

# **Selection Processes for Social Security Administration Representative Payees of Adults**

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# Summary Brief: Selection Processes for Social Security Administration Representative Payees of Adults

This *Summary Brief* highlights the findings from the September 2020 report, *Selection Processes for Social Security Administration Representative Payees of Adults*, by Pamela B. Teaster, Ph.D., and Laura P. Sands, Ph.D., Virginia Tech Center for Gerontology; and Erica Wood, J.D., American Bar Association Commission on Law and Aging (ret.). The Social Security Advisory Board (SSAB) charged the authors to conduct an independent research study focusing on SSA processes for *selection of payees for adults*, with the underlying assumption that a better understanding of the processes involved in selection of payees ultimately could lead to a reduction in the potential for misuse and abuse while maintaining beneficiary rights.

## Background: The SSA Payee Selection Process

The representative payee program provides financial management for Social Security and Supplemental Security Income (SSI) beneficiaries determined incapable of managing their payments. The Social Security Administration (SSA) appoints representative payees to receive benefit payments on the beneficiary's behalf and to use the money for the beneficiary's current needs. SSA currently has approximately 6 million representative payees managing benefits for about 8 million beneficiaries (52 percent of the beneficiaries with payees are minors). Family members—primarily parents or spouses—act as payees for 85 percent of these beneficiaries. Representative payees serve some of society's most vulnerable, at-risk adults, managing their benefits to cover basic expenses such as food, clothing, shelter, and medical care.

A beneficiary, someone who knows the beneficiary, or a state disability determination service or administrative law judge, may indicate that the beneficiary needs help in managing Social Security or SSI payments. An employee at a local Social Security field office examines evidence to determine whether the beneficiary can manage his or her own funds and receive payment directly, or whether a payee should be appointed. The employee selects a payee, who must manage the funds in the beneficiary's best interest. Generally, the payee is a family member or friend, or could be someone else, including a guardian appointed by the court. When there is no individual available and suitable to serve, SSA staff seeks a qualified organization.

Organizational payees include social service agencies, institutions, state or local government agencies, or financial institutions that manage funds for persons who are unable to do so. There are several types of organizational payees. An *institutional representative payee* is a type of organizational payee that provides care and treatment for beneficiaries who reside in an institution or an off-site facility affiliated with an institution (e.g., nursing homes, hospitals, assisted living, group homes). *Fee-for-service organizational payees* are organizations that are authorized by SSA to collect a fee for providing representative payee services from a beneficiary's monthly Social Security or SSI payment.

The primary source of information for SSA field office staff is the SSA Program Operations Manual System (POMS). The POMS provides detailed guidance for staff in deciding whether a payee is necessary and in selecting the most suitable payee. It includes a preferred payee “order of preference” chart for selecting individual and organizational payees.

## Values Underlying Payee Selection

As we conducted our study, we recognized that the payee determination and selection process involves a number of sometimes competing societal or ethical values.<sup>1</sup> At the core is a clash between the principles of autonomy and beneficence. As regards *autonomy*, an individual has the right to direct how his or her money should be used, if at all possible, even if the person makes unwise choices.

*Beneficence*, or doing good, impels SSA to protect the assets of people who are determined incapable of managing their funds by appointing a representative payee. The appointment of a payee is protective – and at the same time, removes important rights and self-determination.

An additional principle is *nonmaleficence*, or doing no harm. SSA staff must select a payee who will not cause harm to the beneficiary by depleting his or her funds or using them for the payee’s own benefit. This may require careful training and considerable investigation, as well as review of payee choices. Payees are “fiduciaries” – agents appointed to make financial decisions on behalf of another, and must be selected with high standards of trust and accountability in mind.

Finally, *justice* means that one group of people should not be treated differently and unfairly in payee determination based on factors such as discriminatory stereotypes or administrative needs rather than beneficiary interests. Staff requires clear and uniform criteria in selection.

We observed SSA field office staff and managers wrestling with these values – and in the real world of limited resources and limited time. We designed our study to determine and depict how the process is working.

## Methods

Researchers at Virginia Tech and the American Bar Association Commission on Law and Aging conducted an independent study for the Social Security Advisory Board on SSA payee selection processes for adults. We used a two-phased approach for gathering data for our report.

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<sup>1</sup> Beauchamp, T.L., & Childress, J.F. (2019). Principles of biomedical ethics (8<sup>th</sup> ed.). New York, New York: Oxford University Press.

**Phase One.** Members of the team conducted face-to-face interviews with SSA field office employees who select individual and organizational payees for adults. The team used standard qualitative analytic techniques to characterize the experience of the participants.

To conduct consistent, uniform interviews, the research team developed an interview guide based upon the combined knowledge of National Council of Social Security Management Associations (NCSSMA) officers, SSAB staff, and Board members. The final interview guide included questions related to field office staff practices and factors influencing selection of individual and organizational payees. The research team conducted face-to-face interviews with 10 members of SSA field office management and 63 employees who select representative payees for adults; the employees were from SSA field offices in eight states. The team then identified emergent themes from the interviews.

**Phase Two.** For the second phase of data collection, the research team developed potential survey items for each theme derived from analysis of the interviews. We presented the survey items and response formats to NCSSMA leadership, SSAB staff, and Board members. Based on this combined expertise, we refined the survey items across several iterations to make sure that our questions were clearly understandable and accurately measured the subject in question. After beta testing by NCSSMA leadership, in September 2019, the president of NCSSMA sent the survey with an introductory letter to 3,136 NCSSMA members across the country. We received responses to the survey from 584 NCSSMA members, a 19percent response rate, which fell within the expectable range for response rates from Web-based surveys.

## Summary of Findings and Recommendations

### 1. Beneficiary Capability and Payee Selection

Field office staff constantly walk a fine line, seeking to balance the harm to beneficiaries' self-determination in controlling their funds with the potential for harm from mismanagement or loss of funds without a payee.

**Availability of Payee.** Staff generally follows POMS guidance to presume capability and pay benefits directly, if possible. However, we found that the capability determination process and the payee selection process sometimes occur simultaneously. The availability of a suitable payee may bear directly on the capability decision. The staff decision to pay benefits directly ultimately may be based on two very different underlying rationales. The first is the need to enhance beneficiary autonomy. The second is the difficulty of finding an appropriate payee, which suggests a need to increase the number of qualified organizational payees with access to resources.

**Meeting with Beneficiary.** An important element in determining capability is meeting with the beneficiary personally, either face-to-face or remotely by phone or video. One-third of field office managers surveyed said this does not occur for beneficiary residents of long-term care facilities. Direct contact with beneficiary residents would offer important evidence needed to make informed decisions. The COVID-19 pandemic has highlighted ways of communicating with facility residents virtually through technology – methods that could be supported by SSA.

**Supported Decision-making.** Staff interviews informed the importance of decision supports and supported decision-making. These supports allow beneficiaries to make their own decisions with help from people they trust, as well as a range of practical, technological, and community options. According to the POMS, a capability determination rests on whether a beneficiary can manage or *direct the management* of benefits. This POMS language reflects a model of supported decision-making – the person may be able to make decisions about managing benefits but needs someone to help in understanding the choices and in communicating and implementing the decisions. More specific SSA guidance in the POMS and on the medical form evaluating capability (Form 787), as well as training for field office staff on this decision-making model, could reduce unnecessary payee appointments. Staff should try to use supported decision-making before making a payee appointment.

## 2. External Evidence of Capability

According to SSA guidance, field office staff must presume a beneficiary is capable of managing benefits, but when capability is in question, staff should examine the lay and medical evidence. Our interviews highlighted problems with evidence from the state Disability Determination Service (DDS) and from physicians that interfere with the efficiency and clarity of the capability determination process.

**DDS Opinions.** The interviews and survey findings show a tendency for DDS to raise, but not resolve and pass along to SSA field office staff, the need for a capability decision. Having to develop capability whenever DDS suggests it consumes SSA staff time and may result in payees being appointed more often than necessary. Because our study did not gather information directly from DDS staff, further research on DDS practices would be helpful.

**Medical Form 787.** Interview and survey findings show that delays or failure of physicians to return the form on beneficiary capability negatively affects the timeliness of selection decisions and can preclude staff consideration of key medical information.

Additionally, the form could be improved to highlight specific functional findings, including examples of the beneficiary’s abilities and limitations for managing financial benefits with support, rather than simply providing the beneficiary’s diagnosis.

## 3. Casework Quality

Quality of the process of determining payee selection could be improved by training staff on methods and strategies of payee determination, review of payee cases by managers, and the need for improvements to the electronic system to include documentation of the reasons influencing the payee selection.

**Training.** SSA should consistently conduct and update staff training on payee selection. Staff and managers reported that live (remote or in-person) training would improve quality, allowing for questions and explanations of the nuanced and complex selection work. Creating a time and place for employees regularly to share decision-making strategies through peer

discussions is also a useful strategy. New staff relies heavily on mentors, who must be thoroughly up-to-date on SSA requirements and have sufficient time allocated for guidance.

**Case Review.** We found that frequently there is no review of staff payee selections. Over half the managers surveyed said such review rarely or never occurred. Combined with workload pressure, this omission leaves the door open for inconsistencies that could unfairly affect beneficiaries. A protocol for consistent review of payee cases would strengthen casework quality and protect beneficiary rights by providing a second set of eyes on each case determination. This should include building time for review into the workload.

**Documentation.** The electronic Representative Payee System (eRPS) requires that staff document payee selection and the reasons behind it, including justifying any deviations from the POMS preference list. Over time, different staff members may be faced with handling the same case and must be thoroughly informed about the circumstances -- including factors such as proximity, family conflict, beneficiary preferences, substance abuse, and criminal history. We support the recommendation of SSA's 2019 Report to Congress on payee selection<sup>2</sup> to "enforce payee selection policy by making the selection determination screen in the payee system mandatory" -- which also would provide better data on payee selection.

#### 4. Field Office Staff Workload

Our interviews revealed that constant time pressure on field office staff can adversely affect investigation of potential payees as well as documentation about the reasons for selection. Over three-quarters of field office managers surveyed said staff workload has increased to the point that it negatively affects payee selection.

**Field Office Staffing.** Staff interviews and survey findings suggest a need for increasing field office staffing to allow additional time for more informed payee selection. Our study did not compare the adequacy of staffing for payee cases with staffing for other aspects of SSA work. However, devoting additional staff to payee determination issues is justified given the vulnerability of the population and the clear rights at stake.

**Specialization.** Management perspectives on the usefulness of staff specialization on payee issues varied. Staff from smaller offices recommended that all their staff should be knowledgeable in all aspects of Social Security cases to best serve customers. Only one-quarter of offices currently have staff that specializes in payee issues, yet over 40percent of managers said it would be useful, implying that some managers might welcome policies encouraging specialization. A related approach, regional specialization, drew mixed interview responses from field office managers. The 2018 SSAB report on the payee program recommended that SSA "create specialized rep payee expertise at the field office and/or regional level to administer the rep payee program more uniformly . . . ."<sup>3</sup> Regional specialization merits evaluation through a pilot project.

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<sup>2</sup> Social Security Administration, *Reassessment of Payee Selection and Replacement Policies Report to Congress* (October 2019)

<sup>3</sup> Social Security Advisory Board, *Report: Improving Social Security's Representative Payee Program*, p. 14 (January 2018).

**eRPS Software.** Staff repeatedly described technical glitches in the eRPS software system, causing loss of significant time. Close to 90percent of managers agreed that eRPS system problems hinder payee selection.

**Changes in Payee.** Some beneficiaries, especially with mental health or substance abuse problems, repeatedly press staff to change the payee, and staff must evaluate a replacement payee or use of direct payment. POMS provisions show that a payee change can be complex and time-consuming. A qualified organizational payee with access to resources is not always available, and, in some cases, the beneficiary may end up being the payee whether or not the beneficiary has sufficient support for financial decision-making.

## 5. Guardians as Payees

**Questioning Guardians for Suitability.** Guardians are high on the POMS preference list for selection as a representative payee because the court has approved them in a fiduciary role. Interviews found that some staff select guardians as payees without additional inquiry. One in three managers surveyed said guardians are always selected as payees. Forty percent of managers said guardians are always questioned about their suitability to serve.

Encouraging additional field office scrutiny of guardians could help in selecting payees who will best meet beneficiary needs. Government reports and hearings have brought to light instances in which guardians have taken advantage of those they were appointed to protect, and court oversight practices are uneven. The POMS states that only guardians with custody or who *demonstrate strong concern for the beneficiary's well-being* may be named as payee. Staff questions are needed to determine the extent to which the guardian meets these conditions.

**Coordination with Courts.** Additionally, national studies have highlighted that, while state courts with guardianship jurisdiction and the SSA payee program serve essentially the same population, there is very little coordination or information sharing between the two systems.<sup>4</sup> This lack of coordination may leave at-risk adults unprotected. For instance, if the same person serves as payee and guardian, and the court removes the guardian for exploitation, the field office is not notified of the need to make a change in the payee. Over 80percent of managers surveyed confirmed that field offices rarely or never contact the court about guardian suitability. Better information sharing could help to address misuse and abuse.

## 6. Organizational Payees

Staff interviews and management survey responses concerning organizational payees were mixed in their views as to whether organizational payees offer beneficiaries greater access to resources than individual payees. Of note, few managers felt that fee-for-service payees provide greater access to resources than individual payees. Study findings revealed the need for more detailed documentation of the reasons for selecting organizational payees.

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<sup>4</sup> U.S. Government Accountability Office, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, GAO-04-655 (July 2004)

**Staffing and Resources of Organizational Payees.** Survey results were mixed about whether organizational payees have enough employees and resources to serve adult beneficiaries. The 2019 U.S. Government Accountability Office (GAO) report on organizational payees stated that “SSA policy directs staff to consider whether the organization ‘has adequate staff and resources to serve its clients,’ but regional guidance varies.”<sup>5</sup> SSA should establish criteria for adequate organizational staffing and resources, including staff-to-beneficiary ratios, frequency of communication with individual beneficiaries, staff responsibilities, and training.

**Beneficiary Access to Community Resources.** The 2018 SSAB report on improving the payee program<sup>6</sup> raised the question of whether organizational payees may offer greater access to resources for adults than individual payees and thus should be moved higher on the POMS preference list. Our interviews and survey results were divided as to whether organizational payees provide greater access to resources, and did not support moving all organizational payees higher, especially FFS payees. However, non-profit social service agencies providing other services to beneficiaries (such as a county or non-profit social service agency) currently are not differentiated in the preference list for adults without a substance abuse condition (although they are first on the list for adults with a substance abuse condition) and should be highlighted as a distinct category.

**Fee-for-Service Organizations.** Few managers felt that FFS organizations (as opposed to other organizational payees) provide greater access to resources than individual payees. Most staff interviewed considered FFS organizations a last resort (as set out in the POMS preference list for adults without substance abuse conditions). Some described local organizations that were not fulfilling duties and were, in fact, simply “conduit payees” doing no more than transferring the funds to the beneficiary – which SSA should identify and prohibit.

**Documentation and Training.** Our study highlighted the need for sufficient documentation concerning organizational payee selections, as well as SSA training and outreach for organizational payees. The 2019 GAO Report<sup>7</sup> recommended additional ways to “obtain and review feedback from organizational payees.” We concur.

## 7. Institutional Payees

Facility payees such as nursing homes present a conflict of interest in that they are providing beneficiaries with services for payment. The 2019 SSA Report on payee selection adds safeguards and possible longer-term improvements.<sup>8</sup>

**More Tools for SSA Oversight.** The interview and survey data suggest that SSA needs more tools to determine whether facility selection is in the beneficiary’s best interest. Over 40percent of field office managers said facilities do not file timely annual reports, and there are no regular audits for facilities serving less than 50 beneficiaries. Thus, it may be difficult for SSA to

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<sup>5</sup> U.S. Government Accountability Office, *Social Security Benefits: SSA Needs to Improve Oversight of Organizations that Manage Money for Vulnerable Beneficiaries*, GAO-19-688 (September 2019)

<sup>6</sup> Social Security Advisory Board, *Report: Improving Social Security’s Representative Payee Program* (January 2018)

<sup>7</sup> GAO, *Social Security Benefits*

<sup>8</sup> SSA, *Reassessment of Payee Selection*

track whether the facility should continue to serve. Study findings revealed the importance of training facility payees on their duties and conducting audits of the smaller facility payees. These audits should take into account Center for Medicare and Medicaid Services(CMS) nursing home data, as urged by a recent SSA Office of Inspector General Report.<sup>9</sup>

**More Information for Families, Facilities.** Some interviewees said family members should receive more information on facility payees and services. They also suggested more outreach and training for facility payees about their duties. Additionally, fostering field office contacts with the state or local long-term care ombudsman program could help families and beneficiaries to resolve problems.

