
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**PROBATION OR PAROLE VIOLATORS
SERVING AS REPRESENTATIVE
PAYEES**

August 2009 A-01-09-29112

AUDIT REPORT



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SOCIAL SECURITY

MEMORANDUM

Date: August 19, 2009

Refer To:

To: The Commissioner

From: Inspector General

Subject: Probation or Parole Violators Serving as Representative Payees (A-01-09-29112)

OBJECTIVE

Our objective was to quantify the benefits received by representative payees who were probation or parole violators.

BACKGROUND

Some individuals cannot manage their finances because of their youth, mental and/or physical impairments. Consequently, Congress granted the Social Security Administration (SSA) the authority to appoint representative payees to receive and manage these individuals' Social Security benefit payments.¹

The decision to make payments through a representative payee is serious since it deprives a beneficiary of direct control over personal finances and may affect the beneficiary's manner of living. In recognizing the potential for a representative payee to mishandle benefits, Congress requires that SSA exercise care in determining that a representative payee is needed, selecting a representative payee, and monitoring a representative payee's performance.

Deciding whether a person would be a good payee is an important decision, one that may greatly affect a beneficiary's quality of life. When an individual requests to be selected as payee, the Agency must use all available information to determine who can act on behalf of the beneficiary. For example, SSA uses information reported on the payee application, the applicant's relationship to the beneficiary, whether the applicant has custody of the beneficiary, and information about the applicant's past payee performance and criminal history when making this decision.

¹ *Social Security Act* §§ 205(j) and 1631(a)(2); 42 U.S.C. §§ 405(j) and 1383(a)(2). A representative payee is a person or organization selected by SSA to receive and manage benefits on behalf of an incapable beneficiary. Payees are responsible for using Social Security benefits to serve the beneficiary's best interests.

While conducting our audit, *Fugitive Felons Serving as Representative Payees*,² we identified two issues with probation or parole violators serving as representative payees.

- (1) While the *Social Security Protection Act of 2004* (Pub. L. No. 108-203), which took effect in April 2005, contains a provision that disqualifies probation or parole violators from serving as representative payees for Title XVI recipients,³ there is no similar provision for Title II beneficiaries.
- (2) SSA does not identify probation or parole violators who serve as payees for Title II or XVI beneficiaries.⁴ The matching agreement SSA has with law enforcement agencies only covers the identification of fugitive felons who are representative payees and not probation or parole violators who are representative payees. Article I section A(2) of the computer matching agreement states that the purpose of the match is to "...identify individuals who are fugitive felons...and who are also serving as representative payees...."

We undertook this review to quantify the amount of Title II and XVI funds being paid through certain representative payees who were identified as probation or parole violators.

METHODOLOGY

To conduct our review, we obtained a file of fugitive records from our Office of Investigations and identified 2,904 individuals who had warrants for violating a condition of probation or parole and were serving as representative payees. We randomly selected 50 of the records for detailed review. (See Appendix B for details about our scope and methodology.)

RESULTS OF REVIEW

Based on our sample, we estimate that between April 2005 and January 2009, about \$26.9 million in Social Security funds was paid to about 1,800 probation or parole violators who were serving as representative payees. These payees received benefits

² *Fugitive Felons Serving as Representative Payees* (A-01-08-18021), March 2009.

³ Pub. L. No. 108-203 § 103(c)(3)(C). See also *Social Security Act* § 1631(a)(2)(B)(iii)(V), and 1611(e)(4)(A)(ii), 42 U.S.C. § 1383(a)(2)(B)(iii)(V), and 1382(e)(4)(A)(ii).

⁴ SSA, Program Operations Manual System (POMS), GN 00502.132 B.2.b.

for about 2,439 beneficiaries.⁵ Of the \$26.9 million, probation/parole violators serving as payees received approximately

- \$18.9 million in Title XVI payments and
- \$8.0 million in Title II benefits.

Therefore, SSA was not complying with the *Social Security Act* requirement to prohibit probation or parole violators from serving as representative payees for Title XVI recipients.

SOCIAL SECURITY ACT REQUIREMENTS

SSA provided the following information with regard to the changes to the *Social Security Act* that gave rise to the prohibition of probation and parole violators from serving as representative payees for Title XVI recipients.

The *Social Security Protection Act of 2004*—which amended the *Social Security Act* by adding a provision that disqualified probation or parole violators from serving as representative payees for Title XVI recipients (but not Title II beneficiaries)—began as bill H.R. 743. The original version of that bill prohibited fugitive felons, but not probation or parole violators, from serving as representative payees under both Titles II and XVI. H.R. 743 accomplished the prohibition against fugitive felon representative payees in Title XVI by cross-referencing existing § 1611(e)(4)(A) of the *Social Security Act*, which prohibited eligibility for Title XVI payments for fugitive felons.⁶ It accomplished the prohibition against fugitive felon representative payees in Title II by cross-referencing the new provision in § 202(x)(1)(A)(iv)⁷ prohibiting entitlement to Title II benefits for fugitive felons.

