

formation as necessary in order to ensure that the benefits are provided only to qualified individuals (or their representative payees) in correct amounts.

(Aug. 14, 1935, ch. 531, title VIII, §806, as added Pub. L. 106-169, title II, §251(a), Dec. 14, 1999, 113 Stat. 1846.)

Editorial Notes

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1007. Representative payees

(a) In general

If the Commissioner of Social Security determines that the interest of any qualified individual under this subchapter would be served thereby, payment of the qualified individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the qualified individual, either directly to the qualified individual, or for his or her use and benefit, to another person (the meaning of which term, for purposes of this section, includes an organization) with respect to whom the requirements of subsection (b) have been met (in this section referred to as the qualified individual's "representative payee"). If the Commissioner of Social Security determines that a representative payee has misused any benefit paid to the representative payee pursuant to this section, 405(j) of this title, or section 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke the person's designation as the qualified individual's representative payee under this subsection, and shall make payment to an alternative representative payee or, if the interest of the qualified individual under this subchapter would be served thereby, to the qualified individual.

(b) Examination of fitness of prospective representative payee

(1) Any determination under subsection (a) to pay the benefits of a qualified individual to a representative payee shall be made on the basis of—

(A) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of the determination and shall, to the extent practicable, include a face-to-face interview with the person (or, in the case of an organization, a representative of the organization); and

(B) adequate evidence that the arrangement is in the interest of the qualified individual.

(2) As part of the investigation referred to in paragraph (1), the Commissioner of Social Security shall—

(A) require the person being investigated to submit documented proof of the identity of the person;

(B) in the case of a person who has a social security account number issued for purposes of the program under subchapter II or an employer identification number issued for purposes of the Internal Revenue Code of 1986, verify the number;

(C) determine whether the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(E) obtain information concerning whether such person is a person described in section 1004(a)(2) of this title;

(F) determine whether payment of benefits to the person in the capacity as representative payee has been revoked or terminated pursuant to this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI, respectively, and

(G) determine whether such person has been convicted (and not subsequently exonerated), under Federal or State law, of a felony provided under paragraph (4), or of an attempt or a conspiracy to commit such a felony.

(3) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(A) such person is described in section 1004(a)(2) of this title,

(B) such person has information that is necessary for the officer to conduct the officer's official duties, and

(C) the location or apprehension of such person is within the officer's official duties.

(4) The felony crimes provided under this paragraph, whether an offense under State or Federal law, are the following:

(A) Human trafficking, including as prohibited under sections 1590 and 1591 of title 18.

(B) False imprisonment, including as prohibited under section 1201 of title 18.

(C) Kidnapping, including as prohibited under section 1201 of title 18.

(D) Rape and sexual assault, including as prohibited under sections 2241, 2242, 2243, and 2244 of title 18.

(E) First-degree homicide, including as prohibited under section 1111 of title 18.

(F) Robbery, including as prohibited under section 2111 of title 18.

(G) Fraud to obtain access to government assistance, including as prohibited under sections 287, 1001, and 1343 of title 18.

(H) Fraud by scheme, including as prohibited under section 1343 of title 18.

(I) Theft of government funds or property, including as prohibited under section 641 of title 18.

(J) Abuse or neglect, including as prohibited under sections 111, 113, 114, 115, 116, or 117 of title 18.

(K) Forgery, including as prohibited under section 642 and chapter 25 (except section 512) of title 18.

(L) Identity theft or identity fraud, including as prohibited under sections 1028 and 1028A of title 18.

The Commissioner of Social Security may promulgate regulations to provide for additional felony crimes under this clause.

(5)(A) For the purpose of carrying out the activities required under paragraph (2) as part of the investigation under paragraph (1)(A), the Commissioner may conduct a background check of any individual seeking to serve as a representative payee under this subsection and may disqualify from service as a representative payee any such individual who fails to grant permission for the Commissioner to conduct such a background check.

(B) The Commissioner may revoke certification of payment of benefits under this subsection to any individual serving as a representative payee on or after January 1, 2019 who fails to grant permission for the Commissioner to conduct such a background check.

(c) Requirement for maintaining lists of undesirable payees

The Commissioner of Social Security shall establish and maintain lists which shall be updated periodically and which shall be in a form that renders such lists available to the servicing offices of the Social Security Administration. The lists shall consist of—

(1) the names and (if issued) social security account numbers or employer identification numbers of all persons with respect to whom, in the capacity of representative payee, the payment of benefits has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI, respectively; and

(2) the names and (if issued) social security account numbers or employer identification numbers of all persons who have been convicted of a violation of section 408, 1011, or 1383a of this title.

(d) Persons ineligible to serve as representative payees

(1) In general

The benefits of a qualified individual may not be paid to any other person pursuant to this section if—

(A) the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(B) except as provided in paragraph (2), payment of benefits to the person in the capacity of representative payee has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(ii)¹ of this title by reason of misuse of funds paid as benefits under this

subchapter, subchapter II, or subchapter XVI, respectively;

(C) except as provided in paragraph (2)(B), the person is a creditor of the qualified individual and provides the qualified individual with goods or services for consideration;

(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction;

(E) such person is a person described in section 1004(a)(2) of this title,

(F) except as provided in paragraph (2)(D), such person has previously been convicted (and not subsequently exonerated) as described in subsection (b)(2)(G), or

(G) such person's benefits under this subchapter, subchapter II, or subchapter XVI are certified for payment to a representative payee during the period for which the individual's benefits would be certified for payment to another person.

