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Social Security: Representative Payees and Power of Attorney

Social Security beneficiaries and Supplemental Security Income (SSI) recipients (referred to herein as “beneficiaries” for both programs) may require additional help managing their finances and may grant *power of attorney* to family, friends, or professionals to act on their behalf. One common question is why individuals with power of attorney are not recognized by the Social Security Administration (SSA) as having authority to receive and manage beneficiaries’ Social Security or SSI payments.

Briefly, Treasury Department regulations do not recognize general powers of attorney for negotiating recurring federal benefit payments, including Social Security and SSI payments. Instead, SSA appoints *representative payees* (“payees”) to receive and manage program payments for beneficiaries whom the agency deems incapable of managing their own benefits. For some populations, granting power of attorney is more common than appointing a representative payee. A 2016 study found that approximately 63% of retirees age 70 or older with dementia or mild cognitive impairment had granted a health power of attorney, while about 9% with dementia and 2% with mild cognitive impairment had been assigned a payee.

This In Focus provides an overview of power of attorney and the underlying Treasury regulations regarding the use of power of attorney to negotiate Social Security and SSI payments. It also describes SSA’s payee designation and highlights the agency’s responsibilities for making beneficiary capability determinations, appointing payees, and monitoring payees to ensure proper use of beneficiary funds.

Power of Attorney

Power of attorney is a legal instrument that grants a third party the authority to make certain decisions on an individual’s behalf, such as decisions about finances or medical care. SSA explains, however, that power of attorney “does not lessen the rights of the individual and does not usually grant the third-party the right to manage the individual’s assets.”

Treasury does not recognize power of attorney for negotiating recurring benefit payments, including those from Social Security or SSI. The Social Security Act also generally prohibits the transfer of control of Social Security or SSI payments to individuals other than beneficiaries or their SSA-appointed payees. This means that an individual with power of attorney for someone else does not have the authority to manage that person’s Social Security or SSI payments unless SSA has also made the individual with power of attorney the beneficiary’s payee.

Treasury Regulations

SSA’s policy guidance cites Title 31, Section 240.17, of the *Code of Federal Regulations* as the rationale for not recognizing power of attorney. Paragraph (c) speaks to the need for a special power of attorney to manage recurring benefit payments, which would include Social Security and SSI payments:

Checks issued for classes of payments other than those specified in paragraph (b) of this section, **such as a recurring benefit payment**, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person (emphasis added).

Treasury explains part of the rationale behind the mandatory use of special powers of attorney in the final rule on Indorsement and Payment of Checks Drawn on the United States Treasury posted in the *Federal Register* on April 1, 2004:

This final rule retains the general provision that general powers of attorney may be used only to negotiate certain enumerated checks, the right to which does not expire upon the death of the payee/beneficiary. For all other checks, such as recurring benefit payments, a special power of attorney is required.... The reason for this decision is two-fold: first, a general power of attorney is more easily abused by the attorney-in-fact; and second, a special power of attorney must explicitly state that it does not purport to assign the right to receive payments to the attorney-in-fact or to any other person. Requiring use of a special power of attorney for payments such as recurring benefit payments ensures both that the intended recipient has a clear intent to authorize an attorney-in-fact to negotiate such payments, and that all parties seeking to rely on the power of attorney are aware that it cannot be used as a means of assigning the right to receive payment.

Representative Payees

A *payee* is a person or organization that SSA appoints to receive and manage Social Security or SSI benefits on behalf of an individual whom the agency deems incapable of doing so. A payee’s main duties are to use the benefits to pay for the current and future needs of the beneficiary and properly save any benefits not needed to meet current

needs. A payee must also keep records of expenses to provide an accounting of how benefits were used or saved.

