114TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 114–695
Part 1

REPRESENTATIVE PAYEE FRAUD PREVENTION ACT OF 2015

JULY 21, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany S. 1576]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (S. 1576) to amend title 5, United States Code, to prevent fraud by representative payees, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The Representative Payee Fraud Prevention Act of 2015, S. 1576, would protect against the embezzlement or conversion of federal retirement benefits by representative payees.

BACKGROUND AND NEED FOR LEGISLATION

Under current law, the embezzlement or conversion of federal Social Security and Veterans' benefits is a federal felony. However, an embezzlement or conversion of benefits provided under a federal retirement system is not a federal felony. The absence of a similar penalty for the embezzlement or conversion of benefits provided under the Federal Retirement System often discourages U.S. Attorneys from taking these cases because there is no specific federal crime.

S. 1576 protects against embezzlement or conversion of federal retirement benefits received under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) by individuals authorized by the Office of Personnel Management to receive such benefits (called representative payees).

A representative payee accepts federal retirement payments on behalf of a minor or an individual who is mentally incompetent or under other legal disability. A representative payee is responsible for acting in a recipient's best interest by using payments received under CSRS and FERS for the benefit of such recipient. Unfortunately, there have been cases where representative payees take advantage of their position and use federal retirement payments other than for the benefit of the intended recipient.

S. 1576 makes it federal felony to misuse federal retirement payments with penalties similar to embezzlement of federal Social Security and Veterans' benefits. S. 1576 imposes a fine under title 18, imprisonment for not more than 5 years, or both, for representative payees who embezzle or convert federal retirement benefits.

Finally, S. 1576 prohibits the Office of Personnel Management from authorizing a person who has been convicted of a violation of the new sections under this bill or convicted of violations of similar provisions regarding Social Security or Veterans' benefits from serving as a representative payee.

LEGISLATIVE HISTORY

S. 1576, the Representative Payee Fraud Prevention Action of 2015, was introduced on June 15, 2015, by Senator James Lankford (R–OK) and referred to the Senate Committee on Homeland Security and Governmental Affairs. Senator Heidi Heitkamp (D–ND) is an original cosponsor. On June 24, 2015, the Senate Committee on Homeland Security and Governmental Affairs considered S. 1576 and ordered the bill reported favorably by voice vote. On August 5, 2015, the Senate passed S. 1576 with amendments by unanimous consent. The bill was referred to the House Committee on Oversight and Government Reform on September 8, 2015.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the "Representative Payee Fraud Prevention Act of 2015."

Section 2. Representative payee fraud

This section adds new sections 8345a and 8466a in chapters 83 and 84, respectively, of title 5 of the United States Code that make it unlawful for any person authorized by the Office of Personnel Management to receive federal retirement payments on behalf of a minor or an individual who is mentally incompetent or under other legal disability (representative payee) to embezzle or in any manner convert all or any part of the amounts received from such payments to a use other than for the use and benefit of such minor or individual.

This section also establishes that such conduct is punishable by a fine under title 18 of the United States Code, or imprisonment for not more than 5 years, or both.

The section requires a representative payee's willful neglect or refusal to make and file proper accountings or reports concerning the amounts received from payments authorized under CSRS or FERS to be considered as prima facie evidence of embezzlement or conversion of such amounts.

The section makes technical and conforming amendments to the table of sections for chapters 83 and 84 of title 5 of the United States Code to reflect the new sections added.

The section prohibits the Office of Personnel Management from authorizing an individual as a representative payee to receive CSRS or FERS payments on behalf of a minor or individual with a legal disability if that person has been convicted of violating the new sections 8345a or 8466a created by this bill, 42 U.S.C. 408 or 1383a (similar prohibitions on embezzlement of Social Security benefits), or 38 U.S.C. 6101 (similar prohibitions on embezzlement of Veterans' benefits).

EXPLANATION OF AMENDMENTS

No amendments were offered during Full Committee consideration of S. 1576.

COMMITTEE CONSIDERATION

On October 9, 2015, the Committee met in open session and ordered reported favorably the bill, S. 1576, by unanimous consent, a quorum being present.

ROLL CALL VOTES

No recorded votes were requested or conducted during the Committee's consideration of S. 1576.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill protects against fraud of federal retirement benefits by representative payees. As such this bill does not relate to employment or access to public services and accommodations.

Statement of Oversight Findings and Recommendations of the Committee

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

Statement of General Performance Goals and Objectives

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to amend chapters 83 and 84 of title 5, United States Code, to make it unlawful for any person authorized by the Office of Personnel Management to receive federal retirement benefit payments on behalf of a minor or an individual who is mentally incompetent or under other legal disability to embezzle or in any manner convert such payments to a use other than for the use and benefit of such minor or individual.

Duplication of Federal Programs

No provision of this bill establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. § 551.

Federal Advisory Committee Act

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

Unfunded Mandate Statement

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

NOVEMBER 4, 2015.

Hon. JASON CHAFFETZ,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1576, the Representative Payee Fraud Prevention Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

S. 1576—Representative Payee Fraud Prevention Act of 2015

CBO estimates that implementing S. 1576 would have no significant cost to the federal government. Enacting the legislation could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects on direct spending or revenues would be insignificant.

