



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Congressional Response Report

Interaction Between the Social
Security Administration's
Representative Payment and State
Guardianship Programs

A-09-18-50626 / March 2018

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

March 15, 2018

The Honorable Sam Johnson
Chairman, Subcommittee on
Social Security
Committee on Ways and Means
House of Representatives
Washington, DC 20515

The Honorable Patrick Meehan
House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Mr. Meehan:

In an October 24, 2017 letter, you asked that we review the interaction between the Social Security Administration's (SSA) representative payment and State guardianship programs. My office is committed to combating fraud, waste, and abuse in SSA's operations and programs. Thank you for bringing your concerns to my attention. The report highlights various facts pertaining to the issues raised in your letter. To ensure SSA is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have any questions concerning this matter, please call me or have your staff contact Walter Bayer, Congressional and Intragovernmental Liaison, at (202) 358-6319.

Sincerely,



Gale Stallworth Stone
Acting Inspector General

Enclosure

cc:
Commissioner of Social Security
General Counsel

Interaction Between the Social Security Administration's Representative Payment and State Guardianship Programs

A-09-18-50626



March 2018

Office of Audit Report Summary

Objective

To answer congressional questions about the interaction between the Social Security Administration's (SSA) representative payment and State guardianship programs.

Background

SSA appoints representative payees to receive and manage the payments of those beneficiaries who cannot manage or direct the management of their own benefits because of their youth or mental and/or physical impairments. A representative payee may be an individual or an organization. SSA selects representative payees when it would serve the beneficiaries' interests. Some beneficiaries may have other individuals hold power of attorney or serve as their legal guardian or conservator.

State laws over the appointment and oversight of guardians can vary significantly. A court order is usually required to appoint a legal guardian. If a court establishes a beneficiary is legally incompetent, SSA must select a representative payee for the beneficiary. If a court does not find a beneficiary is legally incompetent, SSA may select a representative payee if it determines the beneficiary is incapable of managing his/her benefits or the court order otherwise indicates the need for a representative payee.

Conclusions

- The *Privacy Act of 1974*, as amended, and State laws may limit SSA and State courts' ability to share information. SSA and State courts may encounter additional challenges—such as technical, economic, and operational barriers—in implementing data sharing.
- A beneficiary, representative payee, guardian, or other individual or organization generally notifies SSA when a guardian is appointed.
- Before selecting a representative payee, SSA must consider the applicant's relationship to the beneficiary and interest in the beneficiary's well-being as well as whether the applicant has custody of the beneficiary. Generally, a spouse or parent with custody of a beneficiary is the first priority while a guardian with custody of a beneficiary is the second priority.
- SSA policy requires that its employees consider several factors when it evaluates a representative payee applicant. This includes the applicant's relationship to, and custody of, the beneficiary; concern for a beneficiary's well-being; ability to handle his/her own affairs; past payee performance; and criminal history.
- When SSA does not select a guardian as the representative payee, it selects spouses, parents, and other relatives or individuals as well as public or nonprofit agencies or institutions; Federal or State institutions; and private, for-profit institutions.

TABLE OF CONTENTS

Objective	1
Background	1
Results of Review	2
The Barriers Preventing SSA and State Courts from Sharing Representative Payee and Guardianship Information	3
How SSA Becomes Aware that Beneficiaries Have a Guardian	4
Why SSA Does Not Select Guardians as Representative Payees	5
The Factors SSA Considers When Selecting a Representative Payee for Beneficiaries Who Have a Guardian	6
Whom SSA Selects as a Representative Payee When it Does Not Select a Guardian to Serve as the Payee	7
Conclusions	8
Appendix A – Congressional Request	A-1
Appendix B – Scope and Methodology	B-1

ABBREVIATIONS

eRPS	Electronic Representative Payee System
NCSC	National Center for State Courts
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration
U.S.C.	United States Code

OBJECTIVE

Our objective was to answer congressional questions about the interaction between the Social Security Administration's (SSA) representative payment and State guardianship programs.

