

Audit Report

Representative Payee Criminal Bar
Policy



MEMORANDUM

Date: August 31, 2018 Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Representative Payee Criminal Bar Policy (A-13-18-50154)

The attached final report presents the results of the Office of Audit's review. The objectives were to assess the Social Security Administration's compliance with its criminal bar policy as implemented, and to determine whether individual representative payees with a criminal history were convicted of any of the felonies identified in the criminal bar policy.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.

A handwritten signature in black ink that reads "Gale Stallworth Stone".

Gale Stallworth Stone

Attachment

Representative Payee Criminal Bar Policy

A-13-18-50154



August 2018

Office of Audit Report Summary

Objective

To assess the Social Security Administration's (SSA) compliance with its criminal bar policy as implemented, and to determine whether individual representative payees with a criminal history were convicted of any of the felonies identified in the criminal bar policy.

Background

In February 2014, SSA implemented a policy that bars individuals from serving as payees if they have been convicted of one of 12 felonies—such as fraud, homicide, or forgery—unless they meet certain exclusions.

On April 13, 2018, the *Strengthening Protections for Social Security Beneficiaries Act of 2018* became law. It prohibits individuals convicted of certain crimes from serving as payees (including existing payees), unless they meet an exemption determined by SSA.

We identified 28,497 individuals who had a prior criminal record and were serving as representative payees as of April 2017. From this population, we sampled 180 payees for review.

Findings

SSA's implementation of its criminal bar policy had not identified and barred convicted felons from serving as individual representative payees. In addition, we identified individual representative payees with a criminal history who SSA should bar from serving as payees. Of the 180 payees we reviewed, 13 had been convicted of 1 of 12 barred felonies. Of the 13 payees, SSA

- did not comply with its policy and selected five individuals after it implemented its policy,
- selected four individuals before it implemented its policy, and
- selected four individuals who met an exclusion because they had a custodial relationship with the beneficiaries they served.

SSA took action for the five payees it selected after it implemented the policy and the four selected before it implemented the policy. These nine payees received about \$363,000 in benefit payments after they were convicted of forgery, insurance fraud, robbery, or identity fraud. Based on the results of our review, we estimate 396 payees received about \$13.7 million in benefit payments subsequent to their barred felony convictions.

Finally, we determined Agency staff did not document criminal information for payees selected after the policy was implemented, as required.

Recommendations

We recommend SSA:

1. Determine whether it should review the 4,856 payees we identified in its efforts to comply with the *Strengthening Protections for Social Security Beneficiaries Act of 2018*.
2. Remind staff to obtain and document criminal information for representative payee applicants, as appropriate.

The Agency agreed with our recommendations.

TABLE OF CONTENTS

| | |
|--|-----|
| Objective | 1 |
| Background | 1 |
| Results of Review | 4 |
| Sample Frame 1: Payees Selected After the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships..... | 4 |
| Sample Frame 2: Payees Selected Before the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships..... | 6 |
| Agency Review of Existing Payees | 7 |
| Sample Frame 3: Payees Excluded from the Criminal Bar Policy Because of a Custodial Relationship | 7 |
| Sample Frame 4: Payees Selected After and Before the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships..... | 9 |
| Sample Frame 5: Payees Selected After the Criminal Bar Policy Was Implemented and Met an Exclusion Related to Custodial Relationships | 9 |
| Sample Frame 6: Payees Selected Before the Criminal Bar Policy Was Implemented and Met an Exclusion Related to Custodial Relationships | 10 |
| Criminal Information Documented in eRPS | 10 |
| Conclusions..... | 11 |
| Recommendations..... | 12 |
| Agency Comments and OIG Response..... | 12 |
| Appendix A – Crimes that Bar Individuals from Serving as Representative Payees | A-1 |
| Appendix B – Scope and Methodology | B-1 |
| Appendix C – Sampling Methodology and Results | C-1 |
| Appendix D – Agency Comments..... | D-1 |

ABBREVIATIONS

| | |
|--------|---|
| C.F.R. | Code of Federal Regulations |
| eRPS | Electronic Representative Payee System |
| MBR | Master Beneficiary Record |
| OASDI | Old-Age, Survivors and Disability Insurance |
| OIG | Office of the Inspector General |
| Payee | Representative Payee |
| POMS | Program Operations Manual System |
| PUPS | Prisoner Update Processing System |
| SSA | Social Security Administration |
| SSI | Supplemental Security Income |
| SSR | Supplemental Security Record |
| U.S.C. | United States Code |

OBJECTIVE

Our objectives were to assess the Social Security Administration’s (SSA) compliance with its criminal bar policy as implemented, and to determine whether individual representative payees with a criminal history were convicted of any of the felonies identified in the criminal bar policy.

BACKGROUND

Congress granted SSA the authority to appoint representative payees for beneficiaries¹ who are incapable of managing or directing the management of their Social Security benefits because of their youth and/or mental or physical impairments.² A representative payee may be an individual or an organization.³ Representative payees receive Old-Age, Survivors and Disability Insurance (OASDI)⁴ benefits and Supplemental Security Insurance (SSI)⁵ payments on behalf of these beneficiaries and are responsible for managing the benefits in the beneficiaries’ best interests.⁶ In 2017, SSA reported there were approximately 5.8 million representative payees who managed about \$70 billion in annual benefit payments for about 8.1 million beneficiaries.

