



# SOCIAL SECURITY

Office of the Commissioner

FEB 22 2000

The Honorable Albert Gore, Jr.  
President of the Senate  
S-212 Capitol Building  
Washington, D.C. 20510

Dear Mr. President:

Enclosed for the consideration of the Congress is a draft bill to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees.

Currently, about 6.5 million Social Security and Supplemental Security Income program beneficiaries rely on representative payees to manage their monthly benefits. A representative payee can be either an individual, such as a parent, or an organization. Certain qualified organizations, known as "fee-for-service" organizations, are permitted to charge a fee from the beneficiary's payment for their representative payee services. In most cases the amount of the monthly fee can be no more than \$28.

When *any* payee has been determined to have misused an individual's benefits, the Social Security Administration (SSA) can reissue the benefits only in cases where negligent failure on SSA's part to investigate or monitor the payee resulted in the misuse. In virtually all other cases, the individual loses his or her funds unless SSA can obtain restitution of the misused benefits from the payee. Currently, SSA can seek restitution only through civil processes if the representative payee refuses to return the misused funds.

One provision in this bill would require SSA to reissue benefit payments (including any respective fees) in all cases when an organizational payee is found to have misused a beneficiary's funds without either a finding of negligence or restitution from the organizational payee. Requiring re-issuance of such misused benefit payments, including fees, would provide additional protection to the most vulnerable of beneficiaries -- those who have no family or friends willing or able to be a payee.

This new authority would enable SSA to restore promptly benefits that have been misused by a beneficiary's representative payee, thereby avoiding the hardship that can be caused by such a loss. And while no longer necessary to restore the lost benefits, SSA would, through all available avenues of legal recourse, continue to seek restitution of the misused funds from the former representative payee.

In addition to this change, the legislative proposal would include other provisions designed to increase the safeguards for beneficiaries with representative payees:

- **Require non-governmental fee-for-service organizational payees to be bonded and licensed, provided that licensing is available under State or local law.** (The requirement under current law is bonding *or* licensing.) This proposed requirement would add further safeguards to a beneficiary's funds. State licensing provides some oversight by the State into the organization's business practices, and bonding provides some assurance that a surety company has investigated the organization and approved it for the level of risk associated with the bond. The proceeds from redeemed bonds would reduce the costs to the program when re-issuing benefits in cases of representative payee misuse.
- **Provide that when an organization has been found to have misused an individual's benefits, the organization shall not qualify for the fee from that individual's benefits for months the payee misused the funds.** Requiring payees to return the fees charged for periods of misuse is reasonable because the payee was clearly not properly performing the service for which the fee was paid. Permitting the organization to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for an individual's current and future needs.
- **Provide that misused benefits (including any respective representative payee fees) would be treated as an overpayment to the payee and, therefore, subject to current SSA overpayment recovery authority.** Although SSA has been given expanded authority in the recovery of overpayments (such as tax refund offset, referral to contract collection agencies, notifying credit bureaus, and administrative offset of future federal benefit/payments), these tools cannot be used to recoup benefits misused by a representative payee. Providing that benefits misused by any representative payee would be an overpayment to the payee would provide SSA with additional means for recouping the misused payments. The proposal would also permit re-issuance of the benefits to the beneficiary (unless already re-issued by SSA). This change would improve the protection of all beneficiaries with payees, not just those with organizational payees.

This package of changes would bolster other efforts that SSA is initiating to help prevent misuse by organizational payees—including a program that provides for triennial ongoing onsite reviews of all fee-for-service payees, onsite reviews of randomly selected fee-for-service payees and other volume payees, annual verification that bonding or licensing continues to be met, and a review after 6 months for all new fee-for-service payees.

An enclosure to this letter provides a section-by-section summary.


We urge the Congress to give the enclosed draft bill its prompt and favorable consideration.

We estimate that the draft bill would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. We estimate that the draft bill's effects on direct spending would be negligible.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this draft bill to the Congress from the standpoint of the Administration's program.

I am sending an identical letter to the Honorable J. Dennis Hastert, Speaker of the House of Representative.

Sincerely,

  
Kenneth S. Apfel  
Commissioner  
of Social Security

Enclosures



# SOCIAL SECURITY

Office of the Commissioner

FEB 22 2000

The Honorable J. Dennis Hastert  
Speaker of the House  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a draft bill to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees.

Currently, about 6.5 million Social Security and Supplemental Security Income program beneficiaries rely on representative payees to manage their monthly benefits. A representative payee can be either an individual, such as a parent, or an organization. Certain qualified organizations, known as "fee-for-service" organizations, are permitted to charge a fee from the beneficiary's payment for their representative payee services. In most cases the amount of the monthly fee can be no more than \$28.