**Facilities Requiring Own Designation.** Nearly half of managers surveyed said facilities require that they be designated as their clients' payees. Such a condition raises concerns that, in some instances, facilities may be overriding what should be an SSA staff determination of suitability and beneficiary needs. SSA should prohibit selection of facilities with contract provisions requiring their designation as payee.

## 8. Practice Inconsistencies

Interview and survey data provided strong evidence of payee selection practice inconsistencies that could be addressed by further training of SSA staff. That training would include clear instruction on the principles and processes for payee selection, the importance of meeting with the beneficiary and payee prior to payee determination, and best practices in making payee determination in cases of substance abuse and criminal history.

**Additional Staff Guidance and Training.** Inconsistency in how payees are selected is a double-edged sword. While SSA staff need flexibility and a certain amount of discretion related to payee selection, some inconsistencies could result in unfair practices and may create beneficiary hardships. Staff generally follow the POMS preference list but vary in the extent to which they lean toward direct payment to enhance beneficiary independence and the extent to which they consider specific factors concerning the beneficiary-payee relationship. Our findings call for fortifying field office staff guidance and remote or in-person training.

**Face-to-Face Meetings.** For both facility and community settings, some staff consistently meet with the beneficiary and the payee either in-person or remotely, while others were less consistent. Staff recognition of the potential of technology to bridge geographic distance was uneven – although perhaps will change with the advent of COVID-19. In particular, staff should meet with both parties if the beneficiary requests a payee change.

**Substance Abuse.** Interviews showed inconsistencies in how payees were chosen for cases involving substance abuse by either the beneficiary or the payee. Inconsistencies included staff consideration of whether the substance abuse was in the past, for how long, or is a recent or present condition. Staff revealed inconsistency in the need to protect the beneficiaries from their own behavior by appointing a payee. SSA should develop and implement additional policy,

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<sup>9</sup> Office of the Inspector General, Social Security Administration, *Audit Report: Using Nursing Home Data to Determine Suitability of Representative Payees*, A-03-16-50056 (March 2018)

guidance, and training on beneficiary substance abuse cases, and factors affecting the choice between direct payment and payee appointment. SSA also should provide guidance on an acceptable length of time that a payee with past but no current substance abuse may serve.

**Criminal History.** Staff said they consistently apply POMS guidelines prohibiting selection of a payee convicted of any of the 12 barred crimes. However, there were inconsistencies for crimes that were outside of the barred crimes. Over a third of the managers surveyed stated there was high to moderate variability among staff in application of the bar. SSA should develop and implement additional policy, POMS guidance, and training concerning cases with barred crimes as well as with crimes outside of the barred crimes.

## Conclusion

The goal of the study was to describe current methods and policies in selecting representative payees and to identify aspects of administrative structures, policies, guidelines, resources, and training that support or deter the selection of efficient and effective representative payees. Our report is the first to describe Social Security field office practices on the selection of representative payees for adults.

The study team gathered data using a two-phase process of in-depth, in-person interviews, and a national survey of field office managers. Data revealed challenges and implementable solutions for determining capability, increasing quality, handling a growing workload, designating guardians as payees, and selecting a range of organizational payees. Study findings revealed inconsistencies in the practice of determining capability and selecting payees.

Our 35 recommendations address many aspects of payee appointment and selection in the current SSA program, including specific changes in policy, POMS guidance, administration, communications, forms, technology, training, and research, as set out in the table below.

As we conducted our research, the new process for beneficiaries to designate potential payees in advance, as required by the 2018 Strengthening Protections for Social Security Beneficiaries Act, was in the early stages of development. Regulations had not yet been promulgated, and most staff we interviewed were unaware of the new provision. At the time of data collection, it was unclear whether this provision would result in substantial changes in the selection process. In the months since our site visits, all employees have been trained on advance designation of payees; our report provides a context for implementation of the new provision.

## Revisions to the Current System

Our recommendations address many aspects of payee appointment and selection in the current SSA program. Field office management can best categorize them by timeframe into short-term, mid-term, and longer-term implementation. Some of the suggested changes have a high fiscal impact (such as increased SSA field office staffing for payee selection), while for others, the cost is more minimal (changes in forms). Below, we categorize our recommendations.

SSA ACTION	REPORT RECOMMENDATION
<b>Changes in Policy</b>	<ul style="list-style-type: none"> <li>• Focus additional research on DDS practices in payee determinations. Discontinue use of the DDS practice of sending SSA field office staff a statement of “capability unresolved.”</li> <li>• Develop and implement consistent review of payee selection cases to improve the quality of each case determination. The review should focus on the process for determining payee selection and should be built into the time allocated to payee selection.</li> <li>• Develop and implement consistent requirements for staff documentation of selection decisions.</li> <li>• Establish criteria for adequate staff and resources for organizational payees, including staff-to-beneficiary ratios, frequency of communication with individual beneficiaries, and staff responsibilities and training.</li> <li>• Prohibit the selection of facilities with contracts requiring the designation of the facility as payee as a condition of admission.</li> <li>• Conduct regular audits of institutional payees with fewer than 50 residents, taking into account CMS nursing home data.</li> <li>• Provide that, if a beneficiary requests a change in payee, staff must meet with both parties, either in-person or through technology.</li> </ul>
<b>Changes in POMS Guidance</b>	<ul style="list-style-type: none"> <li>• Differentiate on the POMS Preference List for Adults without a Substance Abuse Condition, a distinct category of Community Based Non-Profit Social Service Agencies.</li> <li>• Preface the POMS Order of Preference with a statement requiring consideration, prior to payee appointment, of beneficiary supports and services, as well as a supporter who may help the beneficiary’s financial decision-making.</li> <li>• Provide guidance to field office staff about criteria for determining the suitability of any guardian to serve as payee.</li> <li>• Develop and implement additional policy, guidance in POMS, and training concerning beneficiary substance abuse and the choice between direct payment and appointment of a payee.</li> <li>• Develop and implement guidance concerning an acceptable length of time that a payee with past but no current substance abuse may serve.</li> <li>• Develop and implement additional policy, guidance in POMS, and training concerning payee selection if the potential payee has committed a crime that is not one of the 12 barred crimes.</li> </ul>
<b>Changes in Administration</b>	<ul style="list-style-type: none"> <li>• Increase field office staffing levels to allow time for more informed payee determinations, given the rights at stake.</li> <li>• Pilot and evaluate field office staff specialization on payee issues in large offices and at the regional level.</li> <li>• Increase the number of qualified and effective organizational payees with access to beneficiary resources.</li> <li>• Identify and prohibit practices of “conduit” or pass-through organizational payees in order to foster payee-beneficiary relationships and improve access to resources for beneficiaries.</li> </ul>

<b>Contacts and communications</b>	<ul style="list-style-type: none"> <li>• Inform the court when a guardian is appointed as payee.</li> <li>• Develop a process for staff to communicate with the court about the guardian’s performance and suitability to serve as payee.</li> <li>• Foster field office staff contacts with the state or local long-term care ombudsman program under the Older Americans Act.</li> </ul>
<b>Forms</b>	<ul style="list-style-type: none"> <li>• Modify the instructions for the SSA medical form (Form 787) to emphasize assessment of ability <i>to manage or direct the management of</i> financial benefits and the existence of supports and supporters, rather than stating medical diagnoses alone.</li> <li>• Include on the medical Form 787 a timeframe and rationale for its timely return.</li> </ul>
<b>Technological changes</b>	<ul style="list-style-type: none"> <li>• Require field office staff to have a phone call, video call, or face-to-face meeting with beneficiaries, including residents in nursing facilities, before making a capability determination. Encourage technological solutions for personal contact when necessary.</li> <li>• Resolve technological problems in eRPS so that staff can better input data and document decisions on payee selection.</li> </ul>
<b>Training</b>	<ul style="list-style-type: none"> <li>• Provide specific training for staff in identifying and recognizing beneficiary supports and services as well as potential supporters.</li> <li>• Provide education and training for DDS staff on capability factors and require clear written support for any “payee needed” opinions. Include DDS use of technology for remote determinations.</li> <li>• Develop and implement consistent in-service training for field office staff on payee selection, using live virtual training techniques as well as in-person training where possible.</li> <li>• Foster peer discussions for field office staff to share decision-making strategies concerning payee selection.</li> <li>• Develop and implement criteria for field offices to provide regular training and outreach for organizational payees about their duties and how best to meet the needs of beneficiaries.</li> <li>• Develop training materials for institutional payee staff on payee duties and conduct regular training and outreach.</li> <li>• Develop information for families and residents about duties of institutional payees.</li> </ul>
<b>Research</b>	<ul style="list-style-type: none"> <li>• Examine DDS practices in payee determinations.</li> </ul>

## Envisioning Future Directions

Interview comments about the need for overall changes in the payee process resulted in a survey item on the extent to which SSA should continue its current level of involvement in the selection of payees. While 45percent of managers surveyed agreed the SSA should continue its current involvement, 55percent disagreed. Coming from leaders with years of SSA experience, this response seems to call for high-level evaluation of questions such as:

- To what extent and how can supported decision-making greatly reduce the need for appointment of payees? What would a greatly reduced program look like? What kinds of oversight and assistance would supporters for beneficiaries require?

- Can we envision a more person-centered program built around beneficiary self-determination while meeting their needs for resources and support? What bridges should a renewed program build with the aging network, the disability network, and other human services systems?
- If implementation of the recommendations for improving the selection process is not feasible, should the payee program be located in another agency outside of SSA? Such a move should be preceded by determining areas of expertise that are needed in another agency to take on this role.

Our report provides both qualitative and quantitative data to clarify the overall process of payee appointment and selection. It highlights practical recommendations to improve payee selection.

However, clearly, there is a need for further examination of the overall SSA payee appointment and selection process, especially in light of increasing numbers of older adults with limitations in their abilities to manage their Social Security benefits. Older adults with such limitations would benefit from the appointment of a representative payee and implementation of advance designation, as well as technological advances, the emergent role of supported decision-making, and changes brought about by the COVID-19 pandemic.

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The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and accordingly should not be construed as representing the policy of the American Bar Association.

# **Part I**

## **Introduction and Methods**

# INTRODUCTION

**THE REPRESENTATIVE PAYEE PROGRAM** provides financial management for Social Security and Supplemental Security Income (SSI) beneficiaries determined incapable of managing their payments. The Social Security Administration (SSA) currently has approximately 6 million representative payees managing benefits for about 8 million beneficiaries (52 percent of the beneficiaries with payees are minors). Family members—primarily parents or spouses—act as payees for 85 percent of these beneficiaries.<sup>10</sup> The need for payees is projected to grow over the next decades due to the aging of the U.S. population, which will result in more beneficiaries who are incapable of managing their benefits due to age-related conditions.

Representative payees serve some of society’s most vulnerable, at-risk adults, managing their benefits to cover basic expenses such as food, clothing, shelter, and medical care. Payees are “fiduciaries” – agents appointed to make financial decisions on behalf of another and must act with high standards of trust and accountability.<sup>11</sup> Therefore, SSA processes that manage the vast number of payees are critical. SSA management includes three related functions: determining if a payee is needed, selecting the most suitable payee in the beneficiary’s best interest, and overseeing payees to prevent or address misuse of funds. These functions are largely performed by staff and management working in over 1,200 SSA field offices. In carrying out these functions, staff must balance beneficiary rights with their protection. Field office staff make complex decisions in the context of limited time and resources.

SSA maintains that the vast majority of payees are properly managing beneficiary funds. However, SSA remains dedicated to improving the payee system for those beneficiaries whose funds may not be optimally managed.<sup>12</sup> Little data are available about the scope and extent of payee misuse of benefits of adults. A 2007 study by the National Academy of Sciences suggested that the use of a profile audit would reveal approximately 7,000 payee misusers and another 7,000 possible misusers, affecting 0.2 percent of the payee population funds.<sup>13</sup> In 2017, testimony by the Office of the Inspector General (OIG) reviewed allegations of fraud and misuse by individual and organizational payees in recent years and made recommendations to SSA to continue to enhance its payee monitoring.<sup>14</sup> In 2018, Congress passed the *Strengthening Protections for Social Security Beneficiaries Act*,<sup>15</sup> providing for a system of onsite payee reviews. In 2019, the

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<sup>10</sup> *Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews for FY 2016* (Baltimore, SSA 2017), 2 – as cited in *Social Security Advisory Board Report: Improving Social Security’s Representative Payee Program* (January 2018) at 4.

<sup>11</sup> Consumer Financial Protection Bureau, *Managing Someone Else’s Money: Help for Representative Payees and VA Fiduciaries* (June 2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_msem\\_representative-payees\\_guide.pdf](https://files.consumerfinance.gov/f/documents/cfpb_msem_representative-payees_guide.pdf).

<sup>12</sup> Office of Inspector General, “Examining SSA’s Representative Payee Program: Who Provides Help,” Congressional testimony (March 22, 2017), <https://oig.ssa.gov/newsroom/congressional-testimony/march22-representative-payee>.

<sup>13</sup> National Research Council, *Improving the Social Security Representative Payee Program: Serving Beneficiaries and Minimizing Misuse*, The National Academies Press, Washington DC (2007).

<sup>14</sup> Office of Inspector General, note iii above.

<sup>15</sup> Public Law 225-165.

Government Accountability Office (GAO) reported on the need for SSA to increase oversight of organizational payees and identified specific gaps that require agency action.<sup>16</sup>

The Social Security Advisory Board (SSAB) has long been committed to exploring ways to strengthen the SSA payee program. Its 2016 report, *Representative Payees: A Call to Action*,<sup>17</sup> set out concerns about the administration of the representative payee program and recommended additional research on the topic. Its 2017 forum, *Joining Forces to Improve the Rep Payee Program*,<sup>18</sup> brought together a range of stakeholders to discuss program improvements. Its 2018 report, *Improving Social Security's Representative Payee Program*,<sup>19</sup> offers specific recommendations for strengthening current practices.

Building upon these actions, SSAB charged the authors of this report to conduct an independent research study to focus on SSA processes *for selection of payees for adults*. The underlying assumption was that, in addition to improved monitoring, a better understanding of the processes involved in selection of payees ultimately could lead to a reduction in the potential for misuse and abuse while maintaining beneficiary rights. Concurrently, as directed by the 2018 legislation, in 2019, SSA published a report on payee selection policies.<sup>20</sup> Our report, an in-depth examination of SSA field office payee selection practices, based on the perspectives of field office staff and managers, covers new ground in order to inform policymakers and practitioners.

This report is organized into four parts. **Part I** describes the research methods used to collect both qualitative and quantitative data. **Part II** highlights common themes that emerged from interviews with SSA field office staff. **Part III** provides findings from a national survey of field office managers as well as implications of the findings and resulting recommendations. **Part IV** has our concluding perspectives and future directions. Appendix A includes staff and management perspectives on the selection process.

Throughout the report are references to the SSA Program Operations Manual System (POMS).<sup>21</sup> The POMS is the primary source of information used by Social Security employees to process claims for Social Security benefits. Most relevant for this report is POMS section GN 00502.000 and the following sections, concerning “Determining the Need For, Developing and Selecting a Representative Payee.” The section includes many subsections providing detailed guidance for SSA field office staff in deciding whether or not a payee is needed, and if so, which payee is most suitable to meet beneficiary needs. It is particularly important to note GN 00502.105. This section provides SSA’s preferred payee “Order of Preference” charts for selecting individual and organizational payees. For adults, there are two separate charts – one for adults without a substance abuse condition and another for adults with a substance abuse condition. Key POMS sections are cited in each section of our report.

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<sup>16</sup> U.S. Government Accountability Office, *Social Security Benefits: SSA Needs to Improve Oversight of Organizations that Manage Money for Vulnerable Beneficiaries*, GAO-19-688 (September 2019).

<sup>17</sup> Social Security Advisory Board, *Representative Payees: A Call to Action*, Issue Brief (2016),

<sup>18</sup> [https://www.ssab.gov/Portals/0/OUR\\_WORK/REPORTS/Rep\\_Payees\\_Call\\_to\\_Action\\_Brief\\_2016.pdf](https://www.ssab.gov/Portals/0/OUR_WORK/REPORTS/Rep_Payees_Call_to_Action_Brief_2016.pdf).

<sup>19</sup> Social Security Advisory Board, note 1 above,

[https://www.ssab.gov/Portals/0/OUR\\_WORK/REPORTS/ImprovingRepPayee2018.pdf?ver=2018-01-11-160130-430](https://www.ssab.gov/Portals/0/OUR_WORK/REPORTS/ImprovingRepPayee2018.pdf?ver=2018-01-11-160130-430).

