



June 22, 2022

Social Security: Are Benefits Paid to Incarcerated Individuals?

Background

Social Security is a work-related federal benefit program that is funded primarily by dedicated payroll taxes paid by covered workers and their employers. The program pays monthly cash benefits to eligible workers when they retire or become disabled and to the eligible family members of retired, disabled, or deceased workers. In general, because Social Security is a work-related contributory program, there are few restrictions on the payment of benefits to individuals who have established entitlement to benefits. An individual becomes entitled to benefits when he or she meets all of the eligibility requirements for benefits and files an application for benefits with the Social Security Administration (SSA). For background on Social Security, see CRS Report R42035, *Social Security Primer*.

One exception is the payment of benefits to individuals who are incarcerated. This In Focus explains what happens to an individual's Social Security benefit payments during a period of incarceration and to benefits paid to family members on the basis of that individual's work record, as well as other related issues.

The discussion focuses on benefits for individuals who are incarcerated (prisoners and certain other inmates of public institutions). Rules governing the nonpayment of benefits for incarcerated individuals generally also apply to fugitive felons and to individuals who are in violation of probation or parole. However, this In Focus does not address these individuals. Similarly, this In Focus does not address Supplemental Security Income (SSI) benefits with respect to incarcerated individuals. SSI is a separate need-based program that is also administered by SSA.

Are Benefits Paid to an Individual Who Is Incarcerated?

Stated generally, Social Security benefits are suspended when (1) a beneficiary is convicted of a criminal offense and sentenced to a period of confinement in a correctional facility or institution *and* (2) based on that conviction the beneficiary remains confined in a U.S. correctional facility or institution for more than 30 continuous days. See SSA's Program Operations Manual System (POMS), Section GN 02607.160: Title II Prisoner Suspension Provisions, at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0202607160>.

Social Security benefits are *not* suspended if a beneficiary is in custody at a correctional institution while awaiting trial. Conviction must occur before an individual's benefits are suspended. See SSA's POMS, Section GN 02607.200: Special Legal Considerations for Prisoner Suspensions, at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0202607200>.

Specific circumstances of confinement resulting in the suspension of benefits are outlined in the Social Security Act. In part, Section 202(x)(1)(A) of the Social Security Act states that, with respect to periods of confinement for more than 30 continuous days, no monthly Social Security benefits shall be paid to individuals who are:

confined in a jail, prison, or other penal institution or correctional facility pursuant to his [or her] conviction of a criminal offense,

confined by court order in an institution at public expense in connection with—

a verdict or finding that the individual is guilty but insane, with respect to a criminal offense,

a verdict or finding that the individual is not guilty of such an offense by reason of insanity,

a finding that such individual is incompetent to stand trial under an allegation of such an offense, or

a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence), [or]

immediately upon completion of confinement as described in [*the first condition above*] pursuant to conviction of a criminal offense an element of which is sexual activity, is confined by court order in an institution at public expense pursuant to a finding that the individual is a sexually dangerous person or a sexual predator or a similar finding[.]

Section 202(x) of the Social Security Act (Limitation on Payments to Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees) is at https://www.ssa.gov/OP_Home/ssact/title02/0202.htm. See also Title 42, Section 402(x), of the *U.S. Code*.

Section 204(a)(1)(B)(ii) of the Social Security Act prohibits the payment of any *retroactive* Social Security benefits to incarcerated individuals. Section 204 of the Social Security Act (Overpayments and Underpayments) is at https://www.ssa.gov/OP_Home/ssact/title02/0204.htm. See also Title 42, Section 404, of the *U.S. Code*.

Are Benefits Paid to Eligible Family Members?

Under Section 202(x)(2) of the Social Security Act, benefits paid to eligible family members (e.g., a spouse or a dependent child) on the basis of an incarcerated individual's work record continue to be paid as though the incarcerated individual were receiving benefits.

Congress first enacted restrictions on the payment of Social Security benefits to incarcerated individuals in 1980, and the restrictions were expanded over time. Under current law, stated generally, Social Security benefits are suspended when a beneficiary is convicted of a criminal offense and sentenced to a period of confinement in a correctional facility or institution. Based on that conviction, the individual must remain confined for more than 30 continuous days. Other circumstances of confinement also result in the suspension of Social Security benefits, as outlined in Section 202(x)(1)(A) of the Social Security Act.

How Does SSA Know When a Beneficiary Is Incarcerated?

Under Section 202(x)(3)(A) of the Social Security Act, federal, state, and local government agencies must provide to SSA, upon written request, the name and Social Security number of any individual incarcerated under the agency's jurisdiction if the Social Security commissioner requires the information to carry out the provisions of Section 202(x) of the Social Security Act.

In addition, Section 202(x)(3)(B)(i) of the Social Security Act authorizes an Incentive Payment Program in which SSA and institutions enter into voluntary agreements to identify incarcerated individuals who are receiving Social Security benefits. State and local correctional and mental health institutions provide information to SSA on a monthly basis concerning incarcerated individuals. SSA pays the institution up to \$400 for each individual whose Social Security benefits are suspended based on the information provided by the institution. For an incentive payment to be made, SSA must receive the information within certain time limits. See SSA's POMS, Section GN 02607.800: SSA's Title II and Title XVI Incentive Payment Programs, at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0202607800>.

How Does SSA Know When a Beneficiary Is Released?

Some institutions have a prerelease agreement with the local Social Security office. The agreement may be an informal oral agreement or a written agreement signed by both parties. In general, the purpose is to streamline the process for starting or re-starting benefits so that payments can begin as soon as possible after the individual is released. If there is a prerelease agreement, a representative for the institution (or the individual) can initiate contact with SSA before the individual's scheduled release date. Among other responsibilities, the institution notifies SSA when the individual is released.

If there is no prerelease agreement, the individual must contact SSA to notify the agency of his or her anticipated release date. The individual must also notify SSA when he or she is released and provide official prison release documents.

See SSA Publication No. 05-10133, *What Prisoners Need to Know*, and SSA Publication No. 05-10504, *Re-entering the Community After Incarceration—How We Can Help*.

What Happens to Benefit Payments When an Individual Is Released?

Generally, benefits that are withheld during a period of incarceration are not paid when the individual is released. (For an exception, see the following section.)

Going forward, benefits can be reinstated starting with the month following the month of the individual's release (if the individual continues to meet all of the requirements for benefit receipt). For example, if the individual is released in June, his or her benefits can be reinstated starting in July. Under SSA's retrospective payment system, the benefit due for July is payable in August. See SSA's POMS, Section GN 02607.840: Retirement, Survivors, and Disability Insurance (Title II) Reinstatement Policies for Prisoners, at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0202607840>.

What Happens to Benefits That Were Withheld If an Individual Is Exonerated?

Under Section 202(x)(1)(B)(iii) of the Social Security Act, benefits withheld during a period of incarceration are paid if (1) "a court of competent jurisdiction has found the individual not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the individual for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action)," or (2) "the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud."

SSA Resources

SSA provides a variety of resources on its website. See *Benefits After Incarceration: What You Need to Know* at <https://www.ssa.gov/reentry/benefits.htm>. This webpage provides links to SSA publications, frequently asked questions, and links to other (non-SSA) websites that provide a range of information for incarcerated individuals.

Dawn Nuschler, Specialist in Income Security

IF12138

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.