Upon its review of the bill, the Senate added an amendment to existing § 1611(e)(4)(A) of the *Social Security Act* to remove and replace out-dated language regarding "high misdemeanors" in the State of New Jersey. In amending the language, the Senate restructured § 1611(e)(4), placing the prohibition on eligibility for fugitive felons in § 1611(e)(4)(A)(i) and placing the prohibition on eligibility for probation and parole violators in § 1611(e)(4)(A)(ii). The Senate did not go back to § 1631(a)(2)(B)(iii)(V) and change the cross-reference from § 1611(e)(4)(A) to § 1611(e)(4)(A)(i).

SSA asserts that the restructuring of § 1611(e)(4)(A) had the unintended consequence of prohibiting probation and parole violators from serving as representative payees for

⁵ We estimate 697 probation and parole violators were still serving as representative payees as of January 2009 for 929 beneficiaries. Further, we estimate that about \$4.1 million in Title II and XVI funds will be paid to these probation and parole violators over the next 12 months if they continue to be payees for others.

⁶ Section 1611(e)(4)(B) of the original version of H.R. 743 contained the prohibition on entitlement for Title II benefits for probation and parole violators.

⁷ This new prohibition was added by section 203(a) of the *Social Security Protection Act of 2004*.

Title XVI recipients. Additionally, SSA asserts that the purpose of the Senate's amendment to § 1611(e)(4) had nothing to do with representative payees. Also, the Title II and XVI representative payee provisions are generally parallel because there is no reason to have different rules for representative payees who serve Title II beneficiaries and representative payees who serve Title XVI recipients.

According to SSA, the legislative history indicates that the Title XVI statutory provision prohibiting probation and parole violators from serving as representative payees was a drafting error. However, based on our review of Senate Report 108-176 on § 103 of the *Social Security Protection Act*, it seems clear that Congress intended to prohibit probation or parole violators from serving as representative payees. The Report states "The new provision expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: ... (3) violated a condition of probation or parole."

SAMPLE RESULTS

We sampled 50 individuals who had warrants for violating a condition of probation or parole and who served as representative payees. We found that:

- 31 (62 percent) were representative payees for 42 beneficiaries and received \$462,744 while they had outstanding warrants for violating a condition of probation or parole. Of the \$462,744 paid to the payees for beneficiaries in their care, \$325,285 were Title XVI funds and \$137,459 were Title II funds.⁸
- 19 (38 percent) were not representative payees with active warrants for probation or parole violations.⁹

Benefits Received by Probation or Parole Violators Serving as Payees

Our sample contained 31 payees who had received \$462,744 in benefits even though they had outstanding warrants for violations of probation or parole. Of those 31, 19 had satisfied their warrants or were no longer serving as representative payees before the start of our audit; and the remaining 12 payees still had active warrants for a probation or parole violation. As of January 2009:

- 15 representative payees had satisfied their warrants. Before satisfying their warrants, these 15 representative payees received \$145,992 on behalf of 21 beneficiaries over an average of 14 months while their warrants were still outstanding. Of the \$145,992 received by these payees, \$79,189 was for Title XVI payments and \$66,803 was for Title II benefits.

⁸ The 42 beneficiaries were comprised of 27 Title II beneficiaries, 13 Title XVI recipients, and 2 beneficiaries who received both Title II and XVI benefits concurrently.

⁹ For example, in some cases, the payees satisfied their warrants within 30 days; and in other cases, the warrants were satisfied before the individuals were selected as payees.

- four probation or parole violators were no longer representative payees because (a) the beneficiaries were no longer entitled to benefits; (b) more suitable payees were selected; or (c) there was a custody change. These four representative payees received \$69,776 on behalf of five beneficiaries over an average of 2 years while their warrants were still outstanding. Of the \$69,776 these payees received, \$61,445 was for Title XVI payments and \$8,331 was for Title II benefits.
- 12 representative payees still had outstanding probation or parole violation warrants at the time of our audit. These 12 representative payees received \$246,976 on behalf of 16 beneficiaries over an average of 3 years. Of the \$246,976 received by these payees, \$184,651 was for Title XVI payments and \$62,325 for Title II benefits. Additionally, if these individuals continue to serve as payees and their probation or parole violation warrants continue to remain outstanding, they will receive about \$70,181 over the next 12 months.

Table 1 shows the type of benefits received by the 31 representative payees we identified as probation or parole violators.