<sup>20</sup> Social Security Administration, *Reassessment of Payee Selection and Replacement Policies: Report to Congress* (October 2019).

<sup>21</sup> Social Security Administration, Program Operations Manual System, <https://secure.ssa.gov/apps10/>.

## METHODS

Researchers at Virginia Tech and the American Bar Association Commission on Law and Aging conducted this independent study for the Social Security Advisory Board. We used a two-phase, mixed-methods approach, a common approach to conducting exploratory research that is focused on defining issues and areas for process and policy improvement. Data were collected from Social Security field office managers and personnel to establish evidence to inform practice and policy concerning SSA field office selection of representative payees for adults. Prior to data collection, the Virginia Tech Institutional Review Board determined that the project was “not research” because it was classified as an internal process improvement project rather than generalizable research. The study included two distinct phases.

### **Phase One – Interview Procedures**

In Phase One, members of the team conducted face-to-face interviews with SSA field office employees who select individual and organizational payees for adults. Members of the research team used standard qualitative analytic techniques (i.e., analyzing according to the responses that characterize the experience of the participants) and identified emergent themes from the interviews.

The research team developed an interview guide<sup>22</sup> based upon the combined knowledge of National Council of Social Security Management Associations (NCSSMA) officers and SSAB staff and commissioners. Sections of the SSA Program Operations Manual System (POMS) most relevant to the study (GN 00502.000 “Selection of Representative Payee”) also informed questions for the interview guide. Section GN 00502.000 includes general information and definitions regarding representative payee as well as sections on determining the need for payees, developing a payee case, and selecting a payee. The final interview guide included questions related to field office staff practices and factors influencing selection of individual and organizational payees. The questions were posed to elicit open-ended responses, which increase understanding of the procedures and policies that should be examined further.

Well in advance of the interviews, upper-level managers from SSA informed field office staff about the study. SSA sent field office staff a one-page document describing the study procedures (e.g., how the participants were selected and the questions that the interviewers would ask), which emphasized that staff participation in the interviews was entirely voluntary and confidential. With agreement and assistance from SSAB and SSA, members of the research team visited field offices where NCSSMA officers were located. Between February and June 2019, the team conducted face-to-face interviews with managers and field office staff in Fairfax, Virginia; Hot Springs, Arkansas; Great Falls and Helena, Montana; McMinnville, Tennessee; Vancouver and Longview, Washington; and Glen Burnie, Maryland. Individual management and field office staff

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<sup>22</sup> The interview guide is available upon request.

interviews took approximately 40 minutes each. The research team was at each location for approximately two working days.

The research team conducted face-to-face interviews with ten members of field office management and 63 field office employees who select representative payees for adults (Table 1). The number of interviews at each site was determined by the number of SSA staff who voluntarily agreed to participate in the study. The researchers conducted more staff interviews in larger offices than in smaller offices. All persons who volunteered to be interviewed were interviewed while the research team was on site.

From the list that the local SSA field office provided, we contacted and met with representatives from 10 organizational payees. The research team did not conduct formal interviews with the organizational payees but rather spoke with their representatives to understand how they functioned within the catchment area of the individual SSA office.

**Table 1. Social Security Site Visits**

**SSA Staff by Position, Number of Interviews, and Years Working at SSA**

Position Name	Number of Interviews	Range of Years Working for SSA
1. District Manager	8	20-29
2. Assistant District Manager	3	14-24
3. Operations Supervisor	4	10-28
4. Technical Expert	13	14-39
5. Claims Specialist	35	2-27
6. Customer Services Representative	9	9 mo-18
7. Management Support Specialist	1	14
<b>Totals</b>	<b>73</b>	<b>9 mo-39</b>

### Phase One Analysis

The research team analyzed interview data according to standard qualitative analytic techniques<sup>23</sup> that included multiple readings of the interviews and coding of themes that emerged from the answers provided by the participants in order for the research team to understand the experience of those making selections of representative payees. Based on multiple readings of the interviews and reflective process notes developed by each interviewer following each site visit, the research team used a combination of deductive qualitative analysis as well as an inductive approach. We began our analysis coding the themes separately; we noted salient responses and unique circumstances presented in each interview.

Once each team member separately generated an initial list of broad conceptual themes gleaned from the interviews, we grouped them into preliminary categories. Using an iterative

<sup>23</sup> Bogdan, R.C., & Biklen, S.K. (2007.) *Qualitative Research for Education: An Introduction to Theory and Methods*. 5th Edition, Boston: Allyn & Bacon. Moustakas, C. (1994). *Phenomenological research methods*. Thousand Oaks: CA: Sage Publications.

process of constant comparison, we refined the themes throughout our analysis of the transcripts. Team members used reflective process notes to try to reduce their own biases related to payee selection approaches. Upon re-reading the transcripts, team members identified additional subthemes and included them in the final coding scheme. Team members performed open coding procedures and analyses independently but frequently discussed areas of congruence and contention. Throughout the iterative process, the emergent themes and sub-themes provided groupings for the presentation of the findings in Phase One of the report.

### **Phase Two – NCSSMA Survey Procedures**

The research team developed multiple survey items for each theme to ensure that the questions robustly measured field office managers' opinions, experiences, and appraisal of office practices associated with each theme. We presented the survey items and response formats to NCSSMA leadership, SSAB staff, and Board members. The practice of using subject experts to assess the face and content validity of each item is considered a critical step in ensuring the quality of the survey results. Based on their assessments of each question for clarity, specificity, focus, and potential for biased or emotional responses, we refined the survey items across several iterations. This iterative process increased the face and content validity of the times that represented each theme. Response formats for each item followed common practices of providing a small number of choices (e.g., four or fewer) that are mutually exclusive. The wording of each response format reflected the wording of the question. For example, if a question inquired about variability among office staff in a specific practice, the response format included four choices: highly variable, moderately variable, slightly variable, and not variable. These standard response formats were used to solicit respondents' appraisal of practice variability. This is in contrast to audits of client records that can provide specific frequencies of a specific practice but are time-consuming, costly, and require access to private information. Audits are typically used when a specific issue is being investigated.

Beta testing of the survey was conducted with NCSSMA leadership. Their responses to each item provided the final wording check for each item and its response format. In September 2019, the president of NCSSMA sent an introductory letter to 3,136 NCSSMA members across the country. That letter described the purpose of the survey, ensured the anonymity of responses, and provided a web link to the survey. Completed surveys were returned by 584 NCSSMA members, a 19% response rate which falls within the expectable range for response rates from web-based surveys.<sup>24</sup>

Representativeness of the respondents is considered in terms of their self-reported characteristics. Fifty-one percent reported they were District Managers or Field Office Managers. Sixteen percent reported they were Assistant District Managers, and 29% reported they were Operations Supervisors. The remaining four percent were Management Support or Public Affairs Specialists or Systems Coordinators. Two-thirds of respondents said they had been in their current position for up to ten years, 21% said they had been in their position 11 to 20 years, and 12% said they had been in their current position for 21 or more years. Most respondents (56%) were from

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<sup>24</sup> Cook, Colleen, Heath, Fred & Thompson, Russel L., A Meta-Analysis of Response Rates in Web- or Internet-Based Surveys, *Educational and Psychological Measurement*, Vol. 60 No. 6, December 2000 821-836.

offices with 21 or more Social Security Administration (SSA) staff members; the remainder were from offices of twenty or fewer SSA staff members. Most respondents (70%) reported they worked in offices located in urban or suburban locations. The remainder were from rural (29%) or tribal (1%) locations.

### **Phase Two Analysis**

The research team analyzed data from the online surveys to determine potential response bias. We assessed response formats for extreme numbers of respondents reporting at either end of the scale, reporting neutral responses, or missing values toward the end of the survey. All questions had sufficient variability in responses, and only two percent of respondents (n=11) were missing responses to more than 10 questions. Because this was an exploratory research study that focused on defining issues and areas for process and policy improvement, we did have *a priori* hypotheses, and thus, did not conduct any statistical hypothesis tests.

The implications and recommendations of the study are based on the data collected from Phases One and Two of the study. (It is important to note that our study occurred before the COVID-19 pandemic, which brought the temporary closure of SSA offices, and may have affected or could affect some aspects of the research).

**Part II**  
**Findings from**  
**SSA Field Office Staff Interviews**

# 1. Beneficiary Capability and Payee Selection

The decision as to whether to pay a beneficiary directly or appoint a payee sometimes co-occurs with the selection process and can be challenging for field office staff. Identification of supports for beneficiary financial decision-making was a common theme.

The SSAB charge for our study was to examine field office practices in selecting payees for adults. However, interviews showed that the beneficiary capability determination process is integral to the payee selection process. Sometimes the two processes occur simultaneously. The availability or lack of a suitable payee may bear directly on the outcome of the capability determination.

When capability is in question, field office staff said they wrestle with the difficult decision of

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***“A lot of people probably don’t even need a payee, but where do you draw the line between who can take care of themselves and who can’t take care of themselves?”***

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whether to direct funds to the beneficiary (e.g., “make him his own payee”) or instead designate an individual or organizational payee. Most staff we interviewed recognized that appointing a payee removes rights, and many said they made extra efforts to find capability, asking questions

and looking for signs of financial functioning: “I talk to a beneficiary and see how they manage their money, how they have survived.”

In some instances, staff also may direct payment to the beneficiary simply out of frustration and lack of payee options. It can be challenging to find and keep payees for homeless beneficiaries and those with substance use problems or mental illness, and staff said the best solution sometimes is simply to pay directly. “Many times, if you balance it out, they are incapable, but many times we have gone round and round; they wanted their drug money [and thus wanted to change the payee]. Many times, it is more advantageous to just pay directly.”<sup>25</sup>

A key interview theme was the extent to which staff meets with the beneficiary face-to-face to determine capability. Staff said they generally do so, although in some cases, especially for those living in rural areas, distance makes this difficult. Additionally, if staff are unable to personally interview beneficiaries living in nursing homes, instead, they may base their determination of the resident’s capability on the medical director’s signed form. Some staff said they follow up by telephoning the resident to ascertain if he or she is living in the facility and seems unable to manage benefits, but this practice was not consistent.

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***“Not everyone in a nursing home needs a payee. We need to know more.”***

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Another significant theme throughout our interviews was the concept of decision-making supports. Field office staff gave examples of asking the beneficiary what supports were at hand, for example, spouses or trusted relatives who lived nearby and could offer help in managing benefits, or social services case managers who were there to assist. “We ask them if they manage

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<sup>25</sup> SSA guidance in the POMS provides that if a payee is needed but unavailable, benefits must be “paid directly to the incapable beneficiary” (with noted exceptions). Social Security Administration, Policy Operations Manual System (POMS) GN 00504.105.

their funds and whether they have a support network. If a person is able to direct the management of their funds [and a supporter is identified], then they do not need a payee.”

## 2. External Evidence of Capability

### Statements by physicians and by the Disability Determination Service can create complications and concerns for field office staff.

We asked field office staff about their use of two external sources of evidence on the beneficiary’s capability to manage funds directly instead of using a payee -- the opinion of the state Disability Determination Service (DDS), considered lay evidence, on SSA form 831, and medical evidence as stated on SSA form 787.

**State Disability Determination Services Opinions on Form 831.** The state DDS may note an opinion about capability to manage benefits on Form 831, which is used to record disability determinations. DDS uses the form to alert SSA to special circumstances or situations, including whether the beneficiary has been determined incapable by a physician or whether DDS has not secured evidence of capability, in which case the remarks may read “capability unresolved.” Field office staff said DDS frequently does not meet with a beneficiary and thus may have no direct evidence of capability.

Staff repeatedly stated that DDS often indicates “capability unresolved” on Form 831, which prompts SSA staff to begin a process of determining capability. They said that if DDS suggests that a payee is or may be needed, SSA goes through the review. Interviewees suggested there are many times when DDS marks “capability unresolved” or payee recommended, and a response from SSA is needed but may not actually be warranted. “The 831 kicks off a probing process. If capability is unresolved, we will cold call the person and talk with him or her, ask the person to come in and bring a friend or family member. We ask questions about bills and rent. If the beneficiary can answer, that’s good,” and the field office will move beyond the DDS opinion, making a determination based on the evidence they have gathered.

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*“We find that both DDS and sometimes physicians, for whatever reason, don’t want to make the determination and either say ‘inconclusive’ or ‘they need a payee’ when in reality there is no concrete reason. . . .”*

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Our study did not include interviews with DDS staff. Therefore, we received information and perspectives from only one side of the SSA-DDS dynamic on payee selection.

**Medical Evidence on Form 787.** Field office staff use the SSA Form 787 to request needed medical evidence of the beneficiary’s ability to manage benefits. The form is used to determine whether a beneficiary needs a payee, as well as whether a previously appointed payee is no longer needed. Staff said the form is an important tool but should be used along with other sources to supplement their personal observation.

Staff stated there is often a delay in physician return of a completed Form 787, or in some cases, it is not returned at all. One interviewee noted that she waits for about two weeks but then must make a decision. She stated that she receives back only about four of ten forms--an estimate not substantiated by other staff. Some field office staff said the Form 787 may be returned but is not completely filled out. In still other cases, physicians appear reluctant to sign the form. If the beneficiary is in a nursing home, facility employees may give the Form 787 to the medical director to sign.

Form 787 asks the physician to check whether the beneficiary is able to understand and act on the ordinary affairs of life and is able to manage or direct the management of benefits. Staff said that in completing the form, physicians often show a diagnosis but may not provide evidence about functional abilities, particularly financial management abilities.

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***“On the 787 they either check yes or no, and they usually reference the condition and not the abilities.”***

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### **3. Casework Quality**

**The extent of training, case review, and documentation of payee selection were uneven.**

We asked staff about the extent of their training, the review of their cases, and the documentation of their payee selections.

**Training.** Staff stated that each new employee goes through a year of thorough, complex core training on all aspects of SSA work, as well as title-specific training, either retirement or disability focused. To supplement the training, many offices assign an in-house senior staff member, such as a technical expert, to serve as a mentor to new staff. The mentor models best practices, advises new staff about case procedures, including payee selection, and reviews cases. Staff stressed that it is essential for the mentor to be well informed about current SSA practices.

In addition to the initial global training for new employees, staff described varying periodic training, such as when the Office of the Inspector General determines that there is a need for a specific update – which might or might not feature payee selection issues. One employee estimated that periodic training occurred about once every three years. In particular, staff said that more training on the electronic Representative Payee System (eRPS) technology would help in understanding all features of the software and reduce confusion when the system is changed or updated.

Some staff indicated that previous training was usually provided in person, but now most in-service training uses videos from previous years, and sometimes from different regions of the country.

In our interviews, staff said that peer discussions of cases and practices were helpful, particularly for staff making periodic payee selections rather than daily or weekly

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***Case reviews “cause us to dig a little deeper.”***

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selections, and that it was especially useful to hear how others confronted challenging selection situations. They also indicated that there is no feedback on how a payee selection actually works

out. The staff member who makes a payee selection decision is usually not the same individual who might later address misuse by the selected payee.

**Case Review.** Field office staff discussed whether there is any review of their payee selections by other staff or management once initial mentorship is completed. Some described a recent system of “performance quality reviews” in which certain cases were identified for review, usually by a staff technical expert. While all employees go through PQR, the reviews may not target payee cases. However, there was inconsistency in the current practice of such reviews, with one interviewee commenting that, presently, cases are only reviewed if the employee is under overall review and another noting that she only reviews the work of certain employees but not others. NCSSMA reviewers pointed out that all employees in field offices go through Performance Quality Reviews each month, but the employee’s assigned work would dictate the type of review. If an employee does not handle many payee cases, such cases may not be reviewed. Staff found the reviews helpful as a check on “whether we are doing things timely.”

**Documentation.** We also asked field office staff how they document the process of payee selection, particularly when staff selects a payee not highest on the SSA preference list because it would not be in the beneficiary’s best interest, a practice that appears to occur with some frequency. Staff named several reasons why their selection might deviate from the list, making documentation of the underlying rationales important in order to inform future staff: proximity of the potential payee to the beneficiary, existence of family conflict, beneficiary preferences, payee health conditions and abilities, substance abuse by the beneficiary or the payee, and payee criminal history (beyond what SSA lists as “barred crimes<sup>26</sup>).

Field office staff told us that opportunities and requirements for documentation appear on screens along the eRPS software application path. They noted that adding detailed remarks in eRPS is important for justification and to provide a record if other SSA staff unfamiliar with the case were to handle it in the future. Some staff said that, when they open a case, they sometimes find that documentation by other staff members was spotty or too thin, making it difficult to understand factors influencing a previous selection. Additionally, a few staff told us that because of difficulties related to data entry, they create their own documents to supplement documentation required in eRPS.