BACKGROUND

SSA appoints representative payees to receive and manage the payments of those beneficiaries who cannot manage or direct the management of their own benefits because of their youth or mental and/or physical impairments. A representative payee may be an individual or an organization. SSA selects representative payees when it would serve the beneficiaries' interests.¹ Some beneficiaries may have other individuals hold power of attorney or serve as their legal guardian or conservator.²

State laws over the appointment and oversight of guardians can vary significantly.³ A court order is usually required to appoint a legal guardian. If a court establishes a beneficiary is legally incompetent, SSA must select a representative payee for the beneficiary.⁴ If a court does not find a beneficiary is legally incompetent, SSA may select a representative payee if it determines the beneficiary is incapable of managing his/her benefits or the court order otherwise indicates the need for a representative payee.⁵

On October 24, 2017, Social Security Subcommittee Chairman Sam Johnson and Representative Patrick Meehan requested that we review the interaction between SSA's representative payment and State guardianship programs (see Appendix A). They requested we determine the following.

1. The barriers preventing SSA and State courts from sharing representative payee and guardianship information.
2. How SSA becomes aware that beneficiaries have a guardian.
3. Why SSA does not select guardians as representative payees.
4. The factors SSA considers when selecting a representative payee for beneficiaries who have a guardian.
5. Whom SSA selects as a representative payee when it does not select a guardian to serve as the payee.

¹ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.130, Sec. A (January 31, 2006).

² A legal guardian or conservator is a third party appointed by a State court to manage the affairs of an individual who is not able to do so. State courts may use the terms "guardian" or "conservator." SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.139, Sec. A (April 15, 2016).

³ The term "guardian" in this report refers to both guardians and conservators.

⁴ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.023, Sec. A (January 26, 2017).

⁵ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.300 (April 6, 2015).

On December 5, 2017, Chairman Johnson and Representative Larson introduced legislation to improve and strengthen SSA’s representative payment program.⁶ This legislation includes a provision that requires SSA to contract with the Administrative Conference of the United States to conduct a study that includes

- an overview of potential opportunities for information sharing between SSA and State courts and relevant State agencies;
- a detailed analysis of the barriers to such information sharing, including any Federal or State statutory barriers;
- a description of how such information sharing would be implemented, including any additional infrastructure needed; and
- a description of any risks or other factors that SSA and the Congress should consider before implementing such information sharing.

RESULTS OF REVIEW

1. The *Privacy Act of 1974*, as amended, and State laws may limit SSA and State courts’ ability to share information. SSA and State courts may encounter additional challenges—such as technical, economic, and operational barriers—in implementing data sharing.
2. A beneficiary, representative payee, guardian, or other individual or organization generally notifies SSA when a guardian is appointed.
3. Before selecting a representative payee, SSA must consider the applicant’s relationship to the beneficiary and interest in the beneficiary’s well-being as well as whether the applicant has custody of the beneficiary. Generally, a spouse or parent with custody of a beneficiary is the first priority while a guardian with custody of a beneficiary is the second priority.
4. SSA policy requires that its employees consider several factors when it evaluates a representative payee applicant. This includes the applicant’s relationship to, and custody of, the beneficiary; concern for a beneficiary’s well-being; ability to handle his/her own affairs; past payee performance; and criminal history.
5. When SSA does not select a guardian as the representative payee, it selects spouses, parents, and other relatives or individuals as well as public or nonprofit agencies or institutions; Federal or State institutions; and private, for-profit institutions.

⁶ *Strengthening Protections for Social Security Beneficiaries Act of 2017*, House of Representatives Bill, 4547, 115th Congress (2017).