When *any* payee has been determined to have misused an individual's benefits, the Social Security Administration (SSA) can reissue the benefits only in cases where negligent failure on SSA's part to investigate or monitor the payee resulted in the misuse. In virtually all other cases, the individual loses his or her funds unless SSA can obtain restitution of the misused benefits from the payee. Currently, SSA can seek restitution only through civil processes if the representative payee refuses to return the misused funds.

One provision in this bill would require SSA to reissue benefit payments (including any respective fees) in all cases when an organizational payee is found to have misused a beneficiary's funds without either a finding of negligence or restitution from the organizational payee. Requiring re-issuance of such misused benefit payments, including fees, would provide additional protection to the most vulnerable of beneficiaries -- those who have no family or friends willing or able to be a payee.

This new authority would enable SSA to restore promptly benefits that have been misused by a beneficiary's representative payee, thereby avoiding the hardship that can be caused by such a loss. And while no longer necessary to restore the lost benefits, SSA would, through all available avenues of legal recourse, continue to seek restitution of the misused funds from the former representative payee.

In addition to this change, the legislative proposal would include other provisions designed to increase the safeguards for beneficiaries with representative payees:

- **Require non-governmental fee-for-service organizational payees to be bonded and licensed, provided that licensing is available under State or local law.** (The requirement under current law is bonding *or* licensing.) This proposed requirement would add further safeguards to a beneficiary's funds. State licensing provides some oversight by the State into the organization's business practices, and bonding provides some assurance that a surety company has investigated the organization and approved it for the level of risk associated with the bond. The proceeds from redeemed bonds would reduce the costs to the program when re-issuing benefits in cases of representative payee misuse.
- **Provide that when an organization has been found to have misused an individual's benefits, the organization shall not qualify for the fee from that individual's benefits for months the payee misused the funds.** Requiring payees to return the fees charged for periods of misuse is reasonable because the payee was clearly not properly performing the service for which the fee was paid. Permitting the organization to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for an individual's current and future needs.
- **Provide that misused benefits (including any respective representative payee fees) would be treated as an overpayment to the payee and, therefore, subject to current SSA overpayment recovery authority.** Although SSA has been given expanded authority in the recovery of overpayments (such as tax refund offset, referral to contract collection agencies, notifying credit bureaus, and administrative offset of future federal benefit/payments), these tools cannot be used to recoup benefits misused by a representative payee. Providing that benefits misused by any representative payee would be an overpayment to the payee would provide SSA with additional means for recouping the misused payments. The proposal would also permit re-issuance of the benefits to the beneficiary (unless already re-issued by SSA). This change would improve the protection of all beneficiaries with payees, not just those with organizational payees.

This package of changes would bolster other efforts that SSA is initiating to help prevent misuse by organizational payees—including a program that provides for triennial ongoing onsite reviews of all fee-for-service payees, onsite reviews of randomly selected fee-for-service payees and other volume payees, annual verification that bonding or licensing continues to be met, and a review after 6 months for all new fee-for-service payees.

An enclosure to this letter provides a section-by-section summary.

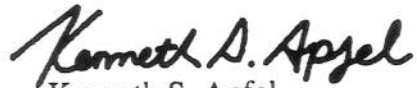
We urge the Congress to give the enclosed draft bill its prompt and favorable consideration.

We estimate that the draft bill would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. We estimate that the draft bill's effects on direct spending would be negligible.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this draft bill to the Congress from the standpoint of the Administration's program.

I am sending an identical letter to the Honorable Al Gore, President of the Senate.

Sincerely,

A handwritten signature in black ink that reads "Kenneth S. Apfel". The signature is written in a cursive style with a large initial 'K'.

Kenneth S. Apfel  
Commissioner  
of Social Security

Enclosures

**A Bill to Provide Additional Safeguards for Beneficiaries  
with Representative Payees**

Section-by-Section Summary

Authority to Re-issue Benefits Misused by Organizational  
Representative Payees

Section 1 would require the Commissioner of Social Security to re-issue title II and title XVI benefit payments (including any fees paid to the representative payee) when an organizational payee is found to have misused a beneficiary's funds. This re-issuance would be without regard to whether there has been negligent failure by the Commissioner to investigate/monitor the payee. (Current law requires the re-issuance of benefits in cases of misuse by an individual or organizational payee when there has been negligent failure by the Commissioner to investigate/monitor the payee.) This change would be effective for any case in which the Commissioner makes a misuse determination after December 31, 1999.

