

Ways to Meet the Growing Need for Representative Payees

Background

Justice in Aging's Fact Sheet, [SSA's Representative Payee Program: The Basics](#), provides an overview of the Social Security Administration's (SSA) Representative Payee Program. The fact sheet provides information about the way SSA determines who may be in need of a representative payee, how SSA chooses payees, the duties of payees, and monitoring and oversight of payees. While it is important for advocates in the aging community to understand how the current program works, it is also vital to promote and encourage reforms to the program. Recent projections point to a growing need for representative payees as the number of older Americans increases.¹ SSA must be equipped to meet the needs of our nation's growing aging population and ensure that proper safeguards are put in place to efficiently administer benefits to this vulnerable population.

The Issue

A major issue with SSA's current Representative Payee Program is that the agency has not established a sustainable method to recruit payees to meet the growing need. In 2010, the Office of Inspector General (OIG) of SSA conducted a review to examine the concern that a number of aged beneficiaries were in need of representative payees, but SSA was not aware that they needed assistance to manage their funds.² Based on the results of that review, the OIG estimated that at that time about 1 million beneficiaries over age 85 might have been in need of a representative payee but did not have one.³ SSA was encouraged to dedicate more resources to the Representative Payee Program in preparation for the growth in the population of aged beneficiaries.

The OIG study also found that SSA does not have a mechanism in place to identify aged beneficiaries who become incapable of managing their own funds after their initial entitlement is established.⁴ This lack presents the opportunity for misuse of benefits by de facto representative payees who have not been properly vetted and are not subject to oversight by SSA. Also, some beneficiaries may have no family members or organizations available to assist them with managing their benefits. This issue is projected to worsen if SSA is unable to take a proactive approach to identifying seniors in need and fails to appoint suitable representative payees.⁵ From 2000 to 2030, the population of beneficiaries aged 85 and older is projected to grow from 4.2

1 Chris E. Anguelov, Gabriella Ravida, and Robert R. Weathers II, *Adult OASDI Beneficiaries and SSI Recipients Who Need Representative Payees: Projections for 2025 and 2035*, Social Security Bulletin, Vol. 75, No.2 (2015).

2 OFFICE OF THE INSPECTOR GEN., SOC. SEC. ADMIN., A-09-09-29002, AUDIT REPORT: AGED BENEFICIARIES IN NEED OF REPRESENTATIVE PAYEES (2010), <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-09-09-29002.pdf>.

3 *Id.*

4 *Id.*

5 *Id.*

million to 10 million, and then to increase to 21 million by 2050.⁶

Corresponding with the overall growth in older Americans over the next two decades, it is projected that the number of people who receive SSI and OASDI benefits and need a representative payee will increase from nearly 2.9 million as of December 2013 to 3.26 million by 2025.⁷ In addition to the growth in numbers of payees needed, the type of payee needed will change. SSA must be equipped to provide representative payees for all beneficiaries in need, including those individuals who do not have family or friends to serve in this role. In 2013, 71 percent of those beneficiaries aged 66 and younger with payees had a family member serving that role; however, the comparable number for those over age 66 was only 57 percent. If this trend continues into the future, SSA will not only need a greater number of payees overall, but specifically will need non-family payees.⁸

SSA's Current Efforts

Under the current structure and administration of the program, SSA will be unable to meet the increasing demand for representative payees. SSA has explored various options, including the Maryland Representative Payee Pro Bono Pilot, to help recruit payees who are both reliable and capable of serving in the best interest of beneficiaries. The pro bono pilot program encourages licensed Maryland attorneys to become representative payees, regardless of their specialty. In the legal context, this pro bono opportunity likens the role of representative payee to that of a trustee or other fiduciary for non-clients. The launch of the Maryland Pro Bono Pilot program seemed like an appropriate strategy to address the projected representative payee shortage. SSA asserted that partnering with the legal community is a natural fit and an appropriate way to expand the pool of suitable representative payee candidates, as attorneys are held to high ethical standards.⁹

While these types of fiduciary relationships are very common in the legal community, not all attorneys in the profession are equipped to serve in a representative payee role due to time constraints, the need for specialized training, and ethical concerns. Although SSA is in the process of evaluating the Pro Bono Pilot, this information is not yet available to the public. However, based on conversations with SSA employees, attorneys, and other interested groups, SSA's efforts thus far to meet the ongoing need for more representative payees have been riddled with low participation, skepticism, and administrative setbacks.

Issues to Consider when Recruiting Attorneys to Serve as Representative Payees

It is important to address the sustainability and viability of the program at these early stages of the pilot. As advertised, the pro bono opportunity should not require a significant investment of time. However, SSA encourages representative payees to take an active role in their beneficiary's life. Due to the busy schedules of most attorneys, it may be difficult to fully perform in this capacity. Every volunteer attorney will not necessarily have the time to devote to frequent meetings to determine the beneficiary's needs and include them in the budget planning process.