In February 2014, SSA implemented a national policy barring individuals from serving as payees if they have been convicted of committing, attempting to commit, or conspiring to commit any of the following 12 felonies, unless they meet certain exclusions—such as being the custodial parent of a minor child for whom the individual applies to serve.⁷

- Human Trafficking
- False Imprisonment
- Kidnapping
- Rape and Sexual Assault
- First-Degree Homicide
- Robbery

¹ We use the term “beneficiary” generically in this report to refer to both OASDI beneficiaries and SSI recipients.

² *Social Security Act*, 42 U.S.C. §§ 405(j)(1), 1383(a)(2)(A)(ii) (2016). See also 20 C.F.R. §§ 404.2001(b), 416.601(b) (2017).

³ 20 C.F.R. §§ 404.2001(a), 416.601(a) (2017).

⁴ The OASDI program provides retirement and disability benefits to qualified individuals and their dependents as well as to survivors of insured workers. See *Social Security Act*, 42 U.S.C. § 401 (2016).

⁵ The SSI program provides payments to individuals who have limited income and resources and who are age 65 or older, blind, or disabled. *Social Security Act*, 42 U.S.C. § 1381 (2016). See also 20 C.F.R. § 416.110 (2017).

⁶ 20 C.F.R. §§ 404.2035(a), 416.635(a) (2017).

⁷ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.133, sec. A.4 (June 23, 2017).

- Fraud to Obtain Access to Government Assistance
- Fraud by Scheme
- Theft of Government Funds or Property
- Abuse or Neglect
- Forgery
- Identity Theft or Identity Fraud

See Appendix A for a description of each felony.

The Agency implemented its criminal bar policy prospectively, meaning it only conducted criminal background checks on individuals who applied to be a payee in February 2014 or later. However, if the Agency learns an existing payee has been convicted of a barred felony,⁸ and does not meet an exclusion, the payee will be removed.

SSA uses the electronic Representative Payee System (eRPS)⁹ to take and process payee applications. The eRPS helps the Agency fulfill its legal duty to investigate applicants to determine whether their appointments are in the beneficiaries' best interest by providing known information about payee applicants so SSA can make well-informed payee selection decisions. Additionally, SSA documents in eRPS whether the person has a history of criminal activity.¹⁰

SSA may learn about a person's criminal activity from various sources, including fugitive felon data,¹¹ prison data,¹² self-reporting,¹³ and PayeeWiz. SSA implemented PayeeWiz to help identify payee applicants who have been convicted of a barred crime. PayeeWiz was designed to

⁸ We use the phrase "barred felony" generically in this report to refer to any of the felonies that bar an individual from serving as a representative payee.

⁹ The eRPS was implemented in April 2016 and it replaced the prior Representative Payee System.

¹⁰ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.120, sec. A (April 15, 2016).

¹¹ To identify active payees who become fugitive felons, SSA matches fugitive felon data against eRPS to detect those persons who have an unsatisfied felony warrant and are serving or have a pending payee application before SSA. Effective April 4, 2009, only outstanding felony warrants for offense codes 4901 (escape from custody), 4902 (flight to avoid prosecution, confinement, etc.), and 4999 (flight-escape or equivalent) are matched against eRPS. SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00504.102, secs. A, B (April 15, 2016).

¹² SSA receives prison inmate reports from Federal, State, and local correctional institutions and stores the information in the Prisoner Update Processing System (PUPS). SSA, *POMS, GN-General*, ch. GN 026, subch. GN 02607.410, sec. B (June 19, 2015). SSA matches prisoner data against eRPS to identify those persons who are serving or applying to serve as a payee and who have recently been incarcerated. SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00504.103, sec. B (May 16, 2016).

¹³ During the payee application process, SSA asks applicants whether they have ever been convicted of a felony.

provide staff with a screening tool that displays an applicant's case facts from various sources and criminal history. PayeeWiz compiles data from SSA's systems¹⁴ as well as public records.¹⁵

On April 13, 2018, the *Strengthening Protections for Social Security Beneficiaries Act of 2018* became law. The law strengthens oversight and beneficiary protections while improving payee selection and quality. The law prohibits individuals convicted of certain crimes from serving as payees (including existing payees), unless they meet an exemption determined by SSA.¹⁶ Further, the Social Security Advisory Board recommended SSA (a) implement a plan to achieve full compliance with its criminal bar policy within 5 years and (b) examine the effectiveness of the criminal bar policy and continue strengthening it as an appropriate monitoring device.¹⁷

To conduct our review, we identified 28,497 individuals who (1) had a prior criminal conviction or sexual predator/sexually dangerous determination recorded in PUPS¹⁸ and (2) were serving as payees as of April 2017. We separated the 28,497 individuals into 6 mutually exclusive sampling frames based on their date of selection and custodial relationship with the beneficiaries they served.¹⁹ We selected 6 random samples, totaling 180 payees, and examined information in SSA's systems/records and third-party sources such as Justice Exchange, Federal Bureau of Prisons, and State Department of Corrections to determine whether they had been convicted of 1 of the 12 barred felonies. See Appendix B for a discussion of our scope and methodology and Appendix C for our sampling methodology and results.

¹⁴ PayeeWiz uses data from queries derived from seven SSA systems/records—eRPS, Numident, Master Beneficiary (MBR) and Supplemental Security (SSR) Records, PUPS, Master Earnings File, and Fugitive Felon. This information is compiled into a summary sheet called the “Payee Snapshot.” SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.113, sec. C (June 23, 2017).