## 4. Field Office Staff Workload

### **The increasing workload of field office staff may adversely affect payee selection.**

Field office staff consistently noted that they have a high case volume, are often backlogged, and are under constant time pressure. While a typical case takes between 20 and 45 minutes for payee selection, many factors can increase the time needed. Those factors include questions about the suitability of the payee, beneficiary requests for changes in their payee, and problematic scheduling of appointments with potential payees. In addition, many staff said that the eRPS software, while an improvement from the former system, has problems with data entry and technical failures that can impede payee selection.

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<sup>26</sup> POMS GN 00502.133 lists felony crimes that bar certain payee applicants from serving. Staff use their judgment as to the best interests of the beneficiary for potential payees with criminal history outside of this barred crimes list.

Staff is conscious of the impact their decisions have on people’s lives and are concerned about time constraints that may preclude doing a good job. One staff member explained that she interviews at least 50 people a day, all of them with problems. In addition to self-referrals who phone in or wait in line at the office, staff receives referrals from the 1-800 number as well as the Office of the Inspector General. Interviews revealed that the constant time pressure could affect selection by reducing the time for (a) investigating key information on potential payees, (b) documenting the process of payee selection, (c) interviewing beneficiaries in nursing homes, (d) responding to frequent beneficiary requests for changes in payee, and (e) providing training and outreach for organizational payees.

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***“It’s tough to make the right decision with such limited time.”***

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Interviews with field office managers about staff specialization in payee cases were mixed. In general, larger field offices seemed more amenable to specialization, while managers in smaller offices said all staff needs to know all areas of work. Some managers and claims specialists supported making payee issues a regional specialization, but others said payee determinations require knowledge of local resources.

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***“In a small office, it makes sense for everyone to be trained in all facets of work.”***

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## 5. Guardians as Payees

**Field office staff may select a guardian as payee without questioning suitability or contacting the court.**

While state terminology differs,<sup>27</sup> guardians are appointed by state courts to make health and personal decisions, and conservators or guardians of property are appointed to make financial and property decisions for adults whom the court finds unable to do so. In this report, we use the term guardian or guardianship to refer to both unless specifically indicated otherwise. Along with family members, guardians are high on the SSA Order of Preference list (See Section 6) for appointment as payees.<sup>28</sup>

Field office staff said they always inquire whether the beneficiary has a guardian and must report this in the eRPS data system. Staff scans the court order of appointment into the electronic file. Staff estimates that the proportion of payees who are guardians is around 10-20percent. The most common type of guardians appointed as payees are parents of adults with disabilities or adult children of older beneficiaries with dementia.

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<sup>27</sup> State terminology varies. In many but not all states, a guardian of the person makes personal and health care decision, and a guardian of the property, often called a conservator, makes financial decisions. In this report, we use the term guardian or guardianship to refer to both unless specifically indicated otherwise.

<sup>28</sup> Social Security Administration, Programs Operation Manual System (POMS), GN00502.105 lists guardians, along with spouse or other relative with custody or strong concern for the beneficiary in the first tier in the Order of Preference for adults without a substance abuse condition.

We asked how frequently guardians are selected as payees and the extent to which staff looks behind the court appointment to assess suitability. Some staff said they automatically select guardians as payee without further inquiry, given their approval by the court and their priority position on the SSA preference list. Others said that if they find any problem in the case, they will look into it. However, the extent to which this occurs was not clear.

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***“I just take the court order, and I don’t look into the background. But if I suspect a problem, I may ask more questions.”***

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We asked field office staff about communication with the court. Uniformly, staff said they saw no reason to ask the court about the guardian’s suitability, nor did they inform the court when a guardian is appointed as payee, noting that no prescribed process exists for doing so.

Our interviews uncovered a few situations in which the court appointed one person or entity as guardian and another as conservator, and staff needed to determine which to select. In this situation, staff said they ask questions and try to select the payee who would better serve the beneficiary.

Staff was aware that agents appointed by a beneficiary under a power of attorney are different from court-appointed guardians and are not included in the SSA preference list. However, some said beneficiary appointment of an agent could be evidence of a beneficiary’s trust and that the designation may help to inform selection decisions.

## **6. Organizational Payees**

### **Staff perspectives varied regarding the sufficiency and quality of organizational payees.**

The Social Security Administration defines “organizations representative payees” as follows:<sup>29</sup>

*“An organizational representative payee is a business, a company, or the like including, but not limited to a social service agency, a state or local services agency, or a financial organization that manages the benefits of an incapable beneficiary.”*

*“An institutional representative payee is a specific type of organizational payee who provides care and treatment for the beneficiaries who reside in the institution or in off-site facilities affiliated with the institution (i.e. nursing homes, hospitals, group homes or a halfway house).”*

*Fee-for-service organizational payee: “Certain qualified organizations may be authorized to collect a fee from a beneficiary’s monthly Social Security or SSI payment. The fee is intended to cover expenses incurred in providing payee services to that beneficiary.” SSA lists criteria to qualify as a fee-for-serve payee.<sup>30</sup>*

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<sup>29</sup> Social Security Administration, *Training Organizational Representative Payees*, <https://www.ssa.gov/payee/LessonPlan-2005-2.htm#WHATISORG>

<sup>30</sup> SSA, *Training Organizational Representative Payees*. To qualify as a fee-for-service organization, you must be: a community based, nonprofit social service agency, which is bonded or licensed in the state in which it serves as

SSA has established an *Order of Preference* for selecting payees for adults. For adults without a substance abuse condition, the order of preference is as follows: 1) legal guardians and relatives or friends who show concern, 2) organizational payees, 3) public institutions and non-profit agencies with custody, 4) private facilities with custody that are licensed and operated for profit (e.g., nursing homes), 5) other organizations that show strong concern for the beneficiary, 6) fee-for-service organizations, and 7) a social service agency or custodial institution. For adults with a substance abuse condition, organizational payees are preferred over family members, guardians, or friends (except private for-profit facilities such as nursing homes).<sup>31</sup>

For processes specific to institutional payees, see Section 7 of this report.

Our interviews revealed that most staff adhered to the SSA POMS guidance to select trusted family members or others first, if possible. However, if there is no one else to serve, and the beneficiary cannot be paid directly, staff may select an organizational payee. We learned that, as a condition of providing beneficiary services, some organizations require that they be selected as the payee.<sup>32</sup>

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***“Do they go the extra mile to help their beneficiaries and advocate for them? There is a much longer list of what they are supposed to do than they think.”***

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**Organizational Payee Knowledge of, and Access to, Resources.** We asked field office staff whether organizational payees have greater access to resources and community contacts for beneficiaries than other payees. Responses were mixed, with many staff indicating that it depends on the type and characteristics of the payee.

Some staff said larger organizations were better than smaller ones because their larger infrastructure permits greater specialization of staff members. Others commented that smaller organizational payees know beneficiaries’ needs better. Most staff said that having enough staff to address the needs of the beneficiary was critical.

Across types of organizational payees, fee-for-service payees were generally the last organization selected because staff regarded the fee they charged as a drain on a beneficiary’s small payment. Some staff members were concerned that fee-for-service organizations might end up being “conduit payees,” meaning that they merely take a fee and process a check. Most staff preferred to select an organizational payee that provides services (e.g., counseling, housing) to the beneficiary so that the organization is familiar with the beneficiary’s needs for food, clothing, and shelter – such as a social service agency.

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***“Fifty percent [of organizational payees] attempt to help, and 50% want to collect their fee.”***

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beneficiary’s small payment. Some staff members were concerned that fee-for-service organizations might end up being “conduit payees,” meaning that they merely take a fee and process a

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payee, or; a state or local government agency with responsibility for income maintenance, social service, health care, or fiduciary responsibilities; *and* regularly serving as a representative payee for at least five beneficiaries, and not a creditor of the beneficiary

<sup>31</sup> Social Security Administration, Program Operations Manual System (POMS) GN 00502.105.

<sup>32</sup> See Section 7.

**Hallmarks of Excellent Organizational Payees.** In the interviews, staff identified five hallmarks of excellent organizational payees. First, they have a qualified person handling the accounting system and have good bank references. Second, the organization files timely reports, keeps clear and up-to-date electronic records, maintains a ledger for auditing purposes, and is knowledgeable about the reporting process. Third, the payee is responsible and responsive to each beneficiary's needs. Fourth, the payee develops a relationship with the beneficiary, including having regular documented reviews during which the beneficiary's account/budget is discussed. Finally, the payee contacts the field office in a timely manner to report changes in beneficiaries' addresses and living situations.

**Training for Organizational Payees.** When we asked about field office outreach and training for organizational payees, staff from only one office reported conducting annual training. For that office, in addition to training about completing mandatory reports, alerting the field office when a beneficiary has a residential or income change, and maintaining accurate accounting records, staff provided information about how and when to contact field office staff.

**Sufficiency in Number of Organizational Payees.** Answers to our question about whether the field office had a sufficient number of organizational payees were mixed and varied by locality. Staff in some localities believed that they have a sufficient number of organizational payees to meet the need, while staff in other areas others disagreed -- particularly staff from areas where distances were great or the population was sparse. One field office had only one organizational payee that was located far from most beneficiaries. At another site, of the two organizational payees available, one was shutting down, and the other had such a high caseload that there were audit problems. Some staff thought the reason there were not enough organizational payees is that compensation is too low.

Though interviews revealed that many organizational payees are highly dedicated and helpful to beneficiaries, some staff told us that a small number were not meeting their responsibilities because they were understaffed, their staff were not sufficiently trained, or both. Field office staff indicated that sometimes an organizational payee might have started as a cottage industry but then outgrew itself and became unable to manage its clients' funds. At nearly every site we visited, there was an organizational payee that had been poorly managed, and within the past five years, was forced to stop accepting clients.

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***"There was a case about two summers ago where we had to close down two big organizations. And it required finding several hundred people new payees."***

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**Some Organizational Payees are Serving Beneficiaries Unnecessarily.** When a field office closes an organizational payee, or the organization decides to conclude its services, other payees

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***"And so quite a few of them (beneficiaries) did not even need a payee anymore. [The payee] had been turning money over to people who were paying their own bills."***

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must be found immediately. Although the responsibility for locating a new payee resides with the beneficiary, staff typically help beneficiaries find another payee. The office is required to meet with every beneficiary when an organization ceases serving them.

From staff, we learned that some closed organizational payees had been acting on behalf of beneficiaries who no longer required a payee and could manage their own funds.

## 7. Institutional Payees

### Field office staff raised issues about conflict of interest.

Field office staff said they aim to select family members or other trusted individuals before selecting a facility where the beneficiary resides. However, if there is no one else to serve as payee and the beneficiary is unable to manage funds and thus cannot be paid directly, staff may determine that an SSA-approved facility (e.g., nursing home) is suitable for payee appointment. Staff noted that sometimes family members do not want the burden of serving as payee and simply transfer the funds to the facility. Sometimes family members who are chosen as the payee later request that the facility become the payee instead.

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***“Family members turn right around and give the money back to the nursing home.”***

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**Conflicts of Interest.** Staff differed as to whether selection of a nursing home was a concern due to the inherent conflict of interest in that the facility is paid for providing beneficiary services and housing. Some staff said if the facility keeps good records, “it works well – I am comfortable with the conflict of interest.” Others found the selection problematic because “the nursing home could take advantage” of the beneficiary. A few cited instances of poor care. Those we asked generally were not in contact with the state or local long-term care ombudsman program in case families or residents have complaints.

**Institutional Payee Issues.** Field office interviewees discussed several issues that may arise with nursing home payees. First, under Medicaid rules, residents are entitled to keep a small portion of their funds for a personal needs allowance. Some staff said they could not determine facility practices about payment of the personal needs allowance. Several noted that SSA does not audit nursing homes serving fewer than 50 residents and would not therefore, review records about the allowance. None of the interviewees had received complaints.

Second, we asked staff how selection of a nursing home as payee affects beneficiaries who may want or need to leave the facility. They said they usually encounter situations in which the beneficiary is transferring from one facility to another rather than seeking to move back to the community. In such inter-facility transfers, some staff found there were delays in transitioning the payee status, which could lead to a delay in the receipt of benefits. Others did not encounter delays, noting that nursing homes generally inform the field office quickly if a resident leaves.

Third, most staff we interviewed were not aware of facilities that require or recommend their own appointment as payee as a condition of admission. However, some staff had seen such a requirement in SSA field offices where they previously worked. Several staff pointed out that they do not review admissions contracts and, therefore, would have no way of knowing about such a written provision.

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***“Some facilities try to make themselves payee as a matter of practice.”***

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However, some noted that instead, it might be strongly encouraged orally at the time of admission.

Finally, while field office staff had little information on facility payee practices in filing annual reports to SSA, some stated that some nursing home reports are not filed in a timely manner, and “we have to send them a letter when they are late in sending in forms.”

Some staff said both families and facilities need to know more about the facility's role as payee. Staff from at least one field office said they had conducted facility training on key requirements.

## 8. Practice Inconsistencies

### Staff practices in representative payee selection were inconsistent.

Field office staff showed remarkable consistency in awareness of the SSA guidance set out in the POMS (Program Operations Manual System). However, the interviews showed inconsistent payee selection practices in areas such as consideration of beneficiary preferences and family conflict, addressing requests to change payees, geographic distance, substance abuse, and criminal history. These inconsistencies prompted further exploration through the SSA management survey in Phase Two of the study.

**Inconsistencies in Considering Beneficiary Preferences<sup>33</sup> and Family Conflict.** Staff uses the POMS preference list as a guide, but selection depends on whom beneficiaries have in their lives. For many -- particularly for many on SSI -- there may be limited choices. A number of staff were very concerned about taking away the rights of the beneficiary when a payee is selected, and hence, gave beneficiaries great latitude to control their own money through direct payment-- particularly if the beneficiary is able to direct payment and there is a family member or other support person able to carry out the funds' management.<sup>34</sup> However, others adopted a more protective stance, either selecting the best individual payee among limited choices or assigning an organizational payee, which staff said sometimes could result in a “conduit payee” (one who just gives the beneficiary money as the path of least resistance).

To best determine the appropriate course of action, some staff request a face-to-face meeting with the beneficiary. They ask that the beneficiary bring a trusted person or family member. Staff assesses the stability of the relationship and the work history of the proposed payee.

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*“If I see the beneficiary in person, I try to make it an open process, read body language . . . and if I have a golden minute alone with them, ask if this [decision] is okay. Elders in caretaking situations can feel squished because people are making decisions for them, and nobody asks them. I worry about when I don't get to see them personally; sometimes the doctors and care facilities are too quick to dismiss a person's concerns.”*

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<sup>33</sup> Section 201 of the 2018 *Strengthening Protections for Social Security Beneficiaries Act* required SSA to promulgate regulations concerning beneficiary designation of a payee in advance of an SSA determination of the need for a payee. This provision was not yet implemented at the time of our study.

<sup>34</sup> See discussion of ability to direct use of benefits, p. 25.

If there is family conflict, staff consider the character and strength of the relationship. Staff also consider the prospective payee's level of income to reduce the likelihood of the payee using the funds for his or her own benefit. However, these criteria did not appear to be applied uniformly.

**Inconsistencies in Addressing Requests to Change Payee.**

In some instances, a beneficiary may allege that the payee is using the money for his or her own purposes. Though this can occur, another explanation may be that either the family member, the beneficiary, or both are disgruntled. Conducting a misuse investigation may take two or more weeks. Said one staff member, "Start asking questions. Sometimes they [beneficiaries] allege misuse. Ask [if the beneficiary has] a place to live, clean clothes, food; if so, the payee is doing the job he is supposed to do."

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***"At the end of the day, if they want to spend money on alcohol, then it's bound to happen and beyond our control."***

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Often the source of conflict concerns how the money is allocated; however, this is not always easy to determine, such as in the case of a person with schizophrenia. Staff may begin to process the application to change the payee but may later find out that the switch is unnecessary. Not all staff had the ability or time to determine whose truth was being told. Staff may appoint an organizational payee due to a beneficiary's compromised mental and psychological status or substance abuse. But this practice varied, with some staff adamant that, given a choice between no payee and an organizational payee in which they lack confidence, they simply "give them [the beneficiary] their money."