The Barriers Preventing SSA and State Courts from Sharing Representative Payee and Guardianship Information

According to SSA, it may only disclose representative payee and beneficiary information when authorized under applicable law. The *Privacy Act of 1974*, as amended, limits how SSA may share such information with State courts. Generally, a representative payee or beneficiary must provide written consent for SSA to disclose his/her information. In addition, the *Act* requires that SSA maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required by statute or executive order.⁷ Therefore, SSA may receive guardianship information from State courts and maintain such information in its records only when it needs the information to accomplish its business.⁸

SSA indicated it may have the legal authority to disclose information to third parties depending on the parties involved, the information to be disclosed, the purpose of the exchange, and how the parties intend to use/disclose the information. SSA also stated it would need to review the details of any proposed information sharing to determine whether an exception to the *Privacy Act* applies and whether it would otherwise be legally permissible. SSA does not have data-sharing agreements with State courts to provide information for beneficiaries who may have a court-appointed guardian.

State laws may also limit guardianship information that State courts can share with SSA. These laws may limit or prevent State courts from sharing with SSA information about beneficiaries who have a guardian. In addition, barriers may be different depending on which State court is disclosing the information. SSA informed us it would defer to State courts to advise it on whether any legal barriers would prevent State courts from disclosing guardianship information to SSA.

Even if the legal and privacy issues are resolved, SSA and State courts may encounter additional barriers in implementing information sharing. Some of these barriers are technical (the data are not collected or preserved, not in an electronic form, not in a compatible format, or only available in aggregate form). Other barriers may be economic (the cost of infrastructure, staffing, or other resources needed) or operational (developing a formal data sharing agreement with each State). SSA would need to weigh the costs and benefits of such an effort to implement data sharing of representative payee and guardianship information with State courts.

⁷ *Privacy Act of 1974*, 5 U.S.C. § 552a(e)(1) (1974).

⁸ *Privacy Act of 1974*, 5 U.S.C. § 552a(b)(3) (1974).

In November 2017, the National Center for State Courts (NCSC) submitted a request to SSA to exchange information between State courts and SSA's representative payment program.⁹ NCSC made this request to improve protections for beneficiaries under court-ordered guardianships and ensure guardians perform their financial duties. NCSC requested that SSA clarify policies and procedures and identify statutory or regulatory barriers that prohibit the exchange of information. If an information exchange between SSA and State courts is possible, NCSC proposed creating a Federal-State workgroup to develop common forms and data exchange protocols. As of January 2018, SSA was evaluating the request to disclose the information.

Finally, the December 5, 2017 legislation Chairman Johnson and Representative Larson proposed would require that SSA analyze the barriers to information sharing, describe how it would implement information sharing, identify infrastructure requirements, and describe any risks or other factors that SSA and the Congress should consider before implementation.

How SSA Becomes Aware that Beneficiaries Have a Guardian

SSA generally relies on beneficiaries, representative payees, guardians, and other individuals or organizations to notify it when a guardian is appointed. According to SSA, State courts generally do not notify SSA when they appoint a guardian for a beneficiary. In addition, State courts may not collect Social Security numbers, dates of birth, and other information that would help SSA identify the correct individual in its records.

During an initial claims application, SSA employees do not ask whether the claimant has a guardian unless he/she is a child or an adult who is alleged to be legally incompetent.¹⁰ However, when an individual or organization applies to be a representative payee, SSA employees are required to ask whether the (1) beneficiary has a court-appointed guardian, (2) representative payee applicant is a guardian, and (3) beneficiary is legally incompetent. If there is a guardian, SSA employees are required to obtain additional information about the guardian and his/her appointment.¹¹

According to SSA, State courts generally do not notify SSA when they remove or select a new guardian for a beneficiary. SSA would learn of the appointment or removal of a guardian when a beneficiary, current representative payee, guardian, or other individual or organization notifies it. SSA does not have a policy requirement to notify State courts when it selects or removes a representative payee who is also a beneficiary's guardian.

⁹ SSA, Form SSA-157, *Data Exchange Request Form (DXRF), Request for Information from SSA* (October 2015).

