

Calendar No. 148

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-56

REPRESENTATIVE PAYEE FRAUD
PREVENTION ACT OF 2019

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1430

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



JULY 15, 2019.—Ordered to be printed

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REPRESENTATIVE PAYEE FRAUD PREVENTION
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JULY 15, 2019.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1430]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1430) 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. 1430, the Representative Payee Fraud Prevention Act of 2019, is to protect recipients of 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. 1430 closes a loophole that currently exists in statute whereby the embezzlement or conversion of Social Security and Veterans' benefits by representative payees is a Federal felony, but the same embez-

zement or conversion of benefits provided to Federal retirees through the Federal retirement system is not.¹

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,² and Civil Service Retirement System (CSRS) benefits.³ 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.⁴ 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.⁵ The OPM OIG has further reported that OPM has an antiquated paper system for tracking representative payees.⁶

From 2004 to 2005, Congress created penalties for anyone who takes funds from Social Security Disability Insurance Benefits,⁷ Social Security Supplemental Income,⁸ or Veterans’ Benefits⁹ and fraudulently uses the funds 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, up to five years in prison, or both.¹⁰

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.¹¹

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.¹² However, Ms. Park did not have a license to do so.¹³ At least one of the individuals alleged to be under her care was an annuitant entitled to OPM benefits, but mentally incom-

¹ On July 27, 2015, the Committee approved S. 1576, the Representative Payee Fraud Prevention Act of 2015. That bill is substantially similar to S. 1430. Accordingly, this committee report is in large part a reproduction of Chairman Johnson’s committee report for S. 1576, S. Rep. No 114–95.

² 5 U.S.C. § 8401, *et seq.*

³ 5 U.S.C. § 8331, *et seq.*

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

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

⁶ Meetings between OPM IG staff and Committee staff in May, June, and July, 2015.

⁷ 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).

⁸ 42 U.S.C. § 1383a.

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

¹⁰ 18 U.S.C. § 3571(b)(3).

¹¹ Meetings between OPM IG staff and Committee staff in May, June, and July, 2015.

¹² Information provided to Committee staff by the OPM IG; *see also Court shuts down West Philly mental health facility*, Philly.com (Jan. 18, 2008).

¹³ *See Court shuts down West Philly mental health facility*, Philly.com (Jan. 18, 2008).

petent and unable to accept Federal payments for herself.¹⁴ Ms. Park was listed as that individual's representative payee, authorized to collect OPM benefits on the annuitant's behalf.¹⁵ In 2009, investigators arrived with police at the home and removed the occupants.¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹

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 that already exists for Social Security and Veterans' benefits. In addition to prosecuting those who abscond with benefits intended for government retirees, S. 1430 prevents those who have committed this crime before (whether for CSRS, FERS, Social Security, or Veterans' benefits) from serving in the future as a representative payee.

III. LEGISLATIVE HISTORY

Senators James Lankford, Gary Peters, and Kyrsten Sinema introduced S. 1430 on May 13, 2019. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1430 at a business meeting on May 15, 2019. The Committee ordered the bill reported favorably en bloc by voice vote as amended. Senators present for the vote on the bill were Senators Johnson, Paul, Lankford, Scott, Peters, Carper, Hassan, and Rosen. For the record only, Senators Portman, Romney, Hawley, and Sinema later asked to be recorded as a “yes” by unanimous consent.

Consistent with Committee rules, the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

¹⁴Information provided to Committee staff by the OPM OIG; see also *Court shuts down West Philly mental health facility*, Philly.com (Jan. 18, 2008).

¹⁵Information provided to Committee staff by the OPM OIG.

¹⁶Information provided to Committee staff by the OPM OIG; see also *Court shuts down West Philly mental health facility*, Philly.com (Jan. 18, 2008).

¹⁷Information provided to Committee staff by the OPM OIG.

¹⁸*Id.*

¹⁹Meetings between OPM OIG staff and Committee staff in May, June, and July, 2015.

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 2019."

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 include the definition of a "representative payee" as an individual appointed under section 8345(e)(1) and 8466(c)(1) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability.

Paragraphs (b)(1) and (b)(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, subchapter 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 OPM 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. If it is determined that a representative payee has embezzled or converted such payments, OPM is required to revoke the payments promptly and certify payment to another representative payee, or to the individual should it serve their best interest. 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.

New section 8466a makes it unlawful for any person authorized by OPM 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. If it is determined that a representative payee has embezzled or converted such payments, OPM is required to revoke the payments promptly and certify payment to another representative payee, or to the individual should it serve their best interest. 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.

Paragraph (b)(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 (b)(1) and (b)(2).

Subsection (c) clarifies that in the case that OPM suspends payment to a mentally incompetent or legally disabled individual until a representative payee is appointed, payments should resume as soon as practicable and include all amounts due.

Subsection (d) 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).

Section 3. Implementation

Paragraph (a) amends section 8348(a)(1)(B) of Title 5 (Civil Service Retirement and Disability Fund) to include administering fraud prevention under sections 8345, 8345a, 8466, 8466a as an eligible use of the funds.

Paragraph (b) requires OPM to issue regulations necessary to carry out the changes in law made by this bill within one year of the date of enactment. This subsection also authorizes OPM to issue additional regulations related to the administration of the representative payee program.

Section 4. Effective date

This section requires the legislation to take effect on the date of enactment and to apply on the effective date of the regulations promulgated under section 3(b)(1) of the bill.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 13, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1430, the Representative Payee Fraud Prevention Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 1430, Representative Payee Fraud Prevention Act of 2019			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 15, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	*	*
Revenues	0	*	*
Deficit Effect	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	n.e.
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
n.e. = not estimated; * = between -\$500,000 and \$500,000.			