**Inconsistencies Related to Geographic Distance.** Interviewing beneficiaries and payees in person, and (if possible) talking to them separately, helps field office staff better discern who will

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***"So, the main question is always how often do you talk or visit, do you have a system to make sure bills are paid? If the payee is in a different state and the beneficiary is not in a nursing home, I do not select that person unless they have very close communication."***

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serve in the beneficiary's best interest. The POMS states that a face-to-face interview with the beneficiary is an important source of evidence about beneficiary capability.<sup>35</sup> The POMS also requires that staff meet in person with the potential payee unless doing so causes an undue hardship.<sup>36</sup> A hardship may be when the beneficiary is a resident of a nursing home, hospital, or other

facility, or when the payee and beneficiary live in different states. Some staff travel to nursing homes to make a determination about beneficiary capability and payee suitability. However, for others, workload pressures preclude this practice.<sup>37</sup>

The payee selection process also varied where a significant geographic distance exists between the payee and beneficiary. Many staff members ask the potential payee what he or she knows about the beneficiary's life and needs. While some staff recognized that technology could

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<sup>35</sup> Social Security Administration, Program Operations Manual System (POMS) GN 00502.050(A).

<sup>36</sup> SSA POMS GN 00502.113(B).

<sup>37</sup> See Section 3 on Workload.

help bridge a geographic divide, others cited its limitations and tended to select a less desirable payee living in close proximity to the beneficiary.

**Inconsistencies in How Substance Abuse Affects Payee Selection.** We asked field office staff how substance abuse by the beneficiary affects their payee selection. Most said that if beneficiaries are using substances illegally, they will try to locate an individual or organizational payee. However, other staff emphasized that beneficiaries have a right to drink or gamble their funds away, and therefore, staff may opt for direct payment instead of a payee.<sup>38</sup>

Staff told us that beneficiaries who are misusing substances can become violent and may take extreme measures with little regard for others in order to get money to purchase drugs, including threatening the payee repeatedly. In some but not all such cases, an organizational payee may be a solution.

Substance abuse by the payee can also affect the selection process. For most staff, if the payee’s substance abuse is in the past, for example, 10 or more years earlier, and the payee does not have a recent history of substance abuse, then he or she is a viable candidate. In rare instances, both the beneficiary and the payee are abusing substances. Under these circumstances, staff may suspend the beneficiary’s check and ask the payee to come to the office. Staff generally finds another person or organization to be the payee or returns the funds to the beneficiary.

**Inconsistencies in Selection Related to Criminal History of the Potential Payee.** During the interviews, staff confirmed that the 12 barred crimes specified in the POMS were non-negotiable.<sup>39</sup> Most staff said that even if one of these crimes had been 20 years earlier and the person’s record remained clean, they still would not appoint him or her to serve.

For non-barred crimes, staff takes into account what the potential payee has done, how long ago, if the crime concerned money, and whether or not these acts could affect the beneficiary.

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***“It depends on when it happened. I will not make a recent felon a payee. If the crime is 20-30 years old, it can be irrelevant.”***

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However, staff was inconsistent in how they consider this information in selecting a payee. Some applied a 10-year rule, while others applied a shorter or longer time. Many staff said that minor offenses, such as a moving violation or traffic tickets, do not necessarily disqualify a payee from serving. Theft was one crime that caused staff concern, yet some stressed that there might be limited payee choices, and they may select a payee with theft in his or her background regardless.

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<sup>38</sup> NCSSMA reviewers observed that “This is a source of frustration with staff and management. At what point does SSA policy conflict with the rights of individuals? This is inconsistent across the agency because you’re asking an individual technician to impart their own value system on another person.” See pages 58-60 on study implications and recommendations concerning beneficiary substance abuse and the choice between direct payment and appointment of a payee.

<sup>39</sup> See Social Security Administration, *Program Operations Manual System (POMS)* GN 00502.133 concerning the 12 barred crimes. The eRPS system includes a question about consent to conduct a background check and includes a program called Payee Wiz that helps staff investigate criminal history. In its 2019 Report to Congress on *Reassessment of Payee Selection and Replacement Policies*, SSA stated that it updated POMS instructions to include “the integration of a criminal background check . . . into the electronic payee application process for non-exempt payee applicants,” p. 10.

**Other Areas of Inconsistent Practice.** Interviews also showed inconsistencies in other selection practices covered elsewhere in this study – such as documentation in eRPS, review of staff selections by other office employees, and assessment of guardians as payees.<sup>40</sup>

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<sup>40</sup> See Sections 3 on Casework Quality and Section 5 on Guardians as Payees.

## **Part III**

**Findings from the**

**NCSSMA Survey of Field Office Managers**

**Implications**

**Recommendations**

# 1. Beneficiary Capability and Payee Selection

Our interviews highlighted challenges for field office staff in capability determinations. They must constantly walk a fine line, balancing the harm to beneficiaries’ self-determination in controlling their funds with the potential for harm from mismanagement or loss of funds without a payee.

## What Does the POMS Say?

- GN00502.020 - Policy for Developing Capability for Adult Beneficiaries. Unless there is a judicial determination, presume capability. However, if there is “information that the beneficiary has a mental or physical impairment that prevents him or her from managing or directing the management of benefits,” staff are to develop capability.
- GN00502.030 - Lay Evidence of Capability. Absent evidence of legal incompetence, lay evidence (nonmedical and nonlegal) must be developed and considered in every case.
- GN00502.030(A). Field office observations during a face-to-face interview include noting the beneficiary’s behavior, reasoning ability, how he or she functions with others are non-medical lay evidence of capability.
- GN00502.050A - Procedure for Developing Lay Evidence. A face-to-face interview with the beneficiary (if practicable) is the best source for lay evidence. This POMS section gives six sets of suggested questions for an interview with the beneficiary, as well as additional questions for third parties.
- GN00502.055 – Policy for Reevaluating a Beneficiary’s Ability to Manage Benefits. The field office must be alert to changes in circumstances that might indicate the need for a new capability determination.

## What Did the NCSSMA Survey Find?

<b>Beneficiary Capability and Payee Selection</b>				
<b>To what extent is there variability among office staff in the use of face-to-face meetings with a beneficiary in the selection of the pre payee for adults?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	20	27	31	22
<b>To what extent is there variability among office staff in the decision to use direct payment instead of selecting a payee?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	26	39	30	5
<b>When capability is uncertain, staff often directs payments to the beneficiary.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	14	56	27	3

<b>Our office contacts residents of nursing facilities or other long-term residential facilities by phone or face-to-face meetings when selecting an organizational payee.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	16	50	28	6
<b>When making decisions about direct payment, staff considers whether the beneficiary has a support mechanism in place to make decisions about the beneficiary's needs.</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	44	47	8	1

- Forty-seven percent (47%) reported that the extent to which office staff uses face-to-face meetings with beneficiaries in determining the need for a payee is variable (20% said highly variable and 27% said variable).
- Sixty-five percent (65%) said there is variability among office staff in the decision to use direct payment instead of selecting a payee (26% said practice is highly variable and 39% said moderately variable).
- Seventy percent (70%) of NCSSMA respondents agreed (14% strongly agreed and 56% agreed) that when capability is uncertain, staff often directs payment to the beneficiary.
- Thirty-four percent disagreed that their office contacts residents of nursing facilities or other long-term residential facilities by phone or face-to-face meetings when selecting an organizational payee; however, 66% agreed (16% agreed strongly and 50% agreed).
- Ninety-one percent (91%) of respondents reported that when making decisions about direct payment, staff considers whether the beneficiary has a support mechanism in place to make decisions about the beneficiary's needs (44% said always and 47% said sometimes).

### **Implications from the Interviews and Survey**

Field office staff generally closely follow POMS guidance to presume capability and pay benefits directly if possible. However, while the POMS gives lists of key questions to assess capability during interviews, the decision to pay directly or appoint a payee can be variable and quite challenging. The decision ultimately may be based on two very different underlying rationales – the need to enhance beneficiary autonomy if possible and the difficulty of finding an appropriate payee due to lack of a suitable payee or repeated beneficiary requests for payee changes. Approaches to increase the number of qualified community-based organizational payees (see Section 6) and to help staff address repeated beneficiary requests to change payee (see Section 3) are needed.

An important element in determining capability is meeting with the beneficiary personally, either face-to-face or by phone or video. Based on survey results, one-third of the managers say this does not happen for beneficiaries who are residents of facilities. Direct contact with beneficiary residents would offer important evidence needed to make informed decisions. The COVID-19 pandemic has highlighted ways of communicating with facility residents remotely through technology – methods that could be supported by SSA policy.

A significant interview theme was attention to decision supports and supported decision-making. Supported decision-making has been defined as “supports and services that help an adult with a disability make his or her own decisions, by using friends, family members, professionals, and other people he or she trusts to help understand the issues and choices; ask questions; receive explanations in language he or she understands, and communicate his or her own decisions to others”<sup>41</sup> Decision supports include a range of practical, technological, legal and community options that can enhance decision-making abilities.<sup>42</sup>

According to the POMS, a capability determination rests on whether a beneficiary can manage or *direct the management* of benefits. This POMS language reflects a model of supported decision-making – the person may be able to make decisions about managing benefits (“direct the management of benefits”) but needs someone to help in implementing the decisions. The NCSSMA survey showed a markedly high level of staff awareness of the importance of support in making a determination. Nonetheless, more specific SSA guidance and training for field office staff on this decision-making model could facilitate its use and move toward reducing unnecessary payee appointments.

### Recommendations

1. Preface the POMS *Order of Preference* with a statement requiring that, prior to any payee appointment, staff consider beneficiary supports and services as well as a supporter who may help the beneficiary’s financial decision-making.
2. Modify the instructions for the SSA medical form (Form 787) to emphasize assessment of the ability *to manage or direct the management of* financial benefits and the existence of supports and supporters, rather than stating medical diagnoses alone. [Also in Section 2]
3. Provide specific training for staff in identifying and recognizing beneficiary supports and services as well as potential supporters.
4. Require field office staff to have a telephone call, video call, or face-to-face meeting with beneficiaries, including residents in nursing facilities, before making a capability determination. Encourage technological solutions for personal contact when necessary. [Also in Section 7 on Institutional Payees and Section 8 on Practice Inconsistencies]

## 2. External Evidence of Capability

According to SSA guidance, field office staff must presume a beneficiary is capable of managing benefits, but when capability is in question, staff should examine the evidence. Lay (non-medical) evidence is required and supplemented by medical evidence if available. The interviews highlighted problems with evidence from physicians and the state Disability

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<sup>41</sup> Blanck, P. & Martinis, J., “The Right to Make Choices: The National Resource Center for Supported Decision-Making, *Inclusion* (2015); Dinerstein, R. “Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making,” *Human Rights Brief*, No. 2 (2012).

<sup>42</sup> American Bar Association Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, *PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making* (2016).

Determination Service (DDS) that might interfere with the efficiency and clarity of the capability determination process.

### What Does the POMS Say?

- GN00502.040 - Policy for Medical Evidence of Capability. When a beneficiary’s capability is in question, develop medical evidence (if available). Although medical evidence is a major factor in the determination, it is not the definitive, determining factor. Evaluate medical evidence along with lay evidence for a sound determination.
- GN00502.050B - Procedure for Developing Medical Evidence. Medical evidence is a statement offered by a medical source based on evaluation, examination, or treatment of the beneficiary within the last year. Form SSA-787 is a form for the medical statement, but other forms or reports also may be used.
- GN00502.040A4 – State Disability Determination Services (DDS) Offers an Opinion. DDS often gives an opinion on capability. DDS is not responsible for making capability determinations. A DDS opinion is lay evidence.

### What Did the NCSSMA Survey Find?

<b>External Evidence of Capability</b>				
<b>To what extent was there variability among office staff in following DDS recommendations about the selection of rep payee for adults?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	14	36	38	12
<b>How often does DDS return a case for capability development with a decision of “unresolved”?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	8	79	12	1
<b>When DDS returns a decision with capability “unresolved,” how often does it delay the selection of a representative payee?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	23	50	19	8
<b>When DDS returns a decision with a capability “unresolved”, how often does it cause staff to make a capability determination for which he or she lacks expertise?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	13	39	30	18
<b>When DDS returns a decision with a capability “unresolved,” how often does it create concerns for field office staff making the selection?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	19	45	24	12

<b>How often is the Form 787 returned in a timely manner to the SSA office?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	3	71	25	1
<b>How often is the Form 787 returned with an unsupported capability determination?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	3	66	29	2
<b>When the Form 787 is not returned, or the capability determination is unresolved, how often does it delay the selection of a payee?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	48	45	6	1
<b>When the Form 787 is unresolved, how often does it cause staff to make a capability determination?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	17	48	23	12
<b>When the Form 787 is not returned, or the capability determination is unresolved, how often does it create concerns for the staff making the selection?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	26	56	13	5

***Survey questions sought information from field office managers about the process for obtaining DDS opinions on the Form 831 to determine whether a payee is needed.***

- Half of the survey respondents (50%) said there is variability (14% said highly variable and 36% said variable) among field office staff in following DDS recommendations about selection of a payee for adults.
- Eighty-seven percent (87%) of respondents said DDS always (8%) or sometimes (79%) returns a case for capability development with a decision of “unresolved.”
- Seventy-three percent (73%) of respondents said a DDS decision of “unresolved” delays the selection of payee (23% said always, and 50% said sometimes).
- Fifty-two percent (52%) of respondents reported that a DDS decision of “unresolved” causes staff to make a capability determination for which they lack the expertise (13% said always and 39% said sometimes), and 64% of respondents said such a statement creates concerns for field office staff making selection determinations (19% said always and 45% said sometimes).

***Findings from the NCSSMA survey about the medical Form 787 include the following.***

- Seventy-four percent (74%) reported the 787 medical form is always (3%) or sometimes (71%) returned in a timely manner; however, 26% said it is rarely (25%) or never (1%) returned in a timely manner.
- Sixty-nine percent (69%) indicated the Form 787 was returned with an unsupported capability determination, (3% reported always, and 66% reported sometimes).

- Ninety-three percent (93%) said the lack of timely return of the report causes staff to delay the selection of a payee (48% reported always, 45% sometimes).
- Sixty-five percent (65%) reported that when the physicians do not return the Form 787, it causes staff to make a capability determination (17% indicated always and 48% indicated sometimes)
- Eight-two percent (82%) indicated that they had concerns about making the selection when the form 787 is not returned or the capability determination is uncertain (26% reported always and 56% reported sometimes).

### Implications from the Interviews and Survey

**DDS Opinions.** The interviews and survey findings show a tendency for DDS to raise, but not resolve, and pass along to field office staff the need for a capability decision, resulting in a significant increase in staff workload. Having to develop capability whenever DDS calls for it appears to not only consume SSA staff time but also may result in more payees being appointed than necessary. One explanation offered in an interview was that historically, disability practice leaned toward protection, and the default was to appoint a payee.

***“The majority of respondents said DDS often returns a case for capability development with a decision of “unresolved.”***

Because our study did not include information gathering directly from DDS staff, further research on DDS practices in determination of need for a payee would be helpful.

**Medical Form 787.** Interview and survey findings show that delays and failure of physicians to return the form on beneficiary capability negatively affect the timeliness of selection decisions. Moreover, it could mean that key medical information is not considered by staff who may lack medical training relevant to a capability determination.

Staff noted that the form could be improved to include specific findings, as well as examples of the beneficiary’s abilities and limitations for managing financial benefits rather than simply providing the beneficiary’s diagnosis such as dementia or schizophrenia. Recent literature on psychological findings concerning financial capacity of older adults (including a “Financial Capacity Instrument”)<sup>43</sup> could help SSA in reframing of the form.

### Recommendations

1. Focus additional research on DDS practices in payee determinations. Discontinue use of the DDS practice of sending SSA field office staff a statement of “capability unresolved.”
2. Provide education and training for DDS staff on capability factors and require clear written support for any “payee needed” opinions. Include DDS use of technology for remote determinations.
3. Modify the instructions for the SSA medical form (Form 787) to emphasize assessment of ability *to manage or direct the management of* financial benefits and the existence of supports and supporters, rather than relying on medical diagnoses alone. [Also in Section 1]

<sup>43</sup> See for example works by Daniel Marson, Jason Karlawish and others, including “Assessing Financial Capacity: A Brief Overview,” Marson, Daniel, for the Committee to Evaluate the SSA’s Capability Determination Process for Adult Beneficiaries, Institute of Medicine Public Meeting, April 21, 2015, <https://www.ncbi.nlm.nih.gov/books/NBK367682/>

4. Include on the medical Form 787 a timeframe and rationale for its timely return.

### 3. Casework Quality

The NCSSMA survey built on findings from our interviews about the extent of field office staff training and mentorship, review of their cases, and documentation of payee selection.

#### What Does the POMS Say?

- GN 00502 -- Determining the Need for, Developing and Selecting a Representative Payee. POMS provides detailed guidance for selecting payees, including documenting payee selections, and is the key reference, serving as its own form of ongoing training for employees.
- POMs GN 00502.185 – Documenting Payee Selections/Non-Selections and Post-Entitlement Actions in eRPS. This provision provides guidance for documenting payee selections and post-entitlement actions in eRPS. POMS requires that “When processing a representative payee (payee) selection application, it is important to document properly so relevant payee information is viewable in future payee applications and continued suitability determinations. Each payee selection is a new independent determination that must be documented even if the payee is already serving as someone else’s payee.”

