



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

**Principles and Recommendations for  
Strengthening Social Security's Representative Payee Program  
CCD Social Security Task Force  
July 7, 2017**

The Consortium for Citizens with Disabilities (CCD) is a coalition of national disability organizations working together to advocate for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

Over 8 million people have a representative payee appointed by the Social Security Administration (SSA) to help them manage their Social Security or SSI benefits. Over half are under the age of 18, including children who receive SSI on the basis of a disability.<sup>1</sup> Adults with payees include:

- Disabled workers who have experienced a qualifying disability and receive Social Security benefits based on their own earnings record;
- Adults who receive Social Security Disabled Adult Child benefits based on a parent's earnings record;
- Adults who are blind or disabled and receive SSI, including individuals who also receive Social Security;
- Seniors who receive Social Security, SSI, or both.

The CCD Social Security Task Force has developed the following principles and recommendations for strengthening Social Security's representative payee program.

**Guiding Principles**

- All people should be treated with dignity and respect, and have the right to determine as much as possible about their own lives and well-being – including Social Security or SSI beneficiaries who have or are under determination for a representative payee.
- New requirements on SSA, including enhancements to its representative payee program, require additional administrative funding. Imposing additional obligations without providing additional resources will erode the overall quality of service SSA is able to provide.

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<sup>1</sup> Out of 63 million Social Security and SSI beneficiaries in 2013. Anguelov, C.E., Ravida, G., and Weathers II, R.R. (2015). Adult OASDI Beneficiaries and SSI Recipients Who Need Representative Payees: Projections for 2025 and 2035. *Social Security Bulletin*, 75(2), pp. 1-17.

- Flexibility and individualization in determination of need and appointment of payees is beneficial, and should be maintained; Congress and SSA should avoid turning the payee program into a process that is more rigid or formal and restrictive, further limiting people's rights.
- Flexibility in determination of need and appointment of payees must be accompanied by strong monitoring and oversight of the individuals and organizations serving as payees, to protect beneficiaries' rights.
- Payee requirements -- including training, reporting, and monitoring -- must strike an appropriate balance between protecting beneficiaries and benefits and not discouraging people from becoming payees.
- Changes to the payee process should not delay payment of fees to representatives, nor should they reduce the confidentiality of representative-client relationships.

### **Determining the Need for a Payee**

- SSA should conduct additional reviews of the determinations of need for and appointment of payees to see if these determinations are being made fairly and consistently, in adherence to SSA policy. This activity requires additional administrative funding for it to be carried out in a suitable manner.
- SSA should not delay payment of representative fees payable under a fee agreement while payee determination is pending.
- SSA should develop regular training opportunities for beneficiaries on their rights as beneficiaries, becoming their own payees, and/or making complaints. SSA should develop a form beneficiaries can use to express their preference as to who should become their payee in the event they lose capacity to manage their own benefits.
- SSA should conduct a review of the use of the SSA-3288 form, which can allow beneficiaries who want assistance but do not need payees to consent to the release of specified information about their benefits.<sup>2</sup> SSA should ensure that all field offices are using the SSA-3288 form in compliance with agency policies.

### **Who Is the Payee?**

- SSA should provide training to its employees on its procedures to ensure better compliance with its policy on payee preference order, especially in the situation where a creditor applies to be the payee.
- SSA should conduct a study, and provide opportunities for public input and comment, to review and reevaluate the orders of preference it uses to select a payee (20 C.F.R. §§ 404.2021 and 416.621), including whether it is appropriate for certain groups to continue to be listed, such as private, for-profit institutions.
- SSA should conduct a study on the feasibility, benefits, and drawbacks of performing criminal background checks for all new and current individual payees with periodic recertification to ensure initial and ongoing suitability to be a payee.
- SSA should disqualify individuals and organizations that have been removed as payee due to poor performance from further participation as a payee, and a

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<sup>2</sup> SSA, Consent for Release of Information, <https://www.ssa.gov/forms/ssa-3288.pdf>.

database of all such individuals and organizations should be maintained and used to screen new payees.

- SSA should consider as one factor in deciding among potential payees the ability of a prospective payee to maintain regular contact with the beneficiary and be aware of the beneficiary's needs and requirements, including as indicated by whether the prospective payee is located within a reasonable radius of the beneficiary's residence or has viable alternate means of communication with the beneficiary.
- SSA should create an online form to request a change of payee or to restore direct payment to the beneficiary. The agency requires adequate administrative funds to make this and other technological improvements.
- SSA should institute better data matching to avoid situations where people who need payees are allowed to become payees, and situations where people have a payee for one title of benefit and not for another.<sup>3</sup> The agency requires adequate administrative funds to make this and other technological improvements.