¹⁵ SSA uses a database called LexisNexis, which includes criminal information from State Department of Corrections, State and Federal court records, and State arrest logs. The type and amount of data varies by State.

¹⁶ *Strengthening Protections for Social Security Beneficiaries Act of 2018*, Pub. L. No. 115-165, § 202, 132 Stat. 1257.

¹⁷ Social Security Advisory Board, *Improving Social Security's Representative Payee Program*, Part V, p. 23 (January 2018).

¹⁸ A sexual predator/sexually dangerous determination is not a crime that would bar an individual from serving as a payee. We used the determination recorded in PUPS as selection criteria to identify payees with a criminal history. See Appendix A for the list of barred felonies and Appendix C for our sampling methodology.

¹⁹ Of the 28,497 individuals we identified, 23,494 (82 percent) had a custodial relationship that exempted them from the policy; 2,774 (10 percent) were selected after SSA implemented the policy; and 2,229 (8 percent) were selected before SSA implemented the policy. See Appendix C for our sampling methodology and results.

RESULTS OF REVIEW

SSA's implementation of its criminal bar policy had not identified and barred convicted felons from serving as individual representative payees. In addition, we identified individual representative payees with a criminal history who SSA should bar from serving as payees. Of the 180 payees we reviewed, 13 (7 percent) had been convicted of 1 of 12 barred felonies. Of the 13 payees, SSA

- did not comply with its policy and selected five individuals after it implemented its policy (*Sample Frames 1 and 4*),
- selected four individuals before it implemented its policy (*Sample Frame 2*), and
- selected four individuals who met an exclusion because they had a custodial relationship with the beneficiaries they served (*Sample Frames 3 and 6*).

SSA took action for 9 of the 13 payees—five selected after it implemented the policy and four selected before it implemented the policy. These nine payees received about \$363,000²⁰ in benefit payments after their barred felony convictions. Based on the results of our review, we estimate²¹ 396 payees received about \$13.7 million in benefit payments after their barred felony convictions (see Appendix C).

Finally, we determined Agency staff did not document criminal information for five payees selected after the policy was implemented, as required (*Sample Frames 1 and 4*).

Sample Frame 1: Payees Selected After the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships

We identified 2,727 individuals who were selected as payees after the criminal bar policy was implemented and did not meet any exclusions related to custodial relationships.²² Our review of 50 payees determined SSA did not comply with its policy for 4 payees (8 percent). The Agency should not have selected these payees because they were convicted of a barred felony and did not

²⁰ Of the \$363,000, the nine payees received about \$152,000 before the policy was implemented and approximately \$211,000 after the policy was implemented.

²¹ We used findings from Sample Frames 1 and 2 to calculate our projections. We did not include the findings for Sample Frames 3 through 6. See Appendix C for a discussion of our sampling methodology.

²² There are seven exclusions in SSA's criminal bar policy. Of which, five are related to the custodial relationship between the payee applicant and the individual for whom he/she is applying to serve. The remaining two exclusions relate to a pardon and parental relationship. SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.133, sec. A.4 (June 23, 2017).

meet any exclusions.²³ SSA paid them about \$83,000²⁴ after their felony convictions (see Table 1).

Table 1: Payees Selected After the Criminal Bar Policy and Convicted of a Barred Felony

| Payee | Date of Barred Felony Conviction ²⁵ | Barred Felony | Beneficiaries Served After Felony Conviction | Payments Received After Felony Conviction (as of July 2018) ²⁶ |
|--------------|--|---------------------------------|--|---|
| 1 | December 2014 | Forgery | 1 | \$5,733 |
| 2 | February 2007 | Fraud by Scheme—Insurance Fraud | 1 | \$4,446 |
| 3 | October 2010 | Forgery | 4 ²⁷ | \$51,852 |
| 4 | November 2000 | Forgery | 1 | \$20,616 |
| TOTAL | | | 7 | \$82,647 |

We referred these four payees to SSA for review. In March 2018, the Agency confirmed all four cases were errors. Further, SSA reported it planned to conduct payee development to identify new representative payees for the beneficiaries. As of July 2018, three of the four payees had been terminated. SSA allowed the remaining payee to continue serving, as he subsequently met a policy exclusion.²⁸

²³ For the payees included in sample frame 1, we verified the payees did not meet any of the seven exclusions.

²⁴ Of the \$83,000, the payees received about \$26,000 before the policy was implemented and approximately \$57,000 after the policy was implemented. The total payments received after felony convictions reflects benefits that the payees received after their conviction for any of the barred felonies, including benefits paid to beneficiaries who were not included in our data extract because the payee relationship had been terminated prior to our review.

²⁵ All four individuals were convicted of the barred felony before they were appointed as a payee. Further, all the barred felonies were documented in LexisNexis—a database SSA used to evaluate payee applicants.

²⁶ See Footnote 24.

²⁷ During our audit period, the payee was active and receiving benefits for one of the four beneficiaries. For the remaining three beneficiaries, the payee relationship had been terminated prior to our review.

²⁸ In February 2018, the payee adopted the minor child and is now the custodial parent.