#### What Did the NCSSMA Survey Find?

Casework Quality				
<b>How important is yearly training about the selection of rep payees for adults?</b>				
	Very Important	Somewhat Important	Slightly Important	Not Important
Percent (%)	58	29	11	2
<b>How important is adding an in-person trainer to the current online instruction?</b>				
	Very Important	Somewhat Important	Slightly Important	Not Important
Percent (%)	45	30	13	12
<b>How much does training on the topic of representative payees influence the selection process of rep payees for adults?</b>				
	Very Influential	Moderately Influential	Slightly Influential	Not Influential
Percent (%)	48	37	12	3
<b>How much does the in-office mentor influence the selection process of representative payees for adults?</b>				
	Very Influential	Moderately Influential	Slightly Influential	Not Influential
Percent (%)	39	34	18	9
<b>How often is the rep payee determination for adults reviewed by other staff in your office?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	2	43	43	12

<b>Who performs the review of the rep payee determination?</b>				
	Claims Specialist	Technical Expert	Operations Supervisor	Assistant Manager or Manager
Percent (%)	13	71	13	3
<b>Is review of payee determinations considered part of staff workload?</b>				
	Yes	No		
Percent (%)	43	57		
<b>To what extent is there variability among office staff in sufficiency of documenting representative payee selection in eRPS?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	34	37	23	6

### ***Training and Mentorship***

- Eighty-seven percent (87%) of respondents indicated that yearly training is very (58%) or somewhat (29%) important.
- Seventy-five percent (75%) of respondents said adding an in-person trainer to the current online instructions is very or somewhat important (45% said very important and 30% said somewhat important). Only 12% reported that it was not important.
- Eighty-five percent (85%) of respondents indicated that training on the topic of representative payees is very (48%) or moderately influential (37%) regarding the selection process.
- Seventy-three percent (73%) of respondents indicated that an in-office mentor is very (39%) or moderately (34%) influential in the selection process of payees for adults.

### ***Case Review***

- Fifty-five percent (55%) of respondents indicated that the representative payee determination is reviewed rarely (43%) or never (12%) by other staff in their office.
- Seventy-one percent (71%) of respondents indicated that, when the review does occur, it is performed by a technical expert. Another 13% named claims specialists, and 13% named the operations supervisor.
- Fifty-seven percent (57%) of respondents indicated that review of payee determinations is not considered part of staff workload.

### ***Documentation***

- Seventy-one percent (71%) of respondents said the sufficiency of documenting payee selection in eRPS is highly or moderately variable (34% said highly variable and 37% said moderately variable).

### **Implications from Interviews and Surveys**

Staff training on the selection of payees will be optimally impactful if consistently conducted and updated. Staff and managers reported that having a live person conduct training sessions would contribute substantially to training quality, especially because it is useful for asking questions and explaining the nuanced and complex selection work. Creating a time and place for employees to regularly share decision-making strategies through peer discussions appears to be a

useful strategy. New staff relies heavily on mentors, who must be thoroughly up-to-date on SSA requirements and have sufficient time allocated to provide guidance.

In many cases, staff selection of payees is not reviewed. Combined with the workload and constant time pressure staff experience (see Section 4), this practice leaves the door open for inconsistencies that could unfairly affect beneficiary interests. A protocol for consistent review of payee cases would contribute to casework quality and protect beneficiary rights. This should include building time for review into the staff workload. NCSSMA reviewers pointed out that Performance Quality Reviews should only focus on the technical aspects of the decision, not the decision itself, yet some reviewers impart their own value system on the appropriateness of the selection instead of only looking at the technical aspects and documentation of the case.

***Over half the NCSSMA respondents said review of staff payee selections rarely or never occurs.***

The electronic Representative Payee System (eRPS) system requires that field office staff document payee selection and the reasons behind their selection, including documenting and justifying deviations from the POMS order of preference list. Over time, different staff may be faced with changing payee selections and must be thoroughly informed about the circumstances, including factors such as proximity, family conflict, beneficiary preferences, substance abuse, and criminal history.

SSA's 2019 Report to Congress on payee selection policies states that although "current policy is to document all payee selections and suitability determinations, the functionality is not mandatory in the payee system. Systems enforcement of mandatory documentation that includes different categories related to selection and payee suitability would help ensure our employees follow our policies for selecting the most suitable payee for beneficiaries."<sup>44</sup>

The Report suggests that an improvement to be evaluated could be to "enforce payee selection policy by making the selection determination screen in the payee system mandatory." It also notes that enforcement of documentation would provide data on payee selection.

## **Recommendations**

- 1.** Develop and implement consistent in-service training for field office staff on payee selection, using live virtual training techniques as well as in-person training where possible. [Also in Section 8 on Practice Inconsistencies]
- 2.** Foster peer discussions for field office staff to share decision-making strategies concerning payee selection.
- 3.** Develop and implement consistent review of payee selection cases to improve the quality of each case determination. The review should focus on the process for determining payee selection and should be built into the time allocated to payee selection.
- 4.** Develop and implement consistent requirements for staff documentation of selection decisions. [See Section 6 on Organizational Payees]

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<sup>44</sup> Social Security Administration, *Reassessment of Payee Selection and Replacement Policies Report to Congress*, p. 11 (October 2019).

- 5. Adopt the potential policy change described by the 2019 SSA Report to make the eRPS selection determination screen mandatory.

## 4. Field Office Staff Workload

Field office interviews highlighted the effect of increasing workload and constant time pressure on payee selection. Survey questions sought additional information from office managers on workload.

### What Does the POMS Say?

- GN 00502.110 – Taking Applications in the eRPS. The electronic Representative Payee System (eRPS) is a web-based application that processes representative payee applications and contains all payee related information. Field office staff use eRPS to create new applications, update pending applications, and make changes in payee information. A number of other POMS sections also address eRPS procedures.
- GN 00504.100 – Determining the Need for a Successor Payee. An individual who files an application to serve as a payee for a beneficiary who already has a payee must show that the new appointment will be in the beneficiary’s best interest. Staff considering making a payee change should contact the current payee unless it would be inappropriate.

### What Did the NCSSMA Survey Find?

Field Office Staff Workload				
<b>In your office, are there designated staff who specialize in representative payee issues?</b>				
	Yes	No		
Percent (%)	25	75		
<b>How useful would it be to designate staff in your office to specialize in representative payee issues?</b>				
	Very Useful	Somewhat Useful	Slightly Useful	Not Useful
Percent (%)	17	26	18	39
<b>Staff workload has increased to the point that it negatively affects the selection of payees.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	34	42	22	2
<b>SSA staff experience unnecessary complications in the eRPS system related to the selection of payees for adults.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	40	46	13	1
<b>Addressing beneficiary complaints about rep payees handling of payments significantly affects workload.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	42	48	9	1

- Twenty-five percent (25%) reported their office had designated staff who specialize in payee issues, and three quarters (75%) said their offices do not have such specialization.
- Forty-three percent (43%) said staff specialization in payee issues would be useful (17% said very useful and 26% said useful), while 18% said it would be slightly useful and 39% said it would not be useful.

- Seventy-six percent (76%) of survey respondents agreed (34% strongly agreed and 42% agreed) that staff workload has increased to the point that it negatively affects the selection of payees.
- Eighty-six percent (86%) of respondents agreed (40% strongly agreed and 46% agreed) that staff experience unnecessary complications in the eRPS system related to the selection of payees.
- Ninety percent (90%) of respondents agreed (42% strongly agreed and 48% agreed) that addressing beneficiary complaints about payee handling of payments significantly affects workload.

### Implications from Interviews and the NCSSMA Survey

Our interviews revealed that constant time pressure on field office staff could adversely affect investigation of potential payees as well as documentation about the reasons for selection, and the survey confirmed that increasing workload adversely affects the selection process.

One approach to address staff workload is to increase the field office staffing level, allowing additional time for more informed payee selection. Our study did not compare the adequacy of staffing for payee cases with staffing for other aspects of SSA work. However, there is solid justification for devoting additional staff to payee determination issues given the vulnerability of the population and the clear rights at stake.

Another solution to workload concerns is staff specialization. However, management perspectives on the usefulness of specialization varied, with staff from smaller offices expressing concern that all staff must be knowledgeable in all aspects of Social Security cases to best serve customers. While only 25% of offices currently specialize in payee issues, 43% of managers said it would be useful, implying that some managers might welcome support on implementing specialization in payee issues.

A related approach, regional specialization, drew mixed interview responses. The 2018 SSAB report on the payee program recommended that SSA “create specialized rep payee expertise at the field office and/or regional level to administer the rep payee program more uniformly, to answer questions and train new rep payees and to manage organizational rep payee workloads.”<sup>45</sup> Regional specialization merits further consideration through a pilot project and evaluation.

Interviews found two issues bearing on staff workload that were strongly confirmed by the NCSSMA survey. One is the eRPS software system. Staff described technical glitches that cause loss of significant time, and a striking 86% of NSCCMA respondents agreed that eRPS system problems could hinder payee selection.

***Over 80% of survey respondents agreed the eRPS system causes problems for staff.***

Second, according to our interviews, field office staff are often pressed by beneficiaries to change the payee frequently so that they can receive their funds for their own use, and staff must evaluate a replacement payee if one exists or whether the funds can and should be paid directly.

<sup>45</sup> Social Security Advisory Board, *Report: Improving Social Security’s Representative Payee Program*, p. 14 (January 2018).

POMS provisions show that a change of payee can be a complex and time-consuming procedure – and if a beneficiary, who has a mental health or substance abuse condition, for example, asks for repeated changes, it can exhaust considerable staff time. Sometimes, the answer may be a change from an individual to an organizational payee. However, a qualified and effective organization is not always available, and the beneficiary may end up being paid directly even though not capable of managing funds even with support.

## Recommendations

1. Increase field office staffing levels to allow time for more informed payee determinations, given the rights at stake.
2. Pilot and evaluate field office staff specialization on payee issues in large offices and at the regional level.
3. Resolve technological problems in eRPS so that staff can better input data and document decisions on payee selection.
4. Increase the number of qualified and effective organizational payees with access to beneficiary resources. [Also in Section 6]

## 5. Guardians as Payees

Along with relatives, court-appointed guardians are high on the SSA preference list for appointment as payees. The NCSSMA survey sought additional information about these selections.

### What Does the POMS Say?<sup>46</sup>

- GN00502.105 – Guardians in Preference Lists. The POMS lists SSA’s preferred order of preference for selection of representative payees. In the preference list for adults without a substance abuse condition, the first tier includes, along with a spouse or other relative, a legal guardian or conservator with custody or who demonstrates strong concern. Guardians are further down the list for adults with a substance abuse condition.
- GN00502.023 – Effect of Court Order. If the court establishes that a beneficiary is “incompetent” (i.e., unable to manage his or her financial and property matters) and appoints a guardian, the beneficiary must receive benefits through a payee, and no capability development is necessary. There must be a court order in place that specifically indicates incompetency or includes statements concerning the beneficiary’s ability to handle financial affairs.
- GN00502.139 – Guardian Appointment as Payee. If SSA field office staff learns that the beneficiary has a court-appointed guardian or conservator, staff should obtain proof of the

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<sup>46</sup> POMS GN 00502.139 includes definitions for various kinds of guardians, and GN 00502.300 includes a State Digest of Guardianship Laws. In addition to legal guardians appointed by the court, the POMS preference list also includes “statutory guardians” and “voluntary conservators” in the fifth tier for adults without a substance abuse condition. A “statutory guardian” is “appointed under State law to manage the assets of institutionalized persons to offset the costs of the State institution. They typically are not court appointed and are not required to account to a court . . .” A “voluntary conservator” is “a third party appointed by an individual through a State court to manage that individual’s assets without a finding of legal incompetence.” Query whether these two kinds of guardians are widely known and used enough to merit distinct categories on the preference list.

appointment and advise the guardian or conservator of the beneficiary’s entitlement to benefits and of a guardian’s right to file for appointment as payee. This section includes a reminder that “you are not required to appoint the legal guardian as payee. Appoint the person who will best serve the beneficiary.”

**What Did the NCSSMA Survey Find?**

<b>Guardians As Payees</b>				
<b>How often are guardians automatically selected as the payee?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	31	61	5	3
<b>How often are guardians questioned about their suitability to serve as payee?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	40	34	23	3
<b>How often is the court contacted about guardians’ suitability to serve as payee?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	3	11	44	42
<b>How often does beneficiary designation of an agent under power of attorney influence payee selection?</b>				
	Always	Sometimes	Rarely	Never
Percent (%)	4	42	32	22

- Ninety-two percent (92%) of survey respondents said guardians are always (31%) or sometimes (61%) automatically selected as payees.
- Seventy-four percent (74%) of respondents said guardians are always or sometimes questioned about their suitability to serve as payees (40% said always and 34% said sometimes); 26% said guardians are rarely (23%) or never (3%) questioned.
- Eighty-six percent said that the court is rarely (44%) or never (42%) contacted about guardians’ suitability to serve as a representative payee.
- Fifty-four percent (54%) said that the designation of an agent under power of attorney rarely or never influences payee selection.

**Implications from the Interviews and Survey**

Guardians are high on the POMS preference list because the court has approved them in a fiduciary role. Thus, some field office staff select guardians as payees without additional inquiry. According to the survey, managers said such automatic appointments are common. However, this seems at odds with the survey results in which a substantial percentage of managers said guardians are questioned about their suitability to serve. Government reports and Congressional hearings have brought to light instances in which guardians have taken advantage of those they

were appointed to protect.<sup>47</sup> Moreover, in practice, court oversight of guardians is often uneven or insufficient.<sup>48</sup>

Encouraging additional field office scrutiny of guardians could help in selecting payees who will serve the beneficiary's best interest. According to the POMS, *only guardians who have custody of the beneficiary or demonstrate strong concern for the beneficiary's well-being* may be named as payee. Staff questions may be needed to determine the extent to which the guardian meets these conditions.

Additionally, national studies have highlighted that, while state courts with guardianship jurisdiction and the SSA payee program serve essentially the same population, there is very little coordination or information sharing between the two systems.<sup>49</sup> This lack of coordination may leave at-risk adults unprotected. For instance, if the same person serves as payee and guardian and the court removes the guardian for exploitation, the field office has no way of knowing this in order to make a change in the payee. The survey confirmed that the court is rarely contacted. Better information sharing could help to address misuse and abuse.<sup>50</sup>

## Recommendations

1. Provide guidance to field office staff about criteria for determining the suitability of any guardian to serve as payee.
2. Inform the court when a guardian is appointed as payee.
3. Develop a process for staff to communicate with the court about the guardian's performance and suitability to serve as payee (i.e., whether the guardian has been sanctioned or removed for cause).

## 6. Organizational Payees

Our interviews with field office staff inquired about the effectiveness and sufficiency of organizational payees – the extent to which they have knowledge of and access to resources that could help beneficiaries, the qualities that make a good organizational payee, and whether there are enough organizational payees to provide the services needed. The interview responses led to questions concerning organizational payees in the NCSSMA survey of office managers.

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<sup>47</sup> U.S. Government Accountability Office, *Guardianships: Cases of Financial Exploitation, Abuse, Neglect of Seniors*, GAO-10-1046 (September 2010); U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* (November 2018).

<sup>48</sup> Ibid.

<sup>49</sup> U.S. Government Accountability Office, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, GAO-04-655 (July 2004).

<sup>50</sup> The 2018 the Strengthening Protections for Social Security Beneficiaries Act required SSA to commission a study by the Administrative Conference of the U.S. on information sharing between state courts and the SSA representative payee program. For the study, ACUS partnered with the National Academy of Public Administration. The June 2020 report provides an analysis of the legal and practical barriers to information sharing and offers input to SSA on overcoming these barriers.

## What Does the POMS Say?

- GN 00501.013 - Types of Payees. This section lists the types of organizational payees. “Institutional payees” is a subgroup of organizational representative payees. Institutional payees include federally funded institutions (e.g., a Veterans Affairs facility), state or locally funded institutions (e.g., a state psychiatric institution), private for-profit entity (e.g., a nursing home), and non-profit entities. Other types of organizational payees including financial organizations (such as a bank), a social agency that is a non-custody entity providing social services, or a state or other governmental official.
- GN 00502.105 - Order of Preference. POMS has two preference lists for payees for adult beneficiaries -- organizational payees fall in different levels in these two lists.
- *For beneficiaries without a substance abuse condition,* organizational payees follow legal guardians, relatives, or friends who show concern. Public institutions and non-profit agencies with custody are third in the order of preference, private facilities with custody that are licensed and operated for profit (such as nursing homes) are fourth, other organizations with concern are fifth, organizations that charge a fee are sixth, followed by a social service agency or custodial institution.
- *For beneficiaries with a substance abuse condition,* several types of organizational payees (except private for-profit facilities such as nursing homes) are preferred over family members, guardians, or friends.
- GN 00506.000 - Fee for Services Organizations. This section provides for qualified organizations serving as payees to collect a fee from the beneficiary’s payment.
- Note: SSA’s recently released report to Congress, *Reassessment of Payee Selection and Replacement Policies Report* (11 October 2019, p. 9), includes changes related to organizational payees. Many of these changes relate to institutional payees, as referenced in Section 7 of this report.

