

Social Security and Representative Payees

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The Social Security Administration (“SSA”) has long used the representative payee program to designate who will manage the funds of a minor or incapacitated beneficiary. As demand for this program is growing, the government is reviewing how the program functions and the role of a representative payee (also referred to as a “rep payee”).

The representative payee program requires that SSA benefits are managed outside the parameters of conventional legal planning. Conventionally, when children, adults with disabilities and elders need help handling their money, an attorney develops an estate plan to manage and preserve their funds. The plan may include setting up a trust, executing a durable power of attorney (if the individual has capacity to do so) or filing for conservatorship. However, when it comes to SSA benefits, none of these conventional techniques are recognized by SSA. SSA does not recognize the authority of a power of attorney or conservator. Instead, the SSA uses its own system for designating a party to manage the federal benefits of a minor or SSA beneficiary. This party is called a “representative payee.”

The Representative Payee program began in 1935, following the enactment of the 1935 Social Security Act. With the expansion of Social Security benefits, as well as the creation of the Supplemental Security Income (SSI) program in 1972, the need for representative payees increased dramatically. By the year 2000, approximately 13% of all beneficiaries had a designated representative payee. Today, the representative payee program helps almost 8 million SSA recipients manage their benefits. As the baby boomer generation joins the ranks of SSA beneficiaries, the need for representative payees will continue to grow.

Under the representative payee program, SSA presumes that a beneficiary has the capacity to manage his or her own benefits unless the beneficiary is either a minor or an adult who has been determined to be legally incapacitated. However, a representative payee may be appointed if SSA determines that an SSA beneficiary is unable to manage his or her funds. If a representative payee is needed, SSA will select an appropriate person to serve, based on preference lists. The top of the preference list for adults comprises a parent, legal guardian, spouse, or other relative with legal custody. These are followed by a person who either has custody or shows a strong concern for the well-being of the beneficiary. Last, a public or nonprofit corporation would be considered. As of December 2016, more than 63% of all representative payees were parents of the beneficiaries. SSA favors individual representative payees because there is a greater chance that they will have a close understanding of the beneficiaries’ financial needs.

Appropriate parties may apply to become a representative payee in person at a local Social Security office. The prospective representative payee must complete form SSA-11 to request to be selected as the representative payee, and must provide his or her Social Security number or employer identification number if the individual represents an organization.

In addition to managing the beneficiary’s funds, representative payees are responsible for holding the SSA benefit funds in an account that is separate from other monies owned by the beneficiaries, and they must file annual accountings. In practice, the accountings filed for SSA retirement or disability insurance benefits are much less complex than the accountings for SSI benefits, which are needs-based rather than based on an entitlement. Parents who serve as representative payees for a son or daughter with a disability, may find the accounting process burdensome because parents are often juggling reporting requirements and eligibility reviews for other needs-based programs such as Medicaid. On a positive note, parents may soon see a reduction in their representative payee reporting requirements. In January 2018, the U.S. House Ways and Means Social Security Subcommittee released a report which outlined recommendations for the challenges facing the Representative Payee Program. According to the Social Security Subcommittee chairman, Sam Johnson, the report “shows why we need to make changes to Social Security’s representative payee program now,” and “makes a number of commonsense recommendations to strengthen the program.” Specifically, the report recommends that Congress waive or reduce the reporting requirements for custodial parents and legal guardians of minor children, as well as spouses living with adult beneficiaries. Other recommendations in the report include re-evaluating the order of preference for representative payee selection, and developing strategies to inform the public about resources related to the representative payee program — including how to report suspected abuse.

The report is the result of a two-year investigation into the representative payee program with a goal of strengthening and improving its functionality. This signals anticipation of the growing demand for this program and, as a result, the importance of refining the management, oversight, and reporting requirements. While providing an SSA recipient with an opportunity to manage his or her own funds is often preferable, in certain cases the appointment of a representative payee is necessary to protect the beneficiary from being exploited or unintentionally wasting his or her benefits.

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