

Calendar No. 167

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-95

REPRESENTATIVE PAYEE FRAUD
PREVENTION ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1576

TO AMEND TITLE 5, UNITED STATES CODE, TO PREVENT FRAUD
BY REPRESENTATIVE PAYEES.



JULY 27, 2015.—Ordered to be printed

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REPRESENTATIVE PAYEE FRAUD PREVENTION ACT OF
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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1576]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1576) to amend title 5, United States Code, to prevent fraud by representative payees having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1576, the Representative Payee Fraud Prevention Act of 2015, is to protect recipients of government federal retiree benefits from unscrupulous caretakers who take the retiree's payments and use them not for the retiree's benefit, but for their own. S. 1576 closes a loophole that currently exists in statute whereby the embezzlement or conversion of federal Social Security and Veterans' benefits by representative payees is a federal felony, but the same embezzlement or conversion of benefits provided to federal retirees through the federal retirement system is not.

II. BACKGROUND AND THE NEED FOR LEGISLATION

In addition to other federal benefits, federal employees may be eligible for federal retiree benefits processed through the Office of Personnel and Management (OPM): Federal Employees Retirement System (FERS) benefits,¹ and Civil Service Retirement System (CSRS) benefits.² Under federal statute, individuals who are minors, mentally incompetent, or under some other qualifying legal disability can have their benefits paid on their behalf through a court-appointed or agency-approved representative.³ Such individuals authorized to receive the payments under these circumstances are frequently referred to as “representative payees.”

The OPM Office of Inspector General (OIG) has reported to Congress an increase during recent years in the number of representative payees who take advantage of their position and use the money they receive for purposes other than to benefit the federal retiree.⁴ The OPM OIG has further reported that OPM has an extremely antiquated paper system for tracking representative payees, and does very little, if any, oversight work to ensure representative payees are using federal monies for the benefit of the retiree.⁵

From 2004 to 2005, Congress created penalties for anyone who takes the funds from Social Security Disability Insurance Benefits,⁶ Social Security Supplemental Income,⁷ or Veterans’ Benefits⁸ and fraudulently uses them for their own purposes, rather than on behalf of the intended recipient. These statutes criminalize such misuse of government benefits as a felony, punishable by a fine of up to \$250,000,⁹ up to five years in prison, or both.

No similar penalty was created for those representatives who misuse or embezzle CSRS or FERS benefits distributed by OPM. The absence of federal statutory authority often dissuades U.S. Attorneys from bringing to justice those appointed to take care of government retirees’ benefits when they use these funds for any purpose other than for the benefit of the retiree that they represent.¹⁰

In one example provided by the OPM OIG, Sakina Park represented that she was running a personal care facility out of her home in Philadelphia, housing at least seven people with mental-health problems.¹¹ However, Ms. Park did not have a license to do so.¹² At least one of the individuals alleged to be under her care was a federal annuitant entitled to OPM benefits, but mentally incompetent and unable to accept federal payments for herself.¹³ Ms. Park was listed as that individual’s representative payee, author-

¹ 5 U.S.C. § 8401, *et seq.*

² 5 U.S.C. § 8331, *et seq.*

³ 5 U.S.C. § 8466(c); 5 U.S.C. § 8345(e).

⁴ Meetings and written communication between OPM IG staff and Committee staff in May, June, and July, 2015.

⁵ Meetings between OPM IG staff and Committee staff in May, June, and July, 2015.

⁶ 42 U.S.C. § 408 (characterizing the conversion of another’s Social Security benefit payments as a felony, punishable by fine pursuant to title 18 and/or up to five years in prison).

⁷ 42 U.S.C. § 1383a.

⁸ 38 U.S.C. § 6101 (criminalizing fiduciary misuse of money or property intended for the veteran’s use).

⁹ 18 U.S.C. § 3571(b)(3).

¹⁰ Meetings between OPM IG staff and Committee staff in May, June, and July, 2015.