¹⁰ During the initial claims application for a child, SSA employees ask whether there is a legal representative or guardian for any of the children on the application. However, SSA employees generally do not ask whether an adult has a guardian. Instead, SSA learns an adult has a guardian typically when the guardian submits an application on the beneficiary's behalf. SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.070 (January 26, 2017) and SSA, *POMS, GN-General*, ch. GN 00204, subch. GN 00204.003, Sec. C.1 (June 15, 2015).

¹¹ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.110 (January 5, 2018).

Why SSA Does Not Select Guardians as Representative Payees

The *Social Security Act* requires that SSA select a representative payee applicant who will best serve the beneficiary's interests.¹² SSA is not required to appoint a legal guardian as a representative payee. Guardians are subject to the same suitability process as other representative payees. To become a representative payee, the individual or organization must complete an application and interview with an SSA employee. SSA uses the interview to evaluate the applicant's qualifications, reason for filing to be representative payee, and ability to carry out a payee's responsibilities.¹³

When SSA learns a beneficiary has a court-appointed legal guardian, it must obtain proof of his/her appointment and notify the guardian of the beneficiary's entitlement to benefits and the guardian's option to file an application to be the representative payee. If a State court appoints a legal guardian after SSA has selected a representative payee for a beneficiary, SSA must notify the guardian of the representative payee's name and address. If a guardian applies to be a representative payee, SSA should only appoint the guardian if he/she can better serve the beneficiary's interests.¹⁴

SSA policy requires that its employees consider several factors when determining the best representative payee, including the applicant's relationship to the beneficiary, interest in the beneficiary's well-being, and custody of the beneficiary. SSA employees should select the applicant best suited to serve as representative payee based on a preference list. A family member (such as a parent, spouse, or other relative) with custody of the beneficiary is the first priority while a legal guardian with custody or who shows strong concern for the beneficiary is the second priority. A family member can also be the court-appointed guardian. Regardless of the relationship or order of selection on the preference list, SSA evaluates each applicant individually to select the most suitable representative payee.¹⁵

The December 5, 2017 legislation Chairman Johnson and Representative Larson proposed would allow beneficiaries to designate their preferred representative payee in advance and improve the selection of payees by requiring that SSA assess the appropriateness of the preference list used to select representative payees.

¹² The *Social Security Act*, §§ 205(j)(1)(A), 1631(a)(2)(A)(ii), 42 U.S.C. §§ 405(j)(1)(A), 1383(a)(2)(A)(ii) (2006).

¹³ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.130 (January 31, 2006).

¹⁴ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.139 (April 15, 2016).

¹⁵ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.105 (June 21, 2017).

The Factors SSA Considers When Selecting a Representative Payee for Beneficiaries Who Have a Guardian

SSA considers the following factors when it evaluates a representative payee application.¹⁶

- Does the applicant show concern for the beneficiary's well-being?
- Does the applicant appear able to handle his/her own affairs?
- Is the applicant knowledgeable about the beneficiary's current and foreseeable needs?
- Does the applicant appear to have the beneficiary's best interests at heart and seem able to exercise good judgment?
- Does the applicant have custody of, or live near, the beneficiary?
- Has the applicant been convicted of a felony or misuse of benefits?
- Is there a family relationship between the applicant and beneficiary?
- Is there a financial relationship between the applicant and beneficiary?
- Is there a legal relationship between the applicant and beneficiary?

If a beneficiary is a child or legally incompetent and has a guardian, SSA must notify the guardian of any action that affects the beneficiary.¹⁷ According to SSA policy, the guardian may not always be the best representative payee candidate. SSA should evaluate a guardian's suitability to act as representative payee the same as any other applicant. If two applicants are equally qualified, SSA must consider the beneficiary's preference and the applicant's eagerness to serve and history of providing good service. Before selecting a new payee, SSA policy requires that its employees contact the current representative payee for his/her views about the possible payee change unless it is inappropriate to do so.¹⁸

¹⁶ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.130, Sec. B.1 (January 31, 2006).