S. 1576 would establish new federal crimes related to federal retiree representatives who misuse funds from the Federal Employees Retirement System and the Civil Service Retirement System. A federal retiree representative is a person or an organization that manages federal retirement benefits for recipients who are unable to do so themselves under the Representative Payee Program. As a result of enacting S. 1576, the government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that S. 1576 would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 1576 could be subject to civil and criminal fines, the federal government might collect additional fines if the legislation is enacted. Civil fines are recorded in the budget as revenues and deposited in the general fund of the Treasury. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and are available to spend without future appropriation action. CBO expects that any net effects associated with collecting and spending such penalties would not be significant in any year because of the relatively small number of cases likely to be affected.

CBO estimates that enacting S. 1576 would not increase direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2026.

S. 1576 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On July 10, 2015, CBO transmitted a cost estimate for S. 1576 as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 24, 2015. The two versions of the legislation are identical, and CBO's estimates of the budgetary effects are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART G—INSURANCE AND ANNUITIES

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CHAPTER 83—RETIREMENT

SUBCHAPTER I—GENERAL PROVISIONS

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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8345a. Embezzlement or conversion of payments.

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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§ 8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b)(1) Except as otherwise provided—

(A) an annuity of an employee or Member commences on the first day of the month after—

(i) separation from the service; or

(ii) pay ceases and the service and age requirements for title to annuity are met; and

(B) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(2) The annuity of—

(A) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(B) an employee or Member retiring under section 8337 of this title due to a disability;

shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating event provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(f) The Office may not authorize a person to receive payments on behalf of a minor or individual of legal disability under subsection (e) if that person has been convicted of a violation of—

(1) section 8345a or 8466a;

(2) section 208 or 1632 of the Social Security Act (42 U.S.C. 408 and 1383a); or

(3) section 6101 of title 38, United States Code.

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based on service of that individual shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of—

(A) any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation; or

(B) any court order or other similar process in the nature of garnishment for the enforcement of a judgment rendered against such employee, Member, or annuitant, for physically, sexually, or emotionally abusing a child.

In the event that the Office is served with more than 1 decree, order, or other legal process with respect to the same moneys due or payable to any individual, such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, other legal process, or agreement, and such additional information and documentation as the Office may prescribe.

(3) For the purpose of this subsection—

(A) the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(B) the term "judgment rendered for physically, sexually, or emotionally abusing a child" means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence; and

(C) the term "child" means an individual under 18 years of age.

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect during any one calendar year.

(3) Subject to paragraph (2) of this subsection, an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(5) For the purpose of this subsection, "State" means a State, the District of Columbia, or any territory or possession of the United States.

(l) Transfers of contributions and deposits authorized by section 408(a)(3) of the Foreign Service Act of 1980 shall be deemed to be a complete and final payment of benefits under this chapter.

§8345a. Embezzlement or conversion of payments

(a) IN GENERAL.—It shall be unlawful for any person that is authorized by the Office under section 8345(e) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability to embezzle or in any manner convert all or

any part of the amounts received from such payments to a use other than for the use and benefit of such minor or individual.

(b) PENALTY.—Any person who violates subsection (a) shall be fined under title 18, imprisoned for not more than 5 years, or both.

(c) PRIMA FACIE EVIDENCE.—Any willful neglect or refusal to make and file proper accountings or reports concerning the amounts received from payments authorized under section 8345(e) as required by law shall be taken to be sufficient evidence prima facie of the embezzlement or conversion of such amounts.

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER I—GENERAL PROVISIONS

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SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

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SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

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§ 8466. Application for benefits

(a) No payment of benefits based on the service of an employee or Member shall be made from the Fund unless an application for payment of the benefits is received by the Office before the one hundred and fifteenth anniversary of the birth of the employee or Member.

(b) Notwithstanding subsection (a), after the death of an employee, Member, or annuitant, or former employee or Member, a benefit based on the service of such employee, Member, or annuitant, or former employee or Member, shall not be paid under subchapter II or IV of this chapter unless an application therefor is received by the Office within 30 years after the death or other event which establishes the entitlement to the benefit.

(c) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(d) The Office may not authorize a person to receive payments on behalf of a minor or individual of legal disability under subsection (c) if that person has been convicted of a violation of—

(1) section 8345a or 8466a;

(2) section 208 or 1632 of the Social Security Act (42 U.S.C. 408 and 1383a); or

(3) section 6101 of title 38, United States Code.

§8466a. Embezzlement or conversion of payments

(a) IN GENERAL.—It shall be unlawful for any person that is authorized by the Office under section 8466(c) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability to embezzle or in any manner convert all or any part of the amounts received from such payments to a use other than for the use and benefit of such minor or individual.

(b) PENALTY.—Any person who violates subsection (a) shall be fined under title 18, imprisoned for not more than 5 years, or both.

(c) PRIMA FACIE EVIDENCE.—Any willful neglect or refusal to make and file proper accountings or reports concerning the amounts received from payments authorized under section 8466(c) as required by law shall be taken to be sufficient evidence prima facie of the embezzlement or conversion of such amounts.

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