Sample Frame 2: Payees Selected Before the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships

We identified 2,229 individuals who were selected as payees before the criminal bar policy was implemented in February 2014 and did not meet any exclusions related to custodial relationships.²⁹ Of the 50 payees reviewed, 4 (8 percent) had been convicted of a barred felony and did not meet any exclusions.³⁰ These four payees received about \$207,000³¹ in benefit payments after their barred felony convictions (see Table 2).

Table 2: Payees Selected Before the Criminal Bar Policy and Convicted of a Barred Felony

| Payee | Date of Barred Felony Conviction | Barred Felony | Beneficiaries Served After Felony Conviction | Payments Received After Felony Conviction (as of July 2018) |
|--------------|----------------------------------|----------------|--|---|
| 1 | April 1988 | Robbery | 1 | \$55,500 |
| 2 | January 2017 | Forgery | 1 | \$12,686 |
| 3 | December 1992 | Robbery | 1 | \$127,134 |
| 4 | December 2016 | Identity Fraud | 1 | \$11,575 |
| TOTAL | | | 4 | \$206,895 |

As discussed in a prior review,³² the Agency implemented its criminal bar policy prospectively, meaning it only conducted criminal background checks on individuals who applied to be a payee in February 2014 or later. However, according to SSA policy, if the Agency learns an existing payee has been convicted of any of the 12 barred felonies and does not meet an exclusion, staff must remove the payee and identify a new payee or consider direct payment to the beneficiary.³³ We determined these four payees had been convicted of a barred felony and did not meet any exclusions. We provided this information to SSA, which agreed the beneficiaries needed new payees. In March 2018, the Agency reported it planned to conduct payee development for the

²⁹ There are seven exclusions in SSA's criminal bar policy. Of which, five are related to the custodial relationship between the payee applicant and the individual for whom he/she is applying to serve. The remaining two exclusions relate to a pardon and parental relationship. SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.133, sec. A.4 (June 23, 2017).

³⁰ For the payees included in sample frame 2, we verified the payees did not meet any of the seven exclusions.

³¹ Of the \$207,000, the payees received about \$91,000 before the policy was implemented and approximately \$116,000 after the policy was implemented.

³² SSA, OIG, *Individuals Barred from Serving as Representative Payees*, A-03-16-50156 (August 2017).

³³ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.133, sec. D (June 23, 2017).

four beneficiaries these payees were serving. As of July 2018, we determined SSA had terminated all four payees.

Agency Review of Existing Payees

The *Strengthening Protections for Social Security Beneficiaries Act of 2018* requires that the Agency review each individual serving as a payee (including existing payees) to determine whether they have been convicted of a barred felony. Further, the legislation grants SSA the authority to conduct a background check on any individual who wants to serve as a payee. SSA may disqualify an individual who fails to grant permission for SSA to conduct a background check, as well as those who provide consent and are found to have been convicted of a barred felony and do not meet an exclusion.³⁴

In addition to LexisNexis, the Agency has access to various third-party sources to obtain and verify inmate information including courts, correctional institutions, and such Websites as Justice Exchange, Federal Bureau of Prisons, and State Department of Corrections.³⁵ However, staff are not required to use these sources to assess the individual's suitability to serve as payee. Instead, SSA policy states staff should use PayeeWiz to obtain criminal background information for payee applicants who grant permission for the background check.³⁶

For all four payees we identified, the barred felony information was documented in at least one of the above-mentioned sources. Thus, after obtaining permission to conduct a background check, SSA could use these available resources to identify payees whom it should bar from serving.

Sample Frame 3: Payees Excluded from the Criminal Bar Policy Because of a Custodial Relationship

A payee applicant is excluded from the criminal bar policy if the individual³⁷

- is the custodial parent of the minor child for whom the individual is applying to serve;
- is the custodial spouse of the beneficiary for whom the individual is applying to serve;
- is the custodial parent of a disabled adult child for whom the individual is applying to serve;
- is the custodial, court-appointed guardian of a beneficiary for whom the individual is applying to serve;

³⁴ *Strengthening Protections for Social Security Beneficiaries Act of 2018*, Pub. L. No. 115-165, § 202, 132 Stat. 1257.

³⁵ SSA, *POMS, GN-General*, ch. GN 026, subch. GN 02607.680 (September 27, 2017).

³⁶ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.113, sec. D (June 23, 2017).

³⁷ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.133, sec. A.4 (June 23, 2017).

- is the custodial grandparent of the minor grandchild for whom the individual is applying to serve;
- is the parent who was previously payee for his/her minor child who has since turned 18 and continues to be eligible for benefits; or
- received a presidential or gubernatorial pardon for the conviction.

We identified 23,238 payees who had a custodial relationship with the beneficiaries they served. We reviewed 50 of these payees and determined 3 (6 percent) had been convicted of a barred felony. These payees received about \$148,000³⁸ after their felony convictions (see Table 3). For all three cases, we determined the payees were the beneficiaries' custodial parent. Although convicted of a barred felony, these payees were exempt from SSA's policy and could continue serving as payees.