Bonding and Licensing Requirements Applicable to  
Nongovernmental Fee-for-Service Organizational  
Representative Payees

Section 2 would require non-governmental fee-for-service organizational payees to be bonded and licensed, provided that licensing is available. The bonding/licensing requirements would be promulgated in regulations issued by the Commissioner. (Current law requires bonding or licensing.) This change would be effective on the first day of the thirteenth month after the date of enactment.

Fee Forfeiture in Case of Benefit Misuse by Representative  
Payees

Section 3 would provide that in cases in which the Commissioner or a court of competent jurisdiction determines that an organization has misused an individual's benefits, the organization shall not qualify for the fee from that individual's benefits for months the payee misused the funds. This change would be effective for any case in which the Commissioner makes a misuse determination after December 31, 1999.

## Liability of Representative Payees for Misused Benefits

Section 4 would provide that for all non-governmental representative payees, any misused benefits (including any respective representative payee fees, but excluding any amount repaid by the representative payee) would be treated as an overpayment to the payee and, therefore, subject to current overpayment recovery authorities. Any amounts recouped through overpayment recovery actions would be reissued to the beneficiary or his/her alternative payee (unless already re-issued under the provisions of section 1 or under the restitution provisions relating to negligent failure). This change would be effective for any case in which the Commissioner makes a misuse determination after December 31, 1999.



A B I L L

To amend the Social Security Act to provide additional safeguards for beneficiaries with representative payees under the Old-Age, Survivors, and Disability Insurance program or the Supplemental Security Income program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO RE-ISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES.

(a) OASDI Amendment.--Section 205(j)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentence: "In any case in which a representative payee that is an organization (regardless of whether it is a 'qualified organization' within the meaning of paragraph (4)(B)) misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (6)(B).".

(b) SSI Amendment.--Section 1631(a)(2)(E) of such Act is amended by inserting after the first sentence the following new sentence: "In any case in which a representative payee that is an organization (regardless of whether it is a 'qualified organization' within the meaning of subparagraph (D)(ii)) misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall

make payment to the beneficiary or the beneficiary's alternative representative payee of an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (F)(ii)."

(c) Effective Date.--The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse after December 31, 1999.

SEC. 2. BONDING AND LICENSING REQUIREMENTS APPLICABLE TO  
NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE  
PAYEES.

(a) OASDI Amendment.--Section 205(j)(4)(B) of such Act is amended by striking "is bonded or licensed in each State in which it serves as a representative payee" and inserting "provides a bond that meets the requirements specified by the Commissioner of Social Security and is licensed in each State in which it serves as a representative payee (provided that licensing is available in such State)".

(b) SSI Amendment.--Section 1631(a)(2)(D)(ii)(I) of such Act is amended to read as follows:

"(I) provides a bond that meets the requirements specified by the Commissioner of Social Security and is licensed in each State in which it serves as a representative payee (provided that licensing is available in such State); and".

(c) Effective Date.--The amendments made by this section shall take effect on the first day of the thirteenth month

beginning after the date of the enactment of this Act.

SEC. 3. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY  
REPRESENTATIVE PAYEES.

(a) OASDI Amendment.--Section 205(j)(4)(A)(i) of such Act is amended--

(1) in the first sentence, by striking "A" and inserting "Except as provided in the next sentence, a"; and

(2) by inserting immediately before the second sentence the following new sentence: "A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization has misused all or part of the individual's benefit, and any amount collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6).".

(b) SSI Amendment.--Section 1631(a)(2)(D)(i) of such Act is amended--

(1) in the first sentence, by striking "A" and inserting "Except as provided in the next sentence, a"; and

(2) by inserting immediately before the second sentence the following new sentence: "A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the

organization has misused all or part of the individual's benefit, and any amount collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F).".

(c) Effective Date.--The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner makes the determination of misuse after December 31, 1999.

#### SEC. 4. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) OASDI Amendment.--Section 205(j) of such Act is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and inserting after paragraph (5) the following new paragraph:

"(6) (A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a State or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount,

the Commissioner shall certify an amount equal to the recovered amount to such individual or the individual's alternative representative payee.

"(B) The total of the amount certified to such individual or the individual's alternative representative payee under subparagraph (A) and the amount certified under paragraph (5) cannot exceed the total benefit amount misused by the representative payee with respect to such individual."

(b) SSI Amendment.--Section 1631(a)(2) of such Act is amended by redesignating subparagraphs (F), (G), and (H) as subparagraphs (G), (H), and (I), respectively, and inserting after subparagraph (E) the following new subparagraph:

"(F)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a State or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this paragraph, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or the individual's alternative representative payee.

"(ii) The total of the amount paid to such individual or the

individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) cannot exceed the total benefit amount misused by the representative payee with respect to such individual."

(c) Effective Date.--The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner makes the determination of misuse after December 31, 1999.