¹⁷ SSA, *POMS, GN-General*, ch. GN 00503, subch. GN 00503.100, Sec. E (April 15, 2016); and SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.139, Sec. B (April 15, 2016).

¹⁸ SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.130, Sec. B.2 (January 31, 2006); and SSA, *POMS, GN-General*, ch. GN 00504, subch. GN 00504.100, Sec. B.1 (April 15, 2016).

Whom SSA Selects as a Representative Payee When it Does Not Select a Guardian to Serve as the Payee

According to SSA’s Electronic Representative Payee System (eRPS),¹⁹ as of November 2017, approximately 8 million beneficiaries had active representative payees. Of these, SSA had selected a guardian as the representative payee for 431,527 beneficiaries. Table 1 summarizes the guardians who served as representative payees and the number of adult and child beneficiaries in their care.

Table 1: Representative Payees Who Were Guardians

Type of Representative Payee	Adult Beneficiaries	Child Beneficiaries	Total
Spouse	4,367	6	4,373
Parent	115,518	18,883	134,401
Other relative	81,127	93,717	174,844
Public or nonprofit agency or institution	41,621	10,847	52,468
Federal or State institution	4,982	2,661	7,643
Private, for-profit institution	4,651	55	4,706
Other individual or organization	42,689	10,403	53,092
Total	294,955	136,572	431,527

Note: Representative payees who serve multiple beneficiaries may be counted more than once.

We also found that 85,726 beneficiaries had a guardian who was not serving as their representative payee. SSA selected spouses, parents, and other relatives or individuals; public or nonprofit agencies or institutions; Federal or State institutions; private, for-profit institutions; and other individuals or organizations to serve as the representative payee. Table 2 summarizes whom SSA selected as the representative payee when it did not select a guardian to serve as the payee and the number of adult and child beneficiaries in their care.

¹⁹ SSA’s eRPS is an integrated system of representative payee information about pending, selected, non-selected, and terminated representative payees. SSA employees use eRPS to take and process representative payee applications and make representative payee determinations. SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.107 (January 5, 2018); and SSA, *POMS, GN-General*, ch. GN 00502, subch. GN 00502.120 (April 15, 2016).

Table 2: Representative Payees Who Were Not Guardians

Type of Representative Payee	Adult Beneficiaries	Child Beneficiaries	Total
Spouse	146	0	146
Parent	1,978	1,408	3,386
Other relative	4,096	2,463	6,559
Public or nonprofit agency or institution	34,423	775	35,198
Federal or State institution	8,243	66	8,309
Private, for-profit institution	22,844	85	22,929
Other individual or organization	8,649	550	9,199
Total	80,379	5,347	85,726

Note: Representative payees who serve multiple beneficiaries may be counted more than once.

CONCLUSIONS

1. The *Privacy Act of 1974*, as amended, and State laws may limit SSA and State courts' ability to share information. SSA and State courts may encounter additional challenges—such as technical, economic, and operational barriers—in implementing data sharing.
2. A beneficiary, representative payee, guardian, or other individual or organization generally notifies SSA when a guardian is appointed.
3. Before selecting a representative payee, SSA must consider the applicant's relationship to the beneficiary and interest in the beneficiary's well-being as well as whether the applicant has custody of the beneficiary. Generally, a spouse or parent with custody of a beneficiary is the first priority while a guardian with custody of a beneficiary is the second priority.
4. SSA policy requires that its employees consider several factors when it evaluates a representative payee applicant. This includes the applicant's relationship to, and custody of, the beneficiary; concern for a beneficiary's well-being; ability to handle his/her own affairs; past payee performance; and criminal history.
5. When SSA does not select a guardian as the representative payee, it selects spouses, parents, and other relatives or individuals as well as public or nonprofit agencies or institutions; Federal or State institutions; and private, for-profit institutions.