Table 3: Payees Excluded from the Criminal Bar Policy and Convicted of a Barred Felony

| Payee | Date of Barred Felony Conviction | Barred Felony | Beneficiaries Served After Felony Conviction | Payments Received After Felony Conviction (as of July 2018) |
|--------------|----------------------------------|---------------|--|---|
| 1 | August 2009 | Forgery | 2 | \$65,004 |
| 2 | July 2007 | Forgery | 4 ³⁹ | \$61,867 |
| 3 | August 2008 | Forgery | 1 | \$21,644 |
| TOTAL | | | 7 | \$148,515 |

According to SSA, any history of criminal behavior casts serious doubt on the individual's character and suitability to serve as a payee.⁴⁰ However, the Agency reported that these categories of payees were excluded from its criminal bar policy because prior studies found that parents and individuals who have custody are generally reliable and adequately perform their payee duties. We determined the custodial parents had committed the same types of crimes as the non-custodial payees (that is, forgery). Further, some custodial parents had extensive criminal histories that dated back several years. For example, one payee who was convicted of a barred felony had also been charged with various other crimes, such as grand theft and fraudulent use of credit cards. We referred these cases to the Agency. In March 2018, SSA confirmed these payees met one of the criminal bar policy exclusions.

³⁸ Of the \$148,000, the payees received about \$56,000 before the policy was implemented and approximately \$92,000 after the policy was implemented.

³⁹ As of July 2018, the payee was active and receiving benefits for two of the four beneficiaries. For the remaining two beneficiaries, the payee relationship had been terminated prior to our review.

⁴⁰ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.133, sec. C.1 (June 23, 2017). SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.132, sec. A.2 (October 31, 2017).

Sample Frame 4: Payees Selected After and Before the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships

We identified 47 individuals selected as payees after and before the criminal bar policy was implemented,⁴¹ and did not meet any exclusions related to custodial relationships.⁴² Of the 10 payees we reviewed, we determined SSA did not comply with its policy for 1 payee. The Agency should not have selected the payee because he was convicted of a barred felony and did not meet any exclusions.⁴³ The payee was convicted of forgery in December 1998. After the felony conviction, the payee received about \$74,000⁴⁴ in benefit payments for one beneficiary (a non-relative).

We referred this individual to SSA for review. In March 2018, the Agency confirmed it was an error and reported it planned to conduct payee development to identify a new representative payee for the beneficiary. As of July 2018, this payee had been terminated.

Sample Frame 5: Payees Selected After the Criminal Bar Policy Was Implemented and Met an Exclusion Related to Custodial Relationships

We identified 129 individuals selected as payees after the criminal bar policy was implemented and met 1 of the policy exclusions related to custodial relationships. We selected 10 to review, and none had been convicted of a barred felony.

⁴¹ These payees had multiple records because the payee served (1) more than 1 beneficiary or (2) 1 beneficiary who received both Old-Age, Survivors and Disability Insurance benefits and Supplemental Security Income payments.

⁴² There are seven exclusions in SSA's criminal bar policy. Of which, five are related to the custodial relationship between the payee applicant and the individual for whom he/she is applying to serve. The remaining two exclusions relate to a pardon and parental relationship. SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.133, sec. A.4 (June 23, 2017).

⁴³ For the payees included in sample frame 4, we verified the payees did not meet any of the seven exclusions.

⁴⁴ Of the \$74,000, the payee received about \$36,000 before the policy was implemented and approximately \$38,000 after the policy was implemented.

Sample Frame 6: Payees Selected Before the Criminal Bar Policy Was Implemented and Met an Exclusion Related to Custodial Relationships

We identified 127 individuals selected as payees before the criminal bar policy was implemented and met 1 of the policy exclusions related to custodial relationships. Of the 10 payees reviewed, 1 had been convicted of a barred felony. In January 2001, the payee was convicted of fraud by scheme (credit card fraud).⁴⁵ After the felony conviction, the payee received about \$57,000⁴⁶ in benefits.

Since this payee was the beneficiary's custodial mother, she was exempt from the criminal bar policy and could continue serving as a payee. We referred this case to the Agency. In March 2018, SSA confirmed this payee met one of the criminal bar policy exclusions.

Criminal Information Documented in eRPS

According to Agency policy, the applicant interview is SSA's first opportunity to assess the individual's suitability to serve as a payee. Staff is required to gather, document, and address information related to⁴⁷

- self-reported criminal convictions;
- criminal history found using PayeeWiz;
- fugitive felon history or periods of incarceration recorded in PUPS;
- beginning and ending dates of confinement; and
- type of conviction, type of crime, and any pending civil or criminal charges.

SSA uses eRPS to query past payee performance, process change actions, record misuse allegations, and document any significant information about the individual. For example, on the "Make Note" screen in eRPS, SSA staff is required to document whether the applicant gave permission to conduct a criminal background check through PayeeWiz,⁴⁸ the applicant's

⁴⁵ In addition to the barred felony, we determined this payee had been charged with various other crimes such as drug possession, embezzlement, and being a fugitive felon.

⁴⁶ Of the \$57,000, the payee received about \$17,000 before the policy was implemented and approximately \$40,000 after the policy was implemented.

⁴⁷ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.113, sec. A (June 23, 2017).

⁴⁸ If, during the interview, the applicant does not (a) self-disclose a barred crime, (b) have a PUPS or Fugitive Felon record, or (c) meet one of the bar policy exclusions, SSA staff is required to ask him/her for permission to conduct a criminal background check. After obtaining permission, staff uses PayeeWiz to obtain criminal information through LexisNexis. SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.113, secs. D.1, D.3 (June 23, 2017).

responses to staff's questions regarding his/her criminal history,⁴⁹ and the payee's suitability determination (payee selection or non-selection).⁵⁰

We determined SSA did not document criminal information in eRPS, as required. SSA acknowledged it had not performed criminal background checks for the five payees who were convicted of a barred felony and selected after it implemented the criminal bar policy (*Sample Frames 1 and 4*). Thus, these individuals were not barred from serving as payees.

