily by the increase in the numbers of (1) retired-worker beneficiaries as of 2025 because of the aging of baby boomers and (2) baby boomers who will have reached age 85 by 2035.

The study also found that in addition to the growth in numbers of payees needed, the type of payee needed will also change. In 2013, 71 percent of disabled workers with payees had a family member serving that role; however, the comparable number for retired workers was only 57 percent. If this trend continues into the future, SSA will not only have a greater need for payees overall, but specifically will have a greater need for non-family payees. SSA's oversight responsibility will also increase as the number of payees increases.

The fundamental and abiding administrative challenge for SSA and other agencies and entities with similar populations is to establish procedures, rules, and requirements that outline a process that incorporates the rights of the beneficiary, the ability to recruit and retain payees, and the structure to provide sufficient oversight to correct errors, address problems, and report crimes. These objectives are easy to state, but hard to meet. We are concerned with the design of the current program and the inadequate resources devoted to administering it. This issue paper is a call to action for more research, more resources, more interagency cooperation, more attention by the media, and more engagement by Congress. All parties need to search for solutions to a complex problem that projections show will become bigger and more complex in the next few decades. ❖

25 *Ibid.*

26 Social Security Protection Act, *supra* note 17.

27 *Ibid.*

28 Government Accountability Office, *SSA Representative Payee Program: Addressing Long-Term Challenges Requires a More Strategic Approach*, May 2013, <http://www.gao.gov/products/GAO-13-473>.

29 Anguelov, Ravida, and Weathers II, *supra* note 6, at 5.

SOCIAL SECURITY ADVISORY BOARD

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