 for

Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – CONGRESSIONAL REQUEST

KEVIN BRADY, TEXAS,
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BRANDON CASEY,
MINORITY CHIEF OF STAFF

October 24, 2017

Gale Stallworth Stone
Acting Inspector General
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21207

Dear Ms. Stone:

A recent study¹ raised questions about how the Social Security Administration's (SSA) representative payee program and state guardianship programs work for beneficiaries who have both a payee and a guardian. We are writing to request a follow up to this study to better understand the interaction between the representative payee program and guardianship programs.

In certain cases, individuals who have a representative payee to help manage their Social Security benefits also have a court-appointed guardian. While fewer than 1 percent of the general population has a guardian, between 5 and 11 percent of individuals with a representative payee have a guardian. In many of these cases, the guardian also serves as the payee. However, the study found that 15 percent of those with both a payee and a guardian have different people serving in these roles. We would like to better understand the interaction between the representative payee program and state guardianship programs. In particular, we are interested in understanding the following:

1. The Subcommittee's March 22, 2017 hearing raised concerns about limited information sharing between the SSA and state courts in cases where a Social Security beneficiary has a payee and a guardian. What do you see as the barriers preventing the SSA and state courts from sharing information?
2. Given the limited information sharing between the SSA and state courts, the SSA may not know that an individual who needs a representative payee already has a guardian. In cases where the SSA does know that the individual has a guardian, how does the agency become aware of this information?

¹ Anek Belbase and Geoffrey T. Sanzenbacher, "Guardianship and the Representative Payee Program," Center for Retirement Research at Boston College, August 2017. Available at: http://crr.bc.edu/wp-content/uploads/2017/08/wp_2017-8.pdf.

3. When the SSA is aware that an individual already has a guardian, what are some reasons that the SSA does not appoint the guardian as the payee?
4. How does the SSA weigh serving as an individual's guardian with other factors when selecting an individual's payee? In cases where the SSA does not choose the guardian to serve as the payee, who is the SSA selecting instead?

Thank you for your prompt attention to this request. Should you or your staff have any questions, please contact Amy Shuart, the Social Security Subcommittee Staff Director, at (202) 225-9263.

Sincerely,



Sam Johnson
Chairman
Subcommittee on Social Security



Patrick Meehan
Member of Congress

Appendix B – SCOPE AND METHODOLOGY

From the Social Security Administration’s (SSA) Electronic Representative Payee System (eRPS), we obtained a data extract of 517,253 beneficiaries with active representative payees who had a legal guardian as of November 2017. Of these, SSA selected the guardian as the representative payee for 431,527 beneficiaries and did not select the guardian as the representative payee for 85,726 beneficiaries.

To accomplish our objective, we

- reviewed the applicable sections of the *Social Security Act* and SSA’s Program Operations Manual System;
- reviewed prior reports and studies related to SSA’s representative payment and State guardianship programs;
- interviewed SSA employees from the Offices of Operations, Retirement and Disability Policy, and General Counsel; and
- reviewed queries from SSA’s eRPS, Master Beneficiary Record, and Supplemental Security Record.

We determined the computer-processed data were sufficiently reliable to meet our audit objective. We limited our review of internal controls to gaining an understanding of the interaction between SSA’s representative payment and State guardianship programs. We did not review internal controls at any States or representative payees.

We conducted audit work in Richmond, California, between November 2017 and January 2018. The principal entities audited were the Offices of the Deputy Commissioners for Retirement and Disability Policy and Operations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

MISSION

By conducting independent and objective audits, evaluations, and investigations, the Office of the Inspector General (OIG) inspires public confidence in the integrity and security of the Social Security Administration's (SSA) programs and operations and protects them against fraud, waste, and abuse. We provide timely, useful, and reliable information and advice to Administration officials, Congress, and the public.

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