CONCLUSIONS

SSA's implementation of its criminal bar policy had not identified and barred convicted felons serving as individual representative payees. Of the 180 payees we reviewed, 13 had been convicted of 1 of 12 barred felonies. Of the 13 payees, SSA

- did not comply with its policy for five payees who were selected after it implemented the policy,
- selected four payees before it implemented the policy, and
- selected four payees who were exempt from the policy because they had a custodial relationship with the beneficiaries they served.

SSA took action for the nine payees—five selected after it implemented the policy and four selected before it implemented the policy. As of July 2018, the Agency paid the nine payees about \$363,000 after their barred felony convictions. Based on the results of our review, we estimate 396 payees received about \$13.7 million in benefit payments after their barred felony convictions (see Appendix C).

Of the 28,497 payees we identified with a criminal conviction or sexual predator/sexually dangerous determination recorded in PUPS, SSA selected 5,003 payees before and/or after the criminal bar policy was implemented (*Sample Frames 1, 2, and 4*). These payees did not have custodial relationships with the beneficiaries they served, which would exclude them from the policy. From the three sample frames, we reviewed 110 payees. We replaced 37 of the payees initially selected because of a change in the payee or beneficiary's status or the lack of third-party criminal information. Therefore, SSA could review the remaining 4,856 to determine whether it should remove these payees in compliance with its criminal bar policy and the *Strengthening Protections for Social Security Beneficiaries Act of 2018*.

⁴⁹ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.113, sec. D.3 (June 23, 2017).

⁵⁰ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.132, sec. A.2 (October 31, 2017).

RECOMMENDATIONS

We recommend SSA:

1. Determine whether it should review the 4,856 payees we identified in its efforts to comply with the *Strengthening Protections for Social Security Beneficiaries Act of 2018*.
2. Remind staff to obtain and document criminal information for representative payee applicants, as appropriate.

AGENCY COMMENTS AND OIG RESPONSE

The Agency agreed with our recommendations. Since SSA took action for the nine payees we identified who were convicted of a barred felony, we dropped the recommendation related to these nine payees that had been included in our draft report.



Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – CRIMES THAT BAR INDIVIDUALS FROM SERVING AS REPRESENTATIVE PAYEES¹

| Crime | Definition |
|-------------------------|--|
| Human Trafficking | Human trafficking is the act of recruiting, transporting, transferring, harboring, or receiving a person through a use of force, coercion, or other means, for the purpose of exploiting the person. |
| False Imprisonment | False imprisonment is the illegal confinement of one individual against his or her will by another individual in such a manner as to violate the confined individual's right to be free from restraint of movement. False Imprisonment often involves physical force but such force is not always required. The threat of force or arrest, or a belief on the part of the person being restrained that force will be used, is sufficient. |
| Kidnapping | Kidnapping is the unlawful and non-consensual seizure of a person for the purpose of gaining a ransom or reward, facilitating the commission of a felony or a flight after the commission of a felony, terrorizing or inflicting bodily injury on the victim or a third person, or interfering with a government or political function. |
| Rape and Sexual Assault | Rape is a type of sexual assault usually involving sexual intercourse, initiated by one or more persons against another person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority, or with a person who is incapable of valid consent. Sexual assault is an involuntary sexual act in which a person is threatened, coerced, or forced to engage in a sexual act against his/her will, or any sexual touching of a person who has not consented. This includes rape, inappropriate touching, forced kissing, child sexual abuse, or the torture of the victim in a sexual manner. |
| First-Degree Homicide | First-degree homicide is an unlawful killing that is both willful and premeditated, meaning that it was committed after planning or “lying in wait” for the victim. |
| Robbery | Robbery is theft or larceny of property or money through the offender's use of physical force or fear against the victim. Where a deadly weapon such as a gun is used or the victim suffers injury. The robbery may be “armed” or “aggravated.” Unlike burglary, the crime of robbery requires the presence of a victim who suffers actual injury or is threatened with harm. |

¹ Individuals convicted of any of these felonies are barred from serving as a payee unless they meet an exclusion, such as being the custodial parent of a minor child for whom the individual applies to serve. SSA, *POMS*, *GN-General*, ch. GN 005, subch. GN 00502.133, sec. A.4 (June 23, 2017).

| Crime | Definition |
|---|--|
| Fraud to Obtain Access to Government Assistance | Fraud to obtain access to government assistance is intentional misrepresentation, concealment, or withholding of information in order to get any, or increased, public assistance or food stamp benefits. If someone intentionally signs papers (application for benefits, questionnaire, or recertification papers) in which the information in the papers is not true, they have committed fraud. This is true even if they never end up receiving any public assistance or food stamps at all. |
| Fraud by Scheme | <p>Fraud schemes typically include three major elements: fraud objective, fraud method, and execution. Some common fraud schemes are</p> <ul style="list-style-type: none"> • telemarketing fraud; • investment-related scams; • Internet scams; • credit card fraud; • counterfeit prescription drug; and • reverse mortgage scams. |
| Theft of Government Funds or Property | Theft of government funds/property is an act by which an individual embezzles, steals, misappropriates, or knowingly converts to his/her use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof. This offense also applies to someone who receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, misappropriated, or converted. |
| Abuse or Neglect | Abuse or neglect is any act or failure to act on the part of a parent, caretaker, or spouse that results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm. |
| Forgery | Forgery is the act of making, drawing, or altering a document in order to deceive people. This includes filling in blanks on a document containing a genuine signature, or materially altering or erasing an existing instrument. Instruments may include bills of exchange, promissory notes, checks, bonds, receipts, mortgages, deeds, public records, account books, and tickets or passes for transportation or events. An underlying intent to defraud, based on knowledge of the false nature of the instrument, must accompany the Act. |
| Identity Theft or Identity Fraud | Identity theft or identity fraud refer to all types of crime in which someone wrongfully obtains and uses another person's personal data in some way that involves fraud or deception, typically for economic gain. Personal data may include a Social Security number, bank account or credit card number, telephone calling card number, or other valuable identifying information that someone can use for profit. |