### **Payee Rules and Obligations**

- SSA should provide additional training and guidance for beneficiaries and potential payees:
  - Create a toll-free hotline, separate from SSA's existing toll-free number, and a secure email system specifically for payee issues, where payees and beneficiaries can seek guidance and concerned individuals can make complaints.
  - Provide payees with training on "improper" vs. "proper" use of beneficiary payments and coordinate with state and local courts to train guardians of beneficiaries who may also have a payee (or the guardian is the payee).
  - Work with federal agency partners to identify appropriate opportunities to communicate with parents of minor children who receive benefits about how to support the transition to direct payment at age 18.
- SSA should end its requirement that the agency perform a case by case analysis of whether a payee can transfer conserved funds directly to the beneficiary when the beneficiary turns 18, in situations where the beneficiary will no longer have a payee after age 18. See POMS GN 00603.001 and GN 00603.055B.2.
- For lump sum payments in excess of three times the Federal Benefit Rate, SSA should require a separate report from the payee following the issuance of a lump sum check outlining expenditures of those funds.
- SSA should require organizational and fee for service payees to report the following information:
  - Copies of their own annual external financial audits;
  - All names under which they conduct business and all addresses where they operate or provide services; and

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<sup>3</sup> See SSA Office of the Inspector General, *Beneficiaries Serving as Representative Payees Who Have a Representative Payee* (2016) <http://oig.ssa.gov/audits-and-investigations/audit-reports/A-09-16-50109> and *Follow-up: Concurrent Title II and Title XVI Beneficiaries Receiving Representative Payee and Direct Payments* (2009) <http://oig.ssa.gov/follow-concurrent-title-ii-and-title-xvi-beneficiaries-receiving-representative-payee-and-direct>.

- Policies regarding background checks and an assurance that all new and existing employees involved with beneficiary funds have completed a background check and met policy requirements.
- SSA should require individual payees serving 15 or more beneficiaries and organizational payees serving less than 50 beneficiaries to report the addresses of all places of business.
- SSA should require both individual payees and organizational payees with five or more unrelated beneficiaries to be bonded and insured.

### **Payee Monitoring and Reporting**

- In addition to payees that the Social Security Act requires SSA to review (fee for service payees, organizational payees serving 50 or more beneficiaries, individual payees serving 15 or more beneficiaries, and state mental hospitals), SSA should also continue to review a sample of large organizational payees as identified by SSA systems, plus a certain amount of “wild card” monitoring of payees as identified by the organization doing the monitoring.
- Effective reviews should:
  - Review payees to evaluate compliance with banking procedures, account titling, and management of beneficiary funds;
  - Refer suspected cases of abuse or neglect, health or safety, housing, or wage related issues to the appropriate third party authorities such as state licensing agencies, Protection and Advocacy agencies, Adult Protective Services, and law enforcement agencies;
  - Conduct follow-up activities and training to ensure deficiencies such as minor recordkeeping or bank account titling issues are corrected;
  - Interview payees about how they handle the beneficiary’s funds, how they determine a beneficiary or recipient’s needs, and any services they provide;
  - Review the payees’ banking procedures (including accounting system and bank account titling), financial records, and documentation of how they managed the sampled beneficiaries’ Social Security payments;
  - Conduct home visits for all beneficiaries selected for review;
  - Interview a sample of beneficiaries, including those with complex communications needs, to confirm information provided by the payee, verify large or unusual purchases noted during the financial review, ask if the payee is meeting his or her needs, and if there are any problems with the payee;
  - Connect beneficiaries to advocacy services, including legal services, where appropriate;
  - Receive, secure, protect and destroy beneficiary personally identifiable information and other confidential information; and
  - Collect and submit data on representative payee reviews in a secure manner.
- SSA should contract with a reviewing agency that:
  - Has on-the-ground presence in all 50 states and the District of Columbia and has familiarity with a range of local service providers and government entities;