SSA reported that, as of September 11, 2023, there were approximately 5.6 million payees serving 7.7 million beneficiaries and managing \$77.9 billion in annual benefits. According to SSA, in December 2022, 2.1% of adult Social Security beneficiaries had payees, including 1.0% of retired workers and 9.5% of workers with disabilities. During the same period, about 26.7% of adult SSI recipients had payees, including 36.5% of SSI recipients ages 18-64 and about 9.1% of recipients age 65 or older. SSA deems almost all minor children to require payees. In December 2022, 89.4% of children under age 18 receiving Social Security had payees, and 99.9% of children under age 18 receiving SSI had payees.

Appointing a Representative Payee

SSA is responsible for (1) determining a beneficiary's need for a payee; (2) selecting the most appropriate payee for a beneficiary requiring one; and (3) monitoring payees to ensure proper use of beneficiaries' funds. For a person with power of attorney to be appointed payee, SSA must determine that the beneficiary is incapable. SSA must then decide that the holder of power of attorney is in the best position to serve the beneficiary.

Determining a Beneficiary's Need for a Payee

Subject to current law and SSA regulations and policies, agency employees determine whether an individual is incapable and requires a payee. SSA presumes that legally competent adults can manage their own benefits unless information available to SSA suggests otherwise. The agency may consider legal, medical, or lay evidence when determining whether a beneficiary requires a payee. A past determination of (in)capability may be updated if SSA has reason to believe a beneficiary's circumstances and need for a payee have changed.

Selecting the Appropriate Payee

Once SSA has determined that an individual requires a payee, the agency must designate one. Potential payees must complete a payee application and be certified by SSA to receive beneficiaries' funds. Generally speaking, current law directs SSA to certify payees based on (1) an investigation of the person seeking to be a payee that includes a face-to-face interview (to the extent practicable) and (2) adequate evidence that payee certification is in the beneficiary's best interest. The investigation of a potential payee must:

- verify his or her identity;
- obtain information on criminal history involving felony convictions, including any attempt or conspiracy to commit a felony, or offenses resulting in imprisonment for more than one year; and
- determine whether the individual was previously revoked as a representative payee for misuse of funds.

A person with power of attorney interested in becoming an individual's payee must file a payee application, provide proof of the power of attorney, and be certified by SSA. SSA regulations dictate a preferred payee order of selection. Policy also states that the presence of a power of attorney indicates that a favorable, trusted relationship exists between a beneficiary and the person holding the power of attorney.

Payee Monitoring

Once appointed, a payee receives the beneficiary's payments and is given the authority to use them on the beneficiary's behalf. A payee is required to use benefits in the beneficiary's best interest and maintain records of income and expenses. The payee must inform SSA of any relevant program-specific changes that may affect the beneficiary's payment, which may include changes in earnings or other income, living arrangements, or family relationships (e.g., marriage, child custody). Additional requirements apply for payees of children receiving SSI. Payees may not collect fees from SSA or beneficiaries for their service, unless they are specifically approved in writing by SSA or are legal guardians court-authorized to charge a guardian fee.

Some payees must report to SSA on how they used beneficiaries' funds by completing an annual Representative Payee Report. Section 102 of the Strengthening Protections for Social Security Beneficiaries Act of 2018 (P.L. 115-165) eased reporting requirements for certain types of family members serving as payees. These payees must still keep records of how they spend or save beneficiaries' funds and provide these records to SSA if requested.

SSA uses the annual accounting process, along with site reviews and other types of reviews, to monitor payee performance. SSA may remove or replace a beneficiary's payee if the agency determines that the current payee is no longer suitable. If a payee misuses benefits, the payee must repay the misused funds. A payee convicted of misusing funds may be fined and imprisoned.

For Additional Information

For more information on Social Security, see CRS In Focus IF10426, *Social Security Overview*, and CRS Report R42035, *Social Security Primer*. For more information on SSI, see CRS In Focus IF10482, *Supplemental Security Income (SSI)*.

For more information on payees, see SSA, *A Guide for Representative Payees*, March 2022, <https://www.ssa.gov/pubs/EN-05-10076.pdf>; and CRS Report R46975, *Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions*.

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