Appendix B – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Obtained and reviewed applicable Federal laws and regulations and the Social Security Administration's (SSA) policies and procedures.
- Reviewed prior Office of the Inspector General reports pertaining to representative payees.
- Coordinated with personnel from SSA's Offices of Operations, Systems, Retirement and Disability Policy, and General Counsel to (a) identify the training and/or instructions SSA staff received as part of the Agency's implementation of the representative payee criminal bar policy, (b) obtain the results of SSA's representative payee pilot survey, (c) quantify the number of payee applicants who were prevented from serving as payees, and (d) determine whether SSA has considered using other third-party databases to identify criminal history.
- Obtained and analyzed data extracts from SSA's Master Beneficiary (MBR) and Supplemental Security (SSR) Records, and Prisoner Update Processing System (PUPS) as of April 2017. See Appendix C for detailed information.
- Selected 6 random samples, totaling 180 individual representative payees. To determine whether they were convicted of a barred felony or met an exclusion, we examined information in SSA's systems/records and third-party sources.
 - MBR
 - SSR
 - PUPS
 - Fugitive Felon Record
 - Electronic Representative Payee System (eRPS)
 - LexisNexis
 - Justice Exchange
 - Federal Bureau of Prisons
 - State Department of Corrections
 - State/County Court Records
 - State and Territory Digest of Crimes Barring an Individual from Serving as Payee¹
- Reviewed eRPS to determine whether SSA documented criminal information, as required.
- Calculated the amount of benefit payments the payees received after their barred felony conviction.

¹ SSA, *POMS, GN-General*, ch. GN 005, subch. GN 00502.301, sec. C (February 27, 2014).

- Provided information to SSA regarding the 13 payees we identified who were convicted of a barred felony.

We conducted our review from August 2017 to March 2018 at SSA's Headquarters in Baltimore, Maryland. The principle entities audited were the Offices of the Deputy Commissioners for Operations and Retirement and Disability Policy.

We determined the computer-processed data used for this audit were sufficiently reliable to meet our audit objective. Further, any data limitations were minor in the context of this assignment, and the use of the data should not lead to an incorrect or unintentional conclusion.

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 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.

Appendix C – SAMPLING METHODOLOGY AND RESULTS

We obtained electronic data extracts from all 20 segments of the Social Security Administration’s (SSA) Master Beneficiary (MBR) and Supplemental Security Records (SSR) to identify existing individual representative payees. We matched the files against the Prisoner Update Processing System (PUPS) to identify those payees who had a prior criminal conviction or sexually dangerous/sexual predator determination¹ posted on their record. We refined the files by excluding records involving (a) payees who were included in another OIG review² and (b) beneficiaries who subsequently died or received direct payment.

After applying the additional screening requirements, we identified 28,497 individual representative payees as of April 2017. We separated the payees into 6 distinct sampling frames based on their date of selection and custodial relationship with the beneficiaries they served.³ We selected a random sample of 180 payees. For each sample item, we reviewed SSA’s records/systems and third-party sources to determine whether the payees had been convicted of 1 of the 12 barred felonies and met any of the exclusions.

¹ A sexual predator/sexually dangerous determination is not a crime that would bar an individual from serving as a payee. We used the determination recorded in PUPS as selection criteria to identify payees with a criminal history.

² See SSA, OIG, *Individuals Barred from Serving as Representative Payees*, A-03-16-50156 (August 2017).

³ There are seven exclusions in SSA’s criminal bar policy. Of which, five are related to the custodial relationship between the payee applicant and the individual for whom he/she is applying to serve. The remaining two exclusions relate to a pardon and parental relationship. We applied the five custodial relationship exclusions, along with the date of selection, to our entire audit population to identify the six sample frames. However, we assessed all seven exclusions during our review of the sampled payees.

Table C–1: Population and Sample Size

| Sample Frame | Description | Population ⁴ | Sample Size ⁵ |
|--------------|---|---------------------------|--------------------------|
| 1 | Payees Selected <u>After</u> the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships | 2,727 | 50 |
| 2 | Payees Selected <u>Before</u> the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships | 2,229 | 50 |
| 3 | Payees <u>Excluded</u> from the Criminal Bar Policy Because of a Custodial Relationship | 23,238 | 50 |
| 4 | Payees Selected <u>Before</u> and <u>After</u> the Criminal Bar Policy Was Implemented—No Exclusions Related to Custodial Relationships | 47 | 10 |
| 5 | Payees Selected <u>After</u> the Criminal Bar Policy Was Implemented and Met an <u>Exclusion</u> Related to Custodial Relationships | 129 | 10 |
| 6 | Payees Selected <u>Before</u> the Criminal Bar Policy Was Implemented and Met an <u>Exclusion Related</u> to Custodial Relationships | 127 | 10 |
| TOTAL | | 28,497⁶ | 180 |

Of the 180 payees reviewed, 13 (7 percent) were convicted of a barred felony. Following their felony convictions, these payees received about \$569,000⁷ on behalf of the beneficiaries they served (see Table C-2).