- Has experience with the full range of settings where a beneficiary may receive housing, treatment, services, supports, and other assistance, and across persons with different types of disabilities;
- Has demonstrable experience monitoring community facilities and representative payees and identifying fraud and abuse;
- Is able to integrate a cross-disability focus and understanding of disability rights, not limited to representative payee financial responsibilities; and
- Has partnerships with national and state coalitions, including self-advocacy groups.
- SSA should validate responses to annual Representative Payee Reports in a manner to identify and flag potential problems.
- In addition to SSA's current algorithm, the agency should use the following factors to identify payees in need of review:
  - Records documenting failure to return annual Representative Payee Reports on behalf of beneficiaries; issuance of overpayment notices; failure to report changes in beneficiary status; unreported beneficiary earnings; indication of payee providing housing or other services to beneficiary.
  - Reports of payees who submit Representative Payee Reports containing inconsistent information or payee reports for multiple beneficiaries that are identical in content.
  - Data from previous representative payee reviews to look for local trends and improper use of beneficiary payments.
  - Data showing a significant percentage of overpayments made to the beneficiaries of a particular representative payee.
- SSA should study whether the following sources of information should be included as factors in identifying payees in need of review:
  - Notices of findings regarding non-compliance by state licensing agencies and federal investigatory authorities such as the Centers for Medicare and Medicaid, Department of Justice, Department of Labor Wage and Hour Division, etc.
  - Information gathered from other sources such as external third party complaints that may indicate abuse, neglect, or financial exploitation; for example, reports from court systems, Child and Adult Protective Services, Long Term Care Ombudsmen, Protection and Advocacy agency reports, incident reports, media reports, and bankruptcy filings.
  - Data issued by probate/guardianship courts identifying guardians who fail to submit required guardianship reports.

### **If the Payee Errs**

- SSA should distinguish in regulation and policy "misuse" (benefits not used for the benefit of the individual) from "improper use" (benefits may not be put to their optimal use but still benefitted the individual). The agency should include a discussion of "improper use" in 20 CFR 404.2040, including examples, and provide training for payees and SSA staff on the difference between misuse and improper use.
- Payees who knowingly and willfully misuse benefits or defraud SSA should be subject to criminal liability under 42 U.S.C. §408 and §1383a.

- SSA should formalize its procedures to assure uninterrupted continuation of benefits once a determination has been made to disqualify a payee, or in the event that an individual becomes unable to serve as a payee (such as, due to death). SSA's regulations provide that "when we learn that your interest is not served by sending your benefit to your present representative payee...we will promptly stop sending your payment to the payee." and go on to say, "We will then send your benefit payment to an alternate payee or directly to you, until we find a suitable payee." (20 C.F.R. §§ 404.2050, 416.650). Under these regulations, SSA may only suspend payment if "we cannot find a suitable alternative representative payee before your next payment is due." Unfortunately, in some cases beneficiaries have experienced extended payment interruptions when SSA has not yet identified an alternate payee. We recommend that SSA clarify its procedures to emphasize direct payment when the agency has not yet identified an alternate payee.

### **Recommendations for Congressional Action**

- Congress should allow SSA to use program integrity funding for monitoring, oversight, and enforcement actions regarding representative payees.
- Congress should designate one or more Congressionally authorized government entities to monitor a sample of large organizational payees (not including payees who must be directly monitored by SSA under the Social Security Act), including additional "wild card" monitoring. Congress must appropriate funds sufficient to provide complete and thorough reviews.
- Congress should eliminate the "negligent failure" standard so SSA can provide restitution for all misused benefits. Prior to the Social Security Protection Act of 2004 (SSPA; P.L. 108-203), SSA provided restitution of misused benefits only where there was "negligent failure" by SSA to investigate or monitor a representative payee. The SSPA eliminated the "negligent failure" standard where misuse has occurred by any payee that is not an individual or is an individual who serves 15 or more beneficiaries. In these situations, SSA will repay the misused benefits to the person or the person's alternative representative payee (42 U.S.C. 405(j)(5); 20 C.F.R. § 404.2041). Unfortunately, the "negligent failure" standard remains in place for all other payees. This standard places an onerous burden of proof on the beneficiary that, in practical terms, makes it extremely difficult to obtain restitution from SSA. Congress should extend these protections by eliminating the "negligent failure" standard for all instances of misuse.
- Congress should appropriate funds for SSA to implement a demonstration project to evaluate how supported decision-making can be developed as an alternative to appointment of a representative payee, and as a "best practice" for certain populations who have a payee.
- Congress should eliminate the requirement that large payments of past-due SSI benefits for child beneficiaries be placed in dedicated accounts. These accounts are required to be kept separate from a child's continuing SSI benefits and can be used for fewer purposes than ongoing benefits. Distinguishing the purposes for which SSI can be used based on whether the benefits were paid when they were due or afterward is arbitrary, inefficient, and unnecessary.

- Congress should raise and inflation-index SSI resource limits and income exclusions, eliminate in-kind support and maintenance from consideration as a type of income, and allow for continuing SSI when a beneficiary is hospitalized for at least a calendar month but still has housing expenses. These changes will simplify the SSI program, increase program integrity, and reduce payees' reporting burden and SSA workloads.