## What Did the NCSSMA Survey Find?

<b>Organizational Payees</b>				
<b>To what extent is there variability among office staff about appointment of organizational payees as the payee?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	12	31	38	19
<b>Our office has an adequate number of organizational payees to serve adult beneficiaries.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	11	37	31	21
<b>Our office provides regular training to organizational payees.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	4	33	47	16
<b>In the past three years, has an organizational payee in your area been discontinued because of misuse of beneficiary funds?</b>				
	Yes	No		
Percent (%)	22	78		

<b>Our office has non-residential organizational payees with adequate staff and resources to serve adult beneficiaries.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	7	42	36	15
<b>Non-residential organizational payees provide greater access to resources than do individual payees of adult beneficiaries.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	6	39	45	10
<b>Our office has Fee For Service organizational payees with adequate staff and resources to serve adult beneficiaries.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	7	38	35	20
<b>Fee-for-Service organizational payees provide greater access to resources than do individual payees of adult beneficiaries.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	6	27	48	19

- Forty-three percent (43%) of respondents indicated that appointment of organizational payees was highly (12%) or moderately variable (31%) among office staff.
- Forty-eight percent (48%) of respondents agreed their office has an adequate number of organization payees. Responses varied somewhat for respondents from urban versus non-urban locations: fifty-one (51%) of respondents from urban locations versus forty-five (45%) from non-urban environments agreed their office has an adequate number of organizational payees.
- Sixty-three percent (63%) of respondents disagree (47% disagree and 16% strongly disagree) that their office provides regular training to organizational payees.
- Twenty-two percent (22%) of respondents indicated that in the past three years, an organizational employee was discontinued due to misuse of beneficiary funds.
- Forty-nine percent (49%) of respondents agreed (7% strongly agreed and 42% agreed) that their office has non-residential organizational payees have adequate staff and resources to meet beneficiary needs, but 51% disagreed.
- Fifty-five percent (55%) of respondents disagreed that non-residential payees provide greater access to resources than do individual payees of adults, while forty-five (45%) of respondents agreed.
- Forty-five percent (45%) of respondents agreed (7% strongly agreed and 38% agreed) that their office has fee-for-service organizational payees with adequate staff and resources to serve adult beneficiaries.
- Thirty-three percent (33%) of respondents agreed (6% strongly agreed, 27% agreed) that fee-for-service payees provide greater access to resources than do individual payees of adults, while a much higher percentage (67%) disagreed.

### **Implications from Interviews and Surveys**

Responses to the NCSSMA survey of field office managers and staff interviews were mixed concerning organizational payees, making it difficult to draw specific conclusions. Over 40% of

managers indicated that there is variability in staff appointment of organizational payees, yet over 50% found the extent of variability slight or nonexistent. Similarly, nearly half agreed that their office has an adequate number of organizational payees, while a little over half disagreed.

**Staffing and Resources of Organizational Payees.** Survey results were similarly mixed about whether organizational payees have adequate staff and resources to serve adult beneficiaries. The 2019 U.S. Government Accountability Office report on organizational payees stated that “SSA policy directs staff to consider whether the organization ‘has adequate staff and resources to serve its clients,’ but that regional guidance varies.”<sup>51</sup> More uniformity in considering organizations’ staff-to-client ratio, as well as staff responsibilities and training, could help to ensure adequate resources.

**Beneficiary Access to Community Resources.** Survey respondents, as well as interviewees, also were divided as to whether organizational payees provide greater access to resources than do individual payees of adult beneficiaries – both non-residential organizational payees generally and fee-for-service organizational payees specifically. The 2018 SSAB report on improving the SSA representative payee program noted that “studying the preference lists, and if warranted, adjusting them, may result in organizational rep payees moving further up the preference list. Some organizational rep payees offer additional services, such as mental health counseling, housing assistance, and supported financial decision-making.”<sup>52</sup>

Our research did not provide the data to support moving all organizational payees higher up on the preference lists, especially fee-for-service payees. However, non-profit social service agencies providing other services to beneficiaries (such as a county department of social services or a non-profit social services agency) currently do not appear to be differentiated in the preference list for adults without a substance abuse condition.<sup>53</sup> Rather, they would fall into the fifth level as “any person or organization other than [fee for service organizations] who shows strong concern for the beneficiary, is suitable, able and willing to act as payee.” This sub-category of organizational payees is already first on the list for adults with a substance abuse condition. It should be highlighted and made a distinct category. Such organizations have the potential to offer beneficiaries key information about resources, and their service should be strongly encouraged.

The survey showed that fewer managers agree that fee-for-service organizations provide greater access to resources than individual payees (33% agreed) compared to non-residential organizational payees, for which 45% of managers agreed. In the interviews, most staff considered fee-for-services organizations to be a last resort (as set out in the POMS preference list for adults

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<sup>51</sup> U.S. Government Accountability Office, *Social Security Benefits: SSA Needs to Improve Oversight of Organizations that Manage Money for Vulnerable Beneficiaries*, GAO-19-688, p. 14 (September 2019). “According to the Report, organizational payees are now required to maintain a physical site in the community, as well as consistent business hours. Field offices may find it more difficult to recruit and/or maintain organizational payees, but access would be improved by the requirements.”

<sup>52</sup> Social Security Advisory Board, *Report: Improving Social Security’s Representative Payee Program*, p. 8 (January 2018).

<sup>53</sup> Such agencies currently would appear to fall in the fifth level of the preference list for adults without substance abuse conditions, just above fee-for service organizations but below private facilities operated for profit such as nursing homes. They are specifically listed much higher on the preference list for adults with a substance abuse condition. POMS GN 00502.105.

without substance abuse conditions). Some described local organizations that were not meeting their responsibilities – and were, in fact, simply “conduit payees” doing no more than transferring the funds to the beneficiary. The 2019 SSA report on payee selection stated that “misuse of benefits was [in 2016] eight times more prevalent among FFS organizational payees compared to non-FFS organizational payees,” and that SSA continues to view fee-for-services payees as a last resort. According to the report, SSA has updated the POMS concerning the requirement that fee-for-service organizations be “community-based” to enhance their accessibility to beneficiaries.<sup>54</sup> We concur with the report’s conclusion that SSA should “continue to explore ways to strengthen our policies and procedures related to FFS payees.”

**Documentation of Organizational Payee Decisions.** Section 8 of our study highlights the variability of documentation among field office staff, as shown in the interviews and the NCSSMA survey. The survey found that 71% of field office managers said the sufficiency of documentation is highly or moderately variable. This includes documentation for the selection of an organizational payee. The 2019 Government Accountability Office report raised questions about documentation of decisions concerning an organizational payee and pointed out that “without fully documenting the decision, SSA staff may not be able to reference . . . information to inform future decisions about the organizational payee.”<sup>55</sup>

**SSA Training for Organizational Payees.** Also, it is notable that 37% of survey respondents said their office provides regular training to organizational payees, but 63% did not. In our interviews, only one field office said they provide such regular training and outreach. The U.S. 2019 Government Accountability Report found that staff at four out of eight field office held training sessions for groups of organizational payees, and three field offices provide training to specific organizational payees on request.<sup>56</sup> The GAO recommended additional outreach by field offices to organizational payees, specifically that they develop additional mechanisms to “obtain and review feedback from organizational payees.”

Finally, as referenced Section 4 on Workload, increasing the number of qualified and effective organizational payees would offer more viable options for SSA staff when selecting organizational payees.

## Recommendations

1. Identify and prohibit practices of “conduit” or pass-through organizational payees in order to foster payee-beneficiary relationships and improve access to resources for beneficiaries.
2. Differentiate on the POMS Preference List for Adults without a Substance Abuse Condition, a distinct category of Community Based Non-profit Social Service Agencies.
3. Develop and implement consistent requirements for staff documentation of selection decisions for organizational payees. [Also in Section 3]

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<sup>54</sup> Social Security Administration, Report to Congress on *Reassessment of Payee Selection and Replacement Policies*, p. 9 (2019).

<sup>55</sup> GAO Report, pp. 16-17.

<sup>56</sup> GAO Report, p. 24.

4. Establish criteria for adequate staff and resources for organizational payees, including staff-to-beneficiary ratios, frequency of communication with individual beneficiaries, and staff responsibilities and training.
5. Develop and implement criteria for field offices to provide regular training and outreach for organizational payees about their duties and how best to meet the needs of beneficiaries.
6. Increase the number of qualified and effective organizational payees with access to beneficiary resources. [Also in Section 4]

## 7. Institutional Payees

According to SSA, there are 15,189 organizational “creditor” payees,<sup>57</sup> which provide beneficiary services or housing for payment. These are generally nursing homes, assisted living facilities, or group homes. Based on issues considered in the interviews, the NCSSMA survey sought information on the selection of such facilities, particularly nursing homes, as payees.

### What Does the POMS Say?

- GN 0050.135 - Definition of Creditor Payee. The POMS defines a creditor payee as an individual or organization that provides the beneficiary with goods or services for monetary consideration, such as a nursing home, assisted living facility, or group home. To select a facility as a creditor payee, the facility must be the most suitable payee and must be a licensed or certified care facility. The suitability determination must be documented. Staff may make a conditional appointment of a creditor payee (GN 00502(B)(1).
- GN 00502.105(B) & ( C ) - Preference List Position. In the preference list for adults without a substance abuse condition, facility creditor payees are in the fourth tier – after family, guardian, friend with custody or strong concern, public institution with custody, and nonprofit agency with custody. They are defined as a “private facility, operated for profit and licensed under state law which has custody of the beneficiary.” For adults without a substance abuse condition, facility creditor payees are in the ninth tier.
- GN 00502.160(B) - Consideration of Institution. Field office staff selecting an institution as a payee must “be sure there are no qualified payees outside the institution who might better serve the beneficiary’s interests. Do not overlook family members who demonstrate interest in the beneficiary, even though they do not have custody.”

Note: The Social Security Administration’s 2019 *Report to Congress* on payee selection stated that SSA has streamlined and enhanced POMS instructions on creditor payee applicants, providing detailed examples, streamlining exceptions for selecting creditor payees, and enhancing guidance on conditionally selecting a creditor payee. The Report also listed several additional potential changes concerning creditor payees.<sup>58</sup>

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<sup>57</sup> Social Security Administration, Report to Congress on Reassessment of Payee Selection and Replacement Policies, p.3 (October 2019).

<sup>58</sup> Social Security Administration, *Reassessment of Payee Selection*, Ibid.

## What Did the NCSSMA Survey Find?

Selection of Institutional Payees				
<b>Organizational payees that provide services and housing for adult beneficiaries maintain separate accounts for the personal needs allowance of beneficiaries.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	18	67	13	2
<b>Organizational payees that provide services and housing for adult beneficiaries file timely reports to SSA.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	6	52	34	8
<b>Organizational payees that provide services and housing for adult beneficiaries require that they be designated as payee as a condition of admission to their facility.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	10	37	45	8

- Eighty-five percent (85%) of respondents agreed (18% strongly agreed and 67% agreed) that organizational payees providing services and housing maintain separate accounts for the personal needs allowance of beneficiaries.
- Fifty-eight percent (58%) agreed (6% strongly agreed and 52% agreed) that organizational payees providing services and housing file timely reports to SSA, but 42% disagreed.
- Forty-seven percent (47%) of respondents agreed (10% strongly agreed and 37% agreed) that organizational payees that provide services and housing require that they be designated as payee as a condition of admission.

### Implications from Interviews and Surveys

Facility payees such as nursing homes present a conflict of interest in that they are providing beneficiaries with services for payment. If selected as payee, the facility has continuous, direct access to payment. Because of this inherent conflict of interest, such payees are not listed high on the SSA Order of Preference list in the POMS, and the reasons for their selection must be well documented.

The 2019 SSA Report to Congress on payee selection practices adds further safeguards -- enhancing POMS instructions, including processes for “conditionally selecting a creditor payee by outlining additional steps required to evaluate a payee’s performance and ensure the payee meets the needs of the beneficiary.” The Report also includes evaluation of possible longer-term improvements that would create a system identifier and selection alerts for creditor payees.<sup>59</sup>

Concerns voiced by field office staff, as well as the variability of NCSSMA survey responses (about the filing of timely reports, and facility requirements that they be designated as payee), suggests that SSA may need more tools to ensure the facility selection is in the best interest of beneficiaries. Although SSA conducts periodic audits of organizational payees, there are no regular reviews for facilities serving less than 50 beneficiaries.<sup>60</sup> Given that over 40% of field office management survey respondents stated that facilities do not file timely annual reports, currently,

<sup>59</sup> SSA, *Reassessment of Payee Selection*, *Ibid.* pp. 8 – 11.

<sup>60</sup> *Social Security Protection Act of 2004*, Public Law No. 108-203, Sec. 102 (2004).

it is not possible for SSA to track whether the facility should continue to serve as, or be considered as, a potential payee. A recent Office of Inspector General Report urged the use of CMS nursing home data to assess the suitability of a facility as payee.<sup>61</sup>

Field office staff we interviewed suggested that family members receive more information about organizational payees, including facility payees and the payee services they provide. They also stated the need for more outreach and training for facility payees about their duties as payees. Additionally, field office staff contacts with the long-term care ombudsman program could help families and beneficiaries to resolve problems.

Finally, it is notable that nearly half of NCSSMA survey respondents agree that facilities require their designation as payees, suggesting that this practice may be more widespread than was evident from the interviews. Such a practice raises possible concerns that, in some instances, facilities may be overriding what should be an SSA staff determination of suitability and beneficiary needs.

***Close to half of survey respondents said institutions require their designation as payee.***

## Recommendations

1. Prohibit the appointment of facilities with contracts requiring the designation of the facility as payee as a condition of admission.
2. Require field office staff to have a phone call, video call, or face-to-face meeting with beneficiaries, including residents in nursing facilities, before making a capability determination. Encourage technological solutions for personal contact when necessary. [Also in Section 1 on Capability and Section 8 on Practice Inconsistencies]
3. Develop training materials for institutional payee staff on payee duties and conduct regular training and outreach.
4. Develop information for families and residents about the duties of institutional payees.
5. Foster field office staff contacts with the state or local long-term care ombudsman program under the Older Americans Act.
6. Conduct regular audits of institutional payees with fewer than 50 residents, taking into account CMS nursing home data.

## 8. Practice Inconsistencies

*Note: This section repeats and reinforces several of the points made earlier in this report in order to underscore areas of practice inconsistencies.*

Our interviews found that field office staff were remarkably aware of the SSA guidance set out in the POMS, yet were inconsistent in some of their payee selection practices. Therefore,

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<sup>61</sup> Office of the Inspector General, Social Security Administration, *Audit Report: Using Nursing Home Data to Determine Suitability of Representative Payees*, A-03-16-50056 (March 2018).

questions in the NCSSMA survey sought information on influential factors in practice variability, as well as the extent of the variability.

### **What Does the POMS Say?**

- POMS GN 00502.001 (B) - Preferences of the Beneficiary. To the extent possible, the beneficiary should be offered an opportunity to participate early in the selection process. The beneficiary may be a key source in the search for a suitable payee. Also, the beneficiary may provide information about trusted individuals who currently assist with day-to-day living or financial affairs.
- POMS GN 00502.130 – Factors to Consider in Evaluating Payee Applicants. Staff should select payee applicants who “show concern for the beneficiary’s well-being” and “have the beneficiary’s best interests at heart.” “Does the applicant have custody of or live in close proximity to the beneficiary?”
- POMS GN 00502.030(A) – Face-to-Face Interview of Beneficiary. Field office staff observations during a face-to-face interview of the beneficiary’s behavior, reasoning ability, how he or she functions with others is non-medical lay evidence of capability.
- POMS GN 00502.113(B) – Face to Face Interview of Payee. Payee applicants should be interviewed in a face-to-face setting unless doing so would cause undue hardship, or the payee previously had a face-to-face interview and is currently serving as payee (or the application is being processed in a centralized processing unit, and the applicant is a spouse with custody). If the applicant meets one of the above exceptions, staff must conduct a telephone or Video Service Delivery interview.
- POMS GN 00502.114 - Payee Responsibilities and Duties. Requires SSA staff to explain the payee’s responsibilities and duties to the applicant, including using the funds in the beneficiary’s best interest.
- POMS GN 00502.020(4) - What If a Beneficiary has a Substance Abuse Problem? “Capability development for individuals with a substance abuse condition follow the same rules as other beneficiaries.” SSA does not prohibit direct payment to a beneficiary with such a condition, but it “is often an indication that a beneficiary needs help managing benefits.”
- POMS GN 00502.105(C) = Order of Preference for Adults with Substance Abuse. Sets out the order of preference for payees for adults with a substance abuse condition, notably starting with community-based nonprofit social service agencies.
- POMs GN 00502.133 – Payee Criminal History. Guidance for payee selection when the payee is a felon or fugitive or has been convicted of another criminal act. Addresses individuals with a criminal history who are barred from serving as a payee as well as the procedure for prohibiting an application from serving as a payee. The section also provides policy information concerning adults with a criminal history who are not barred from serving as payees.