¹¹ Information provided to Committee staff by the OPM IG; *see also Court shuts down West Philly mental health facility, Philly.com (Jan. 18, 2008).*

¹² *See Court shuts down West Philly mental health facility, Philly.com (Jan. 18, 2008).*

¹³ Information provided to Committee staff by the OPM IG; *see also Court shuts down West Philly mental health facility, Philly.com (Jan. 18, 2008).*

ized to collect OPM benefits on the annuitant's behalf.¹⁴ In 2009, investigators arrived with police at the home and removed the occupants of the home.¹⁵ At that time, it was discovered that the annuitant was not present—Ms. Park stated that the retiree was “always running away” and investigators found she had been admitted to another facility after being found on a street unconscious.¹⁶ The OPM OIG determined that Ms. Park had received just under \$8,000 from OPM on the annuitant's behalf and did not use any of those funds to care for the annuitant.¹⁷

The local district attorney prosecuted Ms. Park in 2013 because she also embezzled Social Security benefits from other individuals that were supposed to be in her care. Federal prosecutors may be reluctant to prosecute the misuse of OPM benefit payments alone because while such conduct may violate state embezzlement or conversion laws, it is not a specific federal crime.¹⁸

The Committee believes this lack of federal penalty leaves some of its most vulnerable civil servants, including those who may be mentally incompetent, with less legal recourse when they are taken advantage of and their retirement funds are misused. This legislation criminalizes the misuse of CSRS and FERS funds in the same manner as already exists for Social Security and Veterans' benefits. In addition to prosecuting those who abscond with benefits intended for government retirees, S. 1576 prevents those who have committed this crime before (whether for CSRS, FERS, Social Security, or Veterans' benefits) from future services as a representative payee.

III. LEGISLATIVE HISTORY

Senators James Lankford and Heidi Heitkamp introduced S. 1576 on June 15, 2015. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Ron Johnson joined as a cosponsor on June 24, 2015.

The Committee considered S. 1576 at a business meeting on June 24, 2015. The Committee ordered the bill reported favorably by voice vote. Senators present for the vote on the bill were Senators Johnson, McCain, Lankford, Ayotte, Ernst, Sasse, Carper, Tester, Baldwin, and Heitkamp.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill's short title, the “Representative Payee Fraud Prevention Act of 2015.”

Section 2. Representative payee fraud

Paragraphs (a)(1) and (a)(2) of this section amend Title 5, chapter 83, subchapter III of the United States Code to add a new section 8345a following section 8345, and Title 5, chapter 84, sub-

¹⁴Information provided to Committee staff by the OPM IG.

¹⁵Information provided to Committee staff by the OPM IG; *see also Court shuts down West Philly mental health facility, Philly.com (Jan. 18, 2008)*.

¹⁶Information provided to Committee staff by the OPM IG.

¹⁷*Id.*

¹⁸Meetings between OPM IG staff and Committee staff in May, June, and July, 2015.

chapter VI of the United States Code to add a new section 8466a following section 8466, respectively.

New section 8345a makes it unlawful for any person authorized by the Office of Personnel Management to receive CSRS payments on behalf of a minor or other qualifying individual (a representative payee) to embezzle or in any manner convert any portion of the amount received from such payments to a use other than for the use and benefit of such individual. 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. A representative payee's willful neglect or refusal to make and file proper accountings concerning use of the received payments as required by law shall be considered prima facie evidence of embezzlement or conversion of such amounts.

New section 8466a makes it unlawful for any person authorized by the Office of Personnel Management to receive FERS payments on behalf of a minor or other qualifying individual (a representative payee) to embezzle or in any manner convert any portion of the amount received from such payments to a use other than for the use and benefit of such individual. 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. A representative payee's willful neglect or refusal to make and file proper accountings concerning use of the received payments as required by law shall be considered prima facie evidence of embezzlement or conversion of such amounts.

Paragraph (a)(3) makes technical and conforming amendments to the table of sections of chapters 83 and 84 of Title 5, United States Code, to reflect the new sections added in paragraphs (1) and (2).

Paragraph (b) prohibits an individual from being appointed as a representative payee to receive CSRS or FERS payments on behalf of a minor or individual with a legal disability if he or she 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).

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 10, 2015.

Hon. RON JOHNSON, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, 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 bill 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 relating 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 into 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.

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.

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

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1576 as

reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 5

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART G—INSURANCE AND ANNUITIES

* * * * *

CHAPTER 83—RETIREMENT

* * * * *

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

* * * * *

SEC. 8345. PAYMENTS OF BENEFITS; COMMENCEMENT, TERMINATION, AND WAIVER OF ANNUITY.

(a) * * *

* * * * *

(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.*

* * * * *

SEC. 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.

* * * * *

TITLE 5

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART G—INSURANCE AND ANNUITIES

* * * * *

CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

* * * * *

SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

* * * * *

SEC. 8466. APPLICATION FOR BENEFITS.

(a) * * *

* * * * *

(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.*

SEC. 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.*

* * * * *