Table 1	
Type of Benefits Received by Representative Payees	Number of Representative Payees
Title II Only	18
Title XVI Only	11
Title II and Title XVI ¹⁰	2
Total	31

For example, a representative payee in our sample had a warrant issued in March 2000, and this warrant remained outstanding until December 2008. This probation violator was serving as payee for her two children, who were both receiving Title XVI disability payments for mental disorders. From April 2005 through December 2008, she received a total of \$53,609 in Title XVI payments. Additionally, she has a criminal history of committing such offenses as theft, aggravated assault, and aggravated assault with a deadly weapon. Therefore, it appears this individual might not be the most suitable payee for her children.

¹⁰ For one of these individuals, the probation violator was a payee for a beneficiary who received Title II benefits only and another beneficiary who received both Title II and XVI benefits; therefore, we only counted this payee once in this category.

Types of Representative Payees and Beneficiaries

Of the 42 individuals whose benefits were received by probation or parole violators, 15 were adults and 27 were children under the age of 18. Table 2 shows the relationship between the probation or parole violator and the beneficiaries.

Table 2	
Relationship of Representative Payee to Beneficiary	Number of Beneficiaries
Mother	27
Father	14
Other	1
Total	42

In one case, a mother was a representative payee for her 17-year-old daughter, who was receiving Title II benefits. A warrant for this payee was issued in October 2006 for violating a condition of probation, and the warrant remained open until August 2007. From November 2006 through August 2007, this payee received \$1,780 in Title II benefits on behalf of her daughter; however, the payee's own benefits were suspended because of her probation violation warrant. Additionally, this representative payee had a criminal history, which included such offenses as financial card fraud, assault and battery, and possession of cocaine. Therefore, it appears that despite the payee being the beneficiary's mother, she may not be the most suitable person to serve as representative payee.

Although, the *Social Security Protection Act of 2004* does not contain a provision disqualifying probation or parole violators from serving as representative payees for Title II beneficiaries and the computer-matching agreement does not allow SSA to identify probation or parole violators serving as payees, a probation or parole violator may not be in the best position to serve as a representative payee.

Payees Whose Benefits Were Suspended Because of Their Warrant for Violating a Condition of Probation or Parole

Of the 31 probation or parole violators we identified as serving as representative payees, 14 had their own benefits suspended because of their warrant for violating a condition of probation or parole.

For example, one representative payee had her own benefits suspended because of a warrant for violating a condition of probation; however, she was still selected in January 2006 to serve as a representative payee for her 17-year-old son who was diagnosed with mental retardation and was receiving Title XVI payments. As of January 2009, the payee's warrant was still outstanding and she received a total of \$22,894 from February 2006 through January 2009. If this individual continues to serve as payee, she will receive about \$7,900 in Title XVI payments over the next 12 months.

CONCLUSION AND RECOMMENDATIONS

SSA was not complying with the *Social Security Act* requirement to prohibit probation or parole violators from serving as representative payees for Title XVI recipients. We estimate that from April 2005 through January 2009, about \$18.9 million in Title XVI funds were paid to representative payees who were probation or parole violators. As a best practice and to comply with the *Social Security Act*, SSA should screen representative payees against probation or parole violator data and use the results in assessing a payee's suitability.

Therefore, we recommend SSA:

1. Work with Congress to update the *Social Security Act* so there is consistency in the law between probation or parole violators serving as representative payees for Title II and XVI beneficiaries.
2. Update its computer-matching agreement to allow SSA to identify probation or parole violators who are serving as representative payees and to use this information in determining whether a payee is suitable.

AGENCY COMMENTS

SSA agreed with our recommendations. The Agency's comments are included in Appendix C.



Patrick P. O'Carroll, Jr.

Appendices

[APPENDIX A](#) – Acronyms

[APPENDIX B](#) – Scope, Methodology and Sample Results

[APPENDIX C](#) – Agency Comments

[APPENDIX D](#) – OIG Contacts and Staff Acknowledgments

Acronyms

POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SSA	Social Security Administration
U.S.C.	United States Code

Scope, Methodology and Sample Results

To accomplish our objective, we:

- Researched the *Social Security Act* and the Social Security Administration's (SSA) regulations, policies, and procedures related to probation or parole violators and representative payees.
- Obtained a file of fugitive felon and probation or parole violator records as of June 2007 from our Office of Investigations. Through computer analysis, we identified 2,904 individuals with warrants for violating a condition of probation or parole, and were representative payees for Title II and XVI beneficiaries as of July 2007. We randomly selected 50 individuals from this population for detailed analysis. Specifically, we
 - calculated the funds received by the probation or parole violators while serving as representative payees;
 - calculated the funds the probation or parole violators will receive if they continue to serve as representative payees;
 - determined whether the probation or parole violator was still a representative payee as of January 2009; and
 - researched Lexis/Nexis for criminal history information.¹¹
- Consulted with SSA's Office of General Counsel and our Office of the Counsel to the Inspector General concerning probation and parole violators.