Furthermore, all attorneys, regardless of practice area, are being recruited to serve in this capacity. At the outset, it might seem that attorneys would need very little training and would not need extensive support from SSA to carry out the often straightforward duties of representative payees. However, an understanding of SSI's especially complicated rules and compliance with them is a vital part of the representative payee's work. Attorneys in some practice areas may find they are easily able to handle this type of pro bono activity, while others may need additional resources and support beyond general online training to prepare them for this role.

It is important to recognize that an attorney's adherence to ethical rules with regard to clients, or potential

⁶ *Id.*

⁷ Chris E. Anguelov, Gabriella Ravid, and Robert R. Weathers II, *Adult OASDI Beneficiaries and SSI Recipients Who Need Representative Payees: Projections for 2025 and 2035*, Social Security Bulletin, Vol. 75, No.2 (2015).

⁸ *Id.*

⁹ See Janet Truhe, Social Security Seeks Pro Bono Lawyers to Meet Need for Representative Payees, *Bifocal*, Vol. 36, Issue 4 (April 2015).

clients, certainly provides a higher level of assurance and safeguards against the misuse of funds. However, there are legitimate concerns surrounding whether serving as a representative payee would create an attorney-client relationship, or the perception of an attorney-client relationship, with the beneficiary. Given the changing dynamics of familial relationships and the common use of direct deposit for Social Security benefits, there is a big difference between serving as a representative payee and serving as a legal advocate for a beneficiary whose health, safety, and/or financial security is in question. It should be the shared responsibility of SSA and the volunteer attorney to ensure that beneficiaries and their families are aware of this distinction. Currently, SSA charges the pro bono attorney with this responsibility and expects for ethical issues be handled on a case-by-case basis. With the possible expansion of the Pro Bono Pilot, SSA should develop policy and training materials for both the attorney representative payees and the beneficiaries to help prevent the appearance of an attorney-client relationship.

Also, the possibility of disciplinary actions for failure to adhere to the duties of a representative payee causes a dilemma for attorneys who expect this pro bono activity to require less time, dedication, and overall resources than advertised. SSA has created a website with training materials and information about the representative payee's role and responsibilities.¹⁰ However, attorneys are not provided with in-depth training on the ethical considerations that go with performing representative payee duties. Although SSA provides some support for the pro bono representative payee, opening up the entire bar and expanding the pilot may be problematic if adequate standards and more specialized trainings are not in place.

The Recommendations

In order to improve the Representative Payee Program, SSA needs to establish a sustainable program to help recruit representative payees who are reliable and suitable to perform all the required duties. Although SSA may not need to abandon its Pro Bono Pilot entirely, there are critical ethical considerations that need to be addressed before expanding the pilot. The program could very well become a long-term strategy for recruitment and retention of representative payees, but SSA should consider providing more in-depth training as a means to avoid ethical issues that could lead to disciplinary actions against attorneys who serve as representative payees. Further, SSA should consider partnering specifically with Emeritus Attorney organizations, elder law sections, and fiduciary law sections of local, state, and national bar organizations.

Aging demographics and the predicted increase in cognitive deficits and other chronic conditions are expected to create a dramatic need for representative payees. For many of these seniors, family members and friends may be unavailable to serve in this capacity. SSA should think broadly about the groups of people eligible to serve as payees and then create standards for appointment, require a more in-depth level of training, and increased accountability. Recruitment efforts should be geared towards eligible individuals with legal experience as well as other fields with relevant backgrounds, such as social workers and religious community leaders.

SSA should also continue to form viable partnerships with community advocacy groups and state departments of aging to address the growing needs of older adults. These organizations and community partners are excellent sources of information and assistance. Most often, these groups are based in the communities where low-income seniors live. Also, church services and activities may be the only organized programs seniors regularly participate in on a weekly basis. More importantly, these seniors often have established and trusting relationships with church members and community members.

In addition, special attention must be paid to those seniors who have very little to no contact with family members or faith-based community groups. These “unbefriended” older adults may not have very deep networks of support. They may rely exclusively on more shallow networks formed through their participation in homeless shelters, food service programs, and senior day programs to help meet their daily needs. SSA should expand recruitment efforts by partnering with advocates at community shelters and senior day programs to assist our nation's unbefriended seniors who are in need of a representative payee.

¹⁰ <https://www.ssa.gov/payee/index.htm>.

It is vital for SSA to create a sustainable representative payee recruitment program. Without the recruitment and retention of representative payees, the payee shortage will continue to increase. Although SSA has been exploring ways to increase the pool of viable payees, the agency has found only limited success. SSA must continue to cultivate these relationships and expand these models to other programs. In the absence of a targeted recruitment campaign and sustainable recruitment programs, it is unlikely that SSA will be able to fulfill its duty to provide representative payees for the beneficiaries who need them.

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