

# Non-Litigation Strategies: Reporting

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## Introduction

When pursuing the recovery of funds unlawfully taken from a client, advocates often think of litigation as a first strategy. Fortunately, there are several non-litigation strategies that can be used to possibly avoid the cost and time related to litigation. The following issue brief will cover several options that can be used to try to recover funds and stop fraud against clients.

## Reporting to a Government Agency

### Social Security Administration

Many older individuals that receive Social Security benefits (Supplemental Security Income or Social Security Retirement) have a representative payee appointed by the Social Security Administration (SSA) to manage their benefits. Representative Payee's have a duty to use the beneficiaries' benefits in the best interests of the beneficiary for their immediate and essential needs (i.e. food, shelter, utilities, clothing, and medical care). Representative Payee's must also notify SSA of any change of circumstances that would affect the amount of benefits paid to the recipient. This is most important for recipients of Supplemental Security Income (SSI), a needs based program. Representative Payee's cannot use a recipients funds for their own personal gain, move a recipients funds to their account, or charge for their services, unless authorized by SSA.

Fraud or misuse by a representative payee should be reported to the Social Security Administration's Office of Inspector General (OIG).<sup>1</sup> While OIG can investigate and possibly prosecute representative payee fraud, no updates will be given to the recipient after reporting to OIG. Therefore, it is imperative that any benefit recipient that suspects fraud or misuse of their benefits by a representative payee report to OIG *and* request a change of representative payee. This can be done by calling or going into their local SSA Field Office and asking to request a change of representative payee because of suspected fraud. A recipient can change their payee to another person or request to be their own payee.<sup>2</sup>

### Veterans Administration

Similar to an SSA representative payee, the Veterans Administration (VA) appoints VA Fiduciaries to manage the cash benefits of a VA benefit recipient when "due to a beneficiary's injury, disease, or infirmities of advanced age" they are determined to be unable to manage their benefits.<sup>3</sup> VA Fiduciaries only have the authority to manage VA benefit checks, they cannot manage any other property or affairs of the recipient. In addition, the VA may request periodic accountings from fiduciaries. Fiduciaries must act in the best interest of the recipient, abstain from commingling funds, and keep accurate records of how benefit money is spent.

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- 1 Online form to report allegations of fraud, waste, and abuse concerning SSA programs and operations: [ssa.gov/fraudreport/oig/public\\_fraud\\_reporting/form.htm](https://ssa.gov/fraudreport/oig/public_fraud_reporting/form.htm).
  - 2 Requests to change a representative payee must be made in person at the local SSA Field Office. Field Offices can be found here: SSA Field Office Locator, [secure.ssa.gov/ICON/main.jsp](https://secure.ssa.gov/ICON/main.jsp).
  - 3 38 CFR § 13.30(A).

Misuse of VA benefits is investigated by the Department of Veterans Affairs, Office of Inspector General. A report can be made through their [online system](#), by calling the VA fiduciary program toll free number: 1-888-407-0144, or the general VA toll free number: 1-800-827-1000. The VA will review all claims of misuse and can in some cases reissue misused funds to the recipient. <sup>4</sup>

A VA benefit recipient can also request appointment of a new fiduciary if: (1) the current fiduciary receives a fee for their services from the beneficiaries account and the beneficiary wants to appoint an unpaid volunteer, (2) the beneficiary request removal of the fiduciary and removal from supervised direct payment of benefits or, (3) the beneficiary provides credible evidence that the fiduciary is not acting in their best interest. <sup>5</sup>

## Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau (CFPB) was created in the wake of the 2008 financial crisis with the goal of regulating consumer financial products and services. Complaints about a consumer financial product or service can be made via the [CFPB website](#). Submitting a complaint to the CFBP may seem insignificant but individual reports of consumer financial fraud are instrumental in the Bureaus ability identify and prosecute widespread financial fraud.

## Financial Fraud Kill Chain (FFKC)

The Financial Fraud Kill Chain is a process to recover international wire transfers originating from U.S. bank accounts. FFKC is a partnership between the Federal Bureau of Investigation (FBI), the Financial Crimes Enforcement Network of the U.S. Treasury (FinCen),<sup>6</sup> and law enforcement. It can only be implemented for international wire transfers of \$50,000 or more that happened in the last 72 hours. Reports should be made to Internet Crime Complaint Center of FBI (IC3)<sup>7</sup> and the victim's bank as soon as possible, ideally within the first 72 hours. Over 70% of money wired internationally by victims has been recovered when the transfer is reported within 48-72 hours.

## State Victims of Crime Offices

Under the federal Victims of Crime Act (VOCA) each state has a victims of crime office that supplies services and support to victims of crime. Crime victims can receive compensation and assistance from their local Victims of Crime Office. Crime victim compensation is a “direct reimbursement to or on behalf of a crime victim” for medical costs, funeral/burial costs, mental health counseling, lost wages or support and other expenses related to the crime.<sup>8</sup> Victim Assistance includes crisis intervention, emergency shelter, transportation counseling and criminal justice advocacy. <sup>9</sup> You can find more information on the [Victims of Crime Act and resources here](#) and you can find your [local VOCA office here](#).

## IRS Whistleblower Informant Award

The Internal Revenue Service (IRS) offers a whistleblower award to those who “blow the whistle on a persons who fail to pay the tax they owe.” If the IRS uses the whistleblowers information it can award up to 30% of the addition tax to the whistleblower. <sup>10</sup> Victims of fraud may consider reporting to the IRS if they believe the perpetrator committed tax fraud.

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<sup>4</sup> [justice.gov/elderjustice/va-benefits-fraud-0](https://justice.gov/elderjustice/va-benefits-fraud-0).

<sup>5</sup> 38 CFR §13.30(b)(9)(i)-(iii).

<sup>6</sup> [fincen.gov/](https://fincen.gov/).

<sup>7</sup> [ic3.gov/default.aspx](https://ic3.gov/default.aspx).

<sup>8</sup> [ovc.gov/pubs/crimevictimsfundfs/intro.html#PrimarySources](https://ovc.gov/pubs/crimevictimsfundfs/intro.html#PrimarySources), Property damage and loss are not covered.

<sup>9</sup> *Id.*

<sup>10</sup> [irs.gov/compliance/whistleblower-informant-award](https://irs.gov/compliance/whistleblower-informant-award).

## Reporting to Non-Government Agencies

### Professional Licenses

If fraud is committed against your client by a licensed professional, reporting to their respective regulating agency may lead to the recoup of stolen funds. Lawyers, real estate agents, financial services providers, and many others are regulated professions which may have restitution funds for those defrauded.<sup>11</sup>

**Please contact [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov) for free case consultation assistance. Sign up for our email list and access more resources at [NCLER.acl.gov](https://www.acl.gov/ncler).**

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<sup>11</sup> Lawyers are licensed and regulated by State Bar Associations while other professions like doctors and real estate agents are regulated by state agencies. You should contact your local state government for the proper procedure for filing a complaint or grievance against a locally regulated profession.