We conducted our audit in Boston, Massachusetts, between April and May 2009. We tested the data obtained for our audit and determined them to be sufficiently reliable to meet our objective. The entity audited was the Office of the Deputy Commissioner for Retirement and Disability Policy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹¹ We did not contact any beneficiaries to determine whether the payees were using the Social Security funds to meet their needs (food, clothing, shelter, and medical care).

SAMPLE RESULTS AND ESTIMATES/PROJECTIONS

Table B-1: Population and Sample Size	
Population Size	2,904
Sample Size	50

PROBATION OR PAROLE VIOLATORS SERVING AS REPRESENTATIVE PAYEES

Table B-2: Benefits Received by Probation or Parole Violators Who Served as Representative Payees	Title XVI Payments	Title II Benefits
Sample Results	\$325,285	\$137,459
Point Estimate	\$18,892,557	\$7,983,589
Projection Lower Limit	\$9,855,042	\$3,999,194
Projection Upper Limit	\$27,930,073	\$11,967,984

Note: All projections are at the 90-percent confidence level.

Table B-3: Probation or Parole Violators Who Served as Representative Payees	Number of Probation or Parole Violators	Number of Beneficiaries	Total Dollars
Sample Results	31	42	\$462,744
Point Estimate	1,800		\$26,876,147
Projection Lower Limit	1,438		\$17,407,552
Projection Upper Limit	2,131		\$36,344,741

Note: All projections are at the 90-percent confidence level.

To estimate the number of beneficiaries, we conducted the following ratio analysis: 42 beneficiaries divided by 31 probation or parole violators equals 1.3548. Multiplying 1.3548 by 1,800 point estimate equals an estimate of 2,439 beneficiaries who had their funds received by probation or parole violators.

Table B-4: Probation or Parole Violators Who Continue to Serve as Representative Payees as of January 2009	Number of Probation or Parole Violators	Number of Beneficiaries
Sample Results	12	16
Point Estimate	697	
Projection Lower Limit	423	
Projection Upper Limit	1,041	

Note: All projections are at the 90-percent confidence level.

To estimate the number of beneficiaries, we conducted the following ratio analysis: 16 beneficiaries divided by 12 probation or parole violators equals 1.3333. Multiplying 1.3333 by 697 point estimate equals an estimate of 929 beneficiaries who had their funds received by probation or parole violators and still need the payee replaced.

Funds Received over the Next 12 Months by Payees Who Have Outstanding Warrants for a Violation of Probation or Parole as of January 2009

Within our sample, 12 probation or parole violators will receive about \$70,182 (or, an average of \$5,848) in funds over the next 12 months if not replaced as payees. Therefore, we estimate that approximately \$4,076,164 will be received by about 697 probation or parole violators (from Table B-4) over the next 12 months if not replaced with new payees.

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: August 10, 2009 **Refer To:** S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: Margaret J. Tittel /s/
Acting Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Probation or Parole Violators Serving as Representative Payees" (A-01-09-29112)—INFORMATION

Thank you for the opportunity to review and comment on the draft report. We appreciate the comprehensive work that the OIG auditing team did on this report. Our response to the report findings and recommendations is attached.

Please let me know if we can be of further assistance. Staff may direct inquiries to Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“PROBATION OR PAROLE VIOLATORS SERVING AS REPRESENTATIVE PAYEES”
(A-01-09-29112)**

We have reviewed the draft report and agree with the report’s contents and its findings. Our responses to the specific recommendations are provided below.

Recommendation 1

Work with Congress to update the Social Security Act so there is consistency in the law between probation or parole violators serving as representative payees (Rep Payee) for Title II and Title XVI beneficiaries.

Comment

We agree. We recognize the inconsistency in the law that prohibits probation and parole violators from serving as Rep Payees for Title XVI beneficiaries, but allows them to serve as Rep Payees for Title II beneficiaries. We will consider a legislative proposal in the next legislative cycle to resolve the inconsistency.

Recommendation 2

Update the computer-matching agreement to identify probation or parole violators who are serving as Rep Payees and use the information in determining whether a Rep Payee is suitable.

Comment

We agree. In January 2010, we expect to start the negotiations to update the computer matching agreement so we can begin processing the appropriate parole and probation information. We will take the steps necessary to use this information to ensure that we accurately assess the suitability of Rep Payees.

OIG Contacts and Staff Acknowledgments

OIG Contacts

Judith Oliveira, Director, Boston Audit Division

Acknowledgments

In addition to the name above:

Frank Salamone, Senior Auditor

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