S. 1430 would establish new federal crimes related to representative payees who misuse payments received from the Federal Employees Retirement System and the Civil Service Retirement System. (A representative payee is a person or an organization that manages federal retirement benefits for recipients who are unable to do so themselves.) Enacting S. 1430 would enable the government to pursue cases that it otherwise would not be able to prosecute. CBO expects that only a relatively small number of offenders would be affected, 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. 1430 could be subject to civil and criminal fines, the federal government might collect additional amounts. Civil fines are recorded in the budget as revenues. Criminal fines also are recorded as revenues, deposited in the Crime Victims Fund, and later spent without future appropriation action. CBO estimates that the revenues and spending associated with those penalties would not be significant in any year because of the relatively small number of cases likely to be affected.

The CBO staff contact for this estimate is Amber Marcellino. The estimate was reviewed 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. 1430 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in *roman*):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart G—Insurance and Annuities

* * * * *

Chapter 83—Retirement

* * * * *

Subchapter III—Civil Service Retirement

* * * * *

SEC. 8331. DEFINITIONS

(1) * * *

* * * * *

(31) “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years; [and]

(32) “Director” means the Director of the Office of Personnel Management[.]; and

(33) “representative payee” means a person (including an organization) appointed under section 8345(e)(1) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability.

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

(a) * * *

* * * * *

(e)(1) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person (including an organization) 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 dis-

ability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person (*including an organization*) who, in the judgment of the Office, is responsible for the care of the claimant and may appropriately receive such payments on behalf of the claimant, and the payment bars recovery by any other person. If the office determines that direct payment of a benefit to an individual mentally incompetent or under other legal disability would cause substantial harm to the individual, the Office may defer or suspend direct payment of the benefit until such time as the appointment of a representative payee is made. The office shall resume payment as soon as practicable, including all amounts due.

(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, 1383a); or
- (3) section 6101 of title 38, United States Code.

* * * * *

SEC. 8345a. EMBEZZLEMENT OR CONVERSION OF PAYMENTS

(a) **EMBEZZLING AND CONVERSION GENERALLY**

(1) **IN GENERAL.**—It shall be unlawful for a representative payee to embezzle or in any manner convert all or any part of the amounts received from payments received as a representative payee to a use other than for the use and benefit of the minor or individual on whose behalf such payments were received.

(2) **REVOCATION.**—If the Office determines that a representative payee has embezzled or converted payments as described in paragraph (1), the Office shall promptly—

(A) revoke the certification for payment of benefits to the representative payee; and

(B) certify payment—

(i) to another representative payee; or

(ii) if the interest of the individual under this title would be served thereby, to the individual.

(b) **PENALTY.**—Any person who violates subsection (a)(1) shall be fined under title 18, imprisoned for not more than 5 years, or both.

* * * * *

SEC. 8348. CIVIL SERVICE RETIREMENT AND DISABILITY FUND

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) * * *

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 or 8462 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title or subchapters II and IV of chapter 84 of this title, in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law), in mak-

ing an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title, *in administering fraud prevention under sections 8345, 8345a, 8466, 8466a of this title*, and in withholding taxes pursuant to section 3405 of title 26 or section 8345(k) or 8469 of this title;

* * * * *

CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

* * * * *

Subchapter I—General Provisions

* * * * *

SEC. 8401. DEFINITIONS

(1) * * *

* * * * *

(37) the term “revised annuity employee” means any individual who—

(A) * * *

(B) after December 31, 2012, and before January 1, 2014, becomes employed as an employee or becomes a Member covered under this chapter performing service which is creditable service under section 8411; [and]

(38) the term “further revised annuity employee means any individual who—

(A) * * *

(i) * * *

(ii) * * *

(iii) * * *

(B) after December 31, 2013, becomes employed as an employee or becomes a Member covered under this chapter performing service which is creditable service under section 8411[.]; and

(39) “representative payee” means a person (including an organization) appointed under section 8466(c)(1) to receive payments on behalf of a minor or an individual mentally incompetent or under other legal disability.

* * * * *

Subchapter VI—General and Administrative Provisions

* * * * *

SEC. 8466. APPLICATION FOR BENEFITS

(a) * * *

(b) * * *

(c)

(1) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person (including an organization) 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 (*including an organization*) who, in the judgment of the Office, is responsible for the care of the claimant, *and may appropriately receive such payments on behalf of the claimant, and the payment bars recovery by any other person. If the office determines that direct payment of a benefit to an individual mentally incompetent or under other legal disability would cause substantial harm to the individual, the Office may defer or suspend direct payment of the benefit until such time as the appointment of a representative payee is made. The office shall resume payment as soon as practicable, including all amounts due.*

(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, 1383a); or*

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

SEC. 8466a. EMBEZZLEMENT OR CONVERSION OF PAYMENTS

(a) *EMBEZZLING AND CONVERSION GENERALLY.—*

(1) *IN GENERAL.—It shall be unlawful for a representative payee to embezzle or in any manner convert all or any part of the amounts received from payments received as a representative payee to a use other than for the use and benefit of the minor or individual on whose behalf such payments were received.*

(2) *REVOCATION.—If the Office determines that a representative payee has embezzled or converted payments as described in paragraph (1), the Office shall promptly—*

(A) *revoke the certification for payment of benefits to the representative payee; and*

(B) *certify payment—*

(i) *to another representative payee; or*

(ii) *if the interest of the individual under this title would be served thereby, to the individual.*

(b) *PENALTY.—Any person who violates subsection (a)(1) shall be fined under title 18, imprisoned for not more than 5 years, or both.*

* * * * *