⁴ We determined 2,392 of the 28,497 payees had multiple records because the payee served (1) more than 1 beneficiary or (2) 1 beneficiary who received both Old-Age, Survivors and Disability Insurance benefits and Supplemental Security Income payments.

⁵ Because of a change in the payee or beneficiary's status or the lack of third-party criminal information, we selected 62 replacement samples.

⁶ Of the 28,497 individuals we identified, 23,494 (82 percent) from Sampling Frames 3, 5, and 6 had a custodial relationships that exempted them from the policy; 2,774 (10 percent) from Sampling Frames 1 and 4 were selected after SSA implemented the policy; and 2,229 (8 percent) from Sampling Frame 2 were selected before SSA implemented the policy.

⁷ Of the \$569,000, the 13 payees received about \$225,000 before the policy was implemented and approximately \$344,000 after the policy was implemented.

Table C–2: Sample Results

| Sample Frame | Number of Payees Convicted of a Barred Felony | Payments Received After Barred Felony Conviction⁸ (as of July 2018) |
|---------------------|--|---|
| 1 | 4 | \$82,647 |
| 2 | 4 | \$206,895 |
| 3 | 3 | \$148,515 |
| 4 | 1 | \$74,105 |
| 5 | 0 | \$0 |
| 6 | 1 | \$57,372 |
| TOTAL | 13 | \$569,534 |

SSA reported it planned to remove the nine payees we identified in Sample Frames 1, 2, and 4. The remaining four in Sample Frames 3 and 6 met an exclusion and could continue serving as a payee.

Table C–3: Sample Results Requiring Agency Action

| Sample Frame | Number of Payees Convicted of a Barred Felony | Payments Received After Barred Felony Conviction (as of July 2018) |
|---------------------|--|---|
| 1 | 4 | \$82,647 |
| 2 | 4 | \$206,895 |
| 4 | 1 | \$74,105 |
| TOTAL | 9 | \$363,647 |

Because of SSA's criminal bar policy exclusions, the payees we identified in Sample Frames 3 and 6 were not included in our projections. In addition, the payees for Sample Frame 4 were not included in our projections because the number we identified was too low to project to the population. As a result, we used eight payees (Sample Frames 1 and 2) to estimate the number of payees convicted of a barred felony and the amount of payments they received after their felony convictions. As of July 2018, the Agency paid these payees about \$290,000. Of the \$290,000, SSA paid about \$83,000 (29 percent) to payees we identified in Sample Frame 1, and about \$207,000 (71 percent) to payees we identified in Sample Frame 2.

⁸ The total payments received after felony convictions reflects benefits that the payees received after their conviction of any of the barred felonies, including benefits made to beneficiaries who were not included in our data extract because the payee relationship had been terminated prior to our review.

Table C–4: Sample Results Used to Project to the Audit Population

| Sample Frame | Number of Payees Convicted of a Barred Felony | Payments Received After Barred Felony Conviction (as of July 2018) |
|--------------|---|--|
| 1 | 4 | \$82,647 |
| 2 | 4 | \$206,895 |
| TOTAL | 8 | \$289,542 |

Projecting our sample results, we estimate approximately 396 payees received about \$13.7 million in benefit payments subsequent to their barred felony convictions.

Table C–5: Projections for Sample Frames 1 and 2

| Description | Number of Payees | Amount of Payments |
|------------------------|---------------------|-----------------------|
| Sample Results | 8 | \$289,542 |
| Point Estimate | 396 | \$13,730,931 |
| Projection Lower Limit | 174 | \$2,567,279 |
| Projection Upper Limit | 619 | \$24,894,582 |

Note: All statistical projections were calculated at the 90-percent confidence level.

Appendix D – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: August 16, 2018 Refer To: S1J-3

To: Gale S. Stone
Acting Inspector General

From: Stephanie Hall
Stephanie Hall
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Representative Payee Criminal Bar Policy"
(A-13-18-50154) -- INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.

Attachment

SSA COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT, “REPRESENTATIVE PAYEE CRIMINAL BAR POLICY” (A-13-18-50154)

GENERAL COMMENTS

Thank you for the opportunity to review the draft report. We acknowledge the critical importance of properly investigating payee applicants and we have taken action to implement the first recommendation in the report. We will work to implement the remaining recommendations and continue our efforts to comply with the requirements of the *Strengthening Protections for Social Security Beneficiaries Act of 2018*.

Recommendation 1

Take appropriate action to remove the nine payees we identified who were convicted of a barred felony and were not excluded from the criminal bar policy.

Response

We agree. As of June 4, 2018, we completed our review and took the appropriate action to remove the nine payees.

Recommendation 2

Determine whether it should review the 4,856 payees we identified in its efforts to comply with the *Strengthening Protections for Social Security Beneficiaries Act of 2018*.

Response

We agree.

Recommendation 3

Remind staff to obtain and document criminal information for representative payee applicants, as appropriate.

Response

We agree.

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