## What Did the NCSSMA Survey Find?

<b>Practice Inconsistencies in Payee Selection</b>				
<b>How much does the individual employee making the selection influence the selection process?</b>				
	Very Influential	Moderately Influential	Slightly Influential	Not Influential
Percent (%)	55	28	11	6
<b>To what extent is there variability among office staff about appointment of organizational payees as the payee?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	12	31	38	19
<b>To what extent is there variability among office staff in the use of face-to-face meetings with beneficiaries in the selection of the rep payee for adults?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	20	27	31	22
<b>To what extent is there variability among office staff in the decision to use direct payment instead of selecting a payee?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	26	39	30	5
<b>To what extent is there variability among office staff about application of the criminal history bar in the selection of the rep payee for adults?</b>				
	Highly Variable	Moderately Variable	Slightly Variable	Not Variable
Percent (%)	13	21	28	38

- Eighty-three percent (83%) of respondents said that the individual employee making the selection is very influential or moderately influential, while (11%) said the employee was slightly or not influential (6%).
- Forty-three percent (43%) of respondents indicated that appointment of organizational payees was highly (12%) or moderately variable (31%) among office staff.
- Forty-seven percent (47%) of respondents stated that the use of face-to-face meetings with the beneficiary is highly (20%) or moderately (27%) variable.
- Sixty-five percent (65%) of respondents said that the field office staff's decision to use direct payment instead of selecting a representative payee is highly or moderately variable, while 35% said is it slightly (30%) or not variable (5%)
- Thirteen percent (13%) of respondents said application of the criminal history bar is highly variable, 21% said moderately variable, 28% slightly variable, and 38% said application is not variable.

## Implications from Interviews and Surveys

Inconsistency in how payees are selected is a double-edged sword. While SSA staff need flexibility and a certain amount of discretion related to payee selection, some inconsistencies

could result in unfair practices and may create hardships for the beneficiary and the payee. Our findings on practice inconsistencies call for fortifying field office staff guidance and training.

It is not surprising that, as shown in the NSCCMA survey, the individual employee making the selection decision strongly influences the selection process and outcome. Staff comes to the job with a variety of backgrounds and beliefs.

Some lean more toward recognizing beneficiary self-determination and independence through direct payment while others are more protective and more likely to designate payees even when the choices are problematic.

Guidance through POMS, interactions with management, and training are critical to

attaining greater uniformity in selection of both individual and organizational payees.

*To address practice inconsistencies, it is important to support staff through better training and clearer directions in POMS -- including beneficiary substance abuse problems and choices of direct payment vs. appointment of a payee.*

As the interviews demonstrated, most staff are deliberate and keenly aware of the gravity and permanency of making a payee selection, taking into account the preferences of the beneficiary when possible. Staff generally follow the POMS preference list but appear to vary in the extent to which they take into account stability of the beneficiary-payee relationship, frequency of contact with the beneficiary, and employment situation of the prospective payee.

With beneficiaries in facility settings, some staff meets face-to-face with the payee and the beneficiary, while other staff often do not. The same was true for those in community settings. Frequently but not consistently, geographic distance is less a factor in payee selection than how often the potential payee is involved in the beneficiary's life. Recognition of the potential of technology to bridge the geographic distance as well as its pitfalls was uneven among staff. In the NCSSMA survey, almost half of the respondents found a high or moderate level of inconsistency in staff use of face-to-face meetings with the beneficiary.

Interviews referenced instances involving substance abuse by either the beneficiary or the payee. Inconsistencies occurred when staff determined whether the substance abuse was in the past, for how long, or was a recent or present condition.

Concerning cases in which the proposed payee has a criminal history, staff said they consistently apply POMS guidelines prohibiting selection of a payee convicted of any of the 12 barred crimes – yet in the NCSSMA survey, over a third of the respondents found high or moderate variability among office staff in application of the bar. Moreover, the interviews revealed inconsistencies where crimes are outside of the barred crimes.

To address practice inconsistencies, SSA should support staff through additional training and provide more clarity in POMS guidance.

## **Recommendations**

1. Develop and implement consistent in-service training for field office staff on payee selection, using live virtual training techniques as well as in-person training where possible. [Also in Section 3 on Casework Quality]
2. Require field office staff to have a telephone call, video call, or face-to-face meeting with beneficiaries, including residents in nursing facilities, before making a capability

determination. Develop technological solutions for remote personal contact when necessary.  
[Also in Section 1 on Capability and Section 7 on Institutional Payees]

3. Provide that, if a beneficiary requests a change in payee, staff must meet with both parties, either in-person or through technology.
4. Develop and implement additional policy, guidance in POMS, and training concerning beneficiary substance abuse and the choice between direct payment and appointment of a payee.
5. Develop and implement guidance concerning an acceptable length of time that a payee with past but no current substance abuse may serve.
6. Develop and implement additional policy, guidance in POMS, and training concerning payee selection if the potential payee has committed a crime that is not one of the 12 barred crimes.

## **Part IV**

# **Concluding Perspectives and Future Directions**

The goal of the study was to describe current methods and policies in selecting representative payees and to identify aspects of administrative structures, policies, guidelines, resources, and training that support or deter the selection of efficient and effective representative payees. Our report is the first to describe Social Security field office practices on the selection of representative payees for adults.

The study team gathered data using a two-phase process of in-depth, in-person interviews, and a national survey of field office managers. Data revealed challenges and implementable solutions for determining capability, increasing quality, handling a growing workload, designating guardians as payees, and selecting a range of organizational payees. Study findings revealed inconsistencies in the practice of determining capability and selecting payees.

Our 35 recommendations address many aspects of payee appointment and selection in the current SSA program, including specific changes in policy, POMS guidance, administration, communications, forms, technology, training, and research, as set out in the table below.

As we conducted our research, the new process for beneficiaries to designate potential payees in advance, as required by the 2018 Strengthening Protections for Social Security beneficiaries Act, was in the early stages of development. Regulations had not yet been promulgated, and most staff we interviewed were unaware of the new provision. At the time of data collection, it was unclear whether this provision would result in substantial changes in the selection process. In the months since our site visits, all employees have been trained on advance designation of payees; our report provides a context for implementation of the new provision.

## Revisions to the Current System

Our recommendations address many aspects of payee appointment and selection in the current SSA program. Field office management can best categorize them by timeframe into short-term, mid-term, and longer-term implementation. Some of the suggested changes have a high fiscal impact (such as increased SSA field office staffing for payee selection), while for others, the cost is more minimal (changes in forms). Below, we categorize our recommendations.

SSA ACTION	REPORT RECOMMENDATION
<p><b>Changes in Policy</b></p>	<ul style="list-style-type: none"> <li>• Focus additional research on DDS practices in payee determinations. Discontinue use of the DDS practice of sending SSA field office staff a statement of “capability unresolved</li> <li>• Develop and implement consistent review of payee selection cases to improve the quality of each case determination. The review should focus on the process for determining payee selection and should be built into the time allocated to payee selection.</li> <li>• Develop and implement consistent requirements for staff documentation of selection decisions.</li> <li>• Establish criteria for adequate staff and resources for organizational</li> </ul>

	<p>payees, including staff-to-beneficiary ratios, frequency of communication with individual beneficiaries, and staff responsibilities and training.</p> <ul style="list-style-type: none"> <li>• Prohibit the selection of facilities with contracts requiring the designation of the facility as payee as a condition of admission.</li> <li>• Conduct regular audits of institutional payees with fewer than 50 residents, taking into account CMS nursing home data.</li> <li>• Provide that, if a beneficiary requests a change in payee, staff must meet with both parties, either in-person or through technology.</li> </ul>
<b>Changes in POMS Guidance</b>	<ul style="list-style-type: none"> <li>• Differentiate on the POMS Preference List for Adults without a Substance Abuse Condition, a distinct category of Community Based Non-Profit Social Service Agencies.</li> <li>• Preface the POMS Order of Preference with a statement requiring consideration, prior to payee appointment, of beneficiary supports and services, as well as a supporter who may help the beneficiary’s financial decision-making.</li> <li>• Provide guidance to field office staff about criteria for determining the suitability of any guardian to serve as payee.</li> <li>• Develop and implement additional policy, guidance in POMS, and training concerning beneficiary substance abuse and the choice between direct payment and appointment of a payee.</li> <li>• Develop and implement guidance concerning an acceptable length of time that a payee with past but no current substance abuse may serve.</li> <li>• Develop and implement additional policy, guidance in POMS, and training concerning payee selection if the potential payee has committed a crime that is not one of the 12 barred crimes.</li> </ul>
<b>Changes in Administration</b>	<ol style="list-style-type: none"> <li>4. Increase field office staffing levels to allow time for more informed payee determinations, given the rights at stake.</li> <li>5. Pilot and evaluate field office staff specialization on payee issues in large offices and at the regional level.</li> </ol> <ul style="list-style-type: none"> <li>• Increase the number of qualified and effective organizational payees with access to beneficiary resources.</li> <li>• Identify and prohibit practices of “conduit” or pass-through organizational payees in order to foster payee-beneficiary relationships and improve access to resources for beneficiaries.</li> </ul>
<b>Contacts and communications</b>	<ul style="list-style-type: none"> <li>• Inform the court when a guardian is appointed as payee.</li> <li>• Develop a process for staff to communicate with the court about the guardian’s performance and suitability to serve as payee.</li> <li>• Foster field office staff contacts with the state or local long-term care ombudsman program under the Older Americans Act.</li> </ul>
<b>Forms</b>	<ul style="list-style-type: none"> <li>• Modify the instructions for the SSA medical form (Form 787) to emphasize assessment of the ability <i>to manage or direct the management of</i> financial benefits and the existence of supports and supporters, rather than stating medical diagnoses alone.</li> <li>• Include on the medical Form 787 a timeframe and rationale for its timely return.</li> </ul>
<b>Technological changes</b>	<ul style="list-style-type: none"> <li>• Require field office staff to have a phone call, video call, or face-to-face meeting with beneficiaries, including residents in nursing facilities, before making a</li> </ul>

	<p>capability determination. Encourage technological solutions for personal contact when necessary.</p> <ul style="list-style-type: none"> <li>• Resolve technological problems in eRPS so that staff can better input data and document decisions on payee selection.</li> </ul>
<b>Training</b>	<ul style="list-style-type: none"> <li>• Provide specific training for staff in identifying and recognizing beneficiary supports and services as well as potential supporters.</li> <li>• Provide education and training for DDS staff on capability factors and require clear written support for any “payee needed” opinions. Include DDS use of technology for remote determinations.</li> <li>• Develop and implement consistent in-service training for field office staff on payee selection, using live virtual training techniques as well as in-person training where possible.</li> <li>• Foster peer discussions for field office staff to share decision-making strategies concerning payee selection.</li> <li>• Develop and implement criteria for field offices to provide regular training and outreach for organizational payees about their duties and how best to meet the needs of beneficiaries.</li> <li>• Develop training materials for institutional payee staff on payee duties and conduct regular training and outreach.</li> <li>• Develop information for families and residents about the duties of institutional payees.</li> </ul>
<b>Research</b>	<ul style="list-style-type: none"> <li>• Examine DDS practices in payee determinations.</li> </ul>

## Envisioning Future Directions

Throughout our interviews, we found that staff and management were conscientious, forthright, and informative. We assured them that we would do our best to see that their opinions were heard. Thus, we concluded each interview with the following question: “If you could change anything in the representative payee selection process, what would it be?” We have summarized their responses in Appendix A.

Particularly notable are staff suggestions on broad systemic changes. Many staff stressed that there should be more emphasis on supports and supported decision-making instead of appointing so many payees. Some stated that too much time and money are spent to develop the need for and select payees when often they are not needed and that the SSA role in the capability or selection process, or in the entire payee process, should be reduced.

The thrust of these interview comments resulted in the addition of a final response statement on the NCSSMA survey for field office management: **“SSA should continue its current level of involvement in the selection of representative payees.”**

<b>SSA should continue its current level of involvement in the selection of payees for adults.</b>				
	Strongly Agree	Agree	Disagree	Strongly Disagree
Percent (%)	10	35	32	23

Although 45% of respondents agreed (10% strongly agreed and 35% agreed) that SSA should continue its current involvement, a striking 55% disagreed (32% disagreed and 23% strongly disagreed). Coming from leaders with years of SSA experience, this response seems to call for high-level evaluation of questions such as these:

- To what extent and how can supported decision-making greatly reduce the need for appointment of payees? What would a greatly reduced program look like? What kinds of oversight and assistance would supporters for beneficiaries require?
- Can we envision a more person-centered program built around beneficiary self-determination while meeting their needs for resources and support? What bridges should a renewed program build with the aging network, the disability network, and other human services systems?
- If implementation of the recommendations for improving the selection process is not feasible, should the payee program be located in another agency outside of SSA? Such a move should be preceded by determining areas of expertise that are needed in another agency to take on this role.

Our report provides both qualitative and quantitative data to clarify the overall process of payee appointment and selection. It highlights practical recommendations to improve payee selection.

However, clearly, there is a need for further examination of the overall SSA payee appointment and selection process, especially in light of increasing numbers of older adults with limitations in their abilities to manage their social security benefits. Older adults with such limitations would benefit from the appointment of a representative payee and implementation of advance designation, as well as technological advances, the emergent role of supported decision-making, and changes brought about by the COVID-19 pandemic.

## Appendix A:

# Comments of Field Office Staff on Payee Selection

Throughout the interview phase of the study, we concluded each session with the following question for SSA staff: “If you could change anything in the representative payee selection process, what would it be?” We have summarized the responses in this Appendix.

*Note that these observations are those of field office staff and do not necessarily represent the recommendations of the researchers or the perspectives of NCSSMA reviewers.*

### Suggestions for Improvements for Field Office Staff

1. **Upgrade eRPS.** Some staff remarked that the flow of documentation is counter-intuitive and too complex. It is too easy to leave out important components of documentation, and there are too many system failures.
2. **Allocate More Resources to Field Office Staff.** Many staff simply asked for more time to make the right decision about selecting the right payee.
3. **Specialize Staff Roles.** Some staff thought job specialization could increase office efficiencies and free up staff to better attend to selection issues.
4. **Increase Staff Safety.** Several staff raised safety concerns, noting that at their offices, guards were present only during public office hours.<sup>62</sup>

### Suggestions for Changes in Determining Capability

1. **Strengthen Requirements for Individuals Needing a Payee.** A number of staff said there should be more specificity and uniformity for evidence showing the need for a payee.
2. **The Staff Role in Capability Determinations Should be Reduced or Eliminated.** Some staff stated that they were thrust into the uncomfortable position of having to make capability determinations for which they are not qualified.<sup>63</sup>

### Suggestions for Improvements to the Selection Process

1. **Establish a More Uniform and Stricter Payee Selection Process.** Some staff said the selection process itself needs more uniformity. Guidelines about communication between staff and beneficiaries and payees should be enhanced and clarified.
2. **Strengthen Requirements for Serving as a Payee.** Staff voiced a need for stricter criteria for both individual and organizational payees – particularly for smaller organizations. SSA should establish minimum resources in order for them to qualify. Prospective payees should be required to hear staff explain their duties.<sup>64</sup>

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<sup>62</sup> NCSSMA reviewers noted that “guard service is consistently required during business hours, but some offices have guards stationed outside those hours as well. This could vary depending on the office.”

<sup>63</sup> NCSSMA reviewers noted that “staff are specifically trained to make capability determinations. They are not trained to make or interpret medical documentation; however, the two overlap. This is the inherent problem.”

<sup>64</sup> NCSSMA reviewers commented that “staff should be doing this. Payees also receive a list of reporting requirements when they apply and are selected. They attest under penalty of perjury.”