(2) Exemptions

(A) The Commissioner of Social Security may prescribe circumstances under which the Commissioner of Social Security may grant an exemption from paragraph (1) to any person on a case-by-case basis if the exemption is in the best interest of the qualified individual whose benefits would be paid to the person pursuant to this section.

(B) Paragraph (1)(C) shall not apply with respect to any person who is a creditor referred to in such paragraph if the creditor is—

(i) a relative of the qualified individual and the relative resides in the same household as the qualified individual;

(ii) a legal guardian or legal representative of the individual;

(iii) a facility that is licensed or certified as a care facility under the law of the political jurisdiction in which the qualified individual resides;

(iv) a person who is an administrator, owner, or employee of a facility referred to in clause (iii), if the qualified individual resides in the facility, and the payment to the facility or the person is made only after the Commissioner of Social Security has made a good faith effort to locate an alternative representative payee to whom payment would serve the best interests of the qualified individual; or

(v) a person who is determined by the Commissioner of Social Security, on the basis of written findings and pursuant to procedures prescribed by the Commissioner of Social Security, to be acceptable to serve as a representative payee.

(C) The procedures referred to in subparagraph (B)(v) shall require the person who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(i) the person poses no risk to the qualified individual;

(ii) the financial relationship of the person to the qualified individual poses no substantial conflict of interest; and

¹ So in original. Probably should be “1383(a)(2)(A)(iii)”.

(iii) no other more suitable representative payee can be found.

(D)(i) With respect to any person described in clause (II)—

(I) subsection (b)(2)(G) shall not apply; and

(II) the Commissioner may grant an exemption from the provisions of paragraph (1)(F) if the Commissioner determines that such exemption is in the best interest of the individual entitled to benefits.

(ii) A person is described in this clause if the person—

(I) is the custodial spouse of the beneficiary for whom the person applies to serve;

(II) is the custodial court appointed guardian of the beneficiary for whom the person applies to serve; or

(III) received a presidential or gubernatorial pardon for the relevant conviction.

(e) Deferral of payment pending appointment of representative payee

(1) In general

Subject to paragraph (2), if the Commissioner of Social Security makes a determination described in the first sentence of subsection (a) with respect to any qualified individual's benefit and determines that direct payment of the benefit to the qualified individual would cause substantial harm to the qualified individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of the benefit to the qualified individual, until such time as the selection of a representative payee is made pursuant to this section.

(2) Time limitation

(A) In general

Except as provided in subparagraph (B), any deferral or suspension of direct payment of a benefit pursuant to paragraph (1) shall be for a period of not more than 1 month.

(B) Exception in the case of incompetency

Subparagraph (A) shall not apply in any case in which the qualified individual is, as of the date of the Commissioner of Social Security's determination, legally incompetent under the laws of the jurisdiction in which the individual resides.

(3) Payment of retroactive benefits

Payment of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the qualified individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the qualified individual.

(f) Hearing

Any qualified individual who is dissatisfied with a determination by the Commissioner of Social Security to make payment of the qualified individual's benefit to a representative payee under subsection (a) of this section or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Se-

curity to the same extent as is provided in section 1009(a) of this title, and to judicial review of the Commissioner of Social Security's final decision as is provided in section 1009(b) of this title.

(g) Notice requirements

(1) In general

In advance, to the extent practicable, of the payment of a qualified individual's benefit to a representative payee under subsection (a), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to so make the payment. The notice shall be provided to the qualified individual, except that, if the qualified individual is legally incompetent, then the notice shall be provided solely to the legal guardian or legal representative of the qualified individual.

(2) Specific requirements

Any notice required by paragraph (1) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as the qualified individual's representative payee, and shall explain to the reader the right under subsection (f) of the qualified individual or of the qualified individual's legal guardian or legal representative—

(A) to appeal a determination that a representative payee is necessary for the qualified individual;

(B) to appeal the designation of a particular person to serve as the representative payee of the qualified individual; and

(C) to review the evidence upon which the designation is based and to submit additional evidence.

(h) Accountability monitoring

(1) In general

In any case where payment under this subchapter is made to a person other than the qualified individual entitled to the payment, the Commissioner of Social Security shall establish a system of accountability monitoring under which the person shall report not less often than annually with respect to the use of the payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing the reports in order to identify instances in which persons are not properly using the payments.

(2) Special reports

Notwithstanding paragraph (1), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of a qualified individual, if the Commissioner of Social Security has reason to believe that the person receiving the payments is misusing the payments.

(3) Eligibility for exemption

(A) Paragraph (1) shall not apply in any case where the other person to whom such payment is made is the spouse of the individual entitled to such payment.

(B) The Commissioner of Social Security shall establish and implement procedures as

necessary for the Commissioner to determine the eligibility of such parties for the exemption provided in subparagraph (A). The Commissioner shall prescribe such regulations as may be necessary to determine eligibility for such exemption.

(4) Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting

In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.

(5) Maintaining lists of payees

The Commissioner of Social Security shall maintain lists which shall be updated periodically of—

(A) the name, address, and (if issued) the social security account number or employer identification number of each representative payee who is receiving benefit payments pursuant to this section, section 405(j) of this title, or section 1383(a)(2) of this title; and

(B) the name, address, and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this section, section 405(j) of this title, or section 1383(a)(2) of this title.

(6) Maintaining lists of agencies

The Commissioner of Social Security shall maintain lists, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this section and which are located in the jurisdiction in which any qualified individual resides.

(i) Restitution

In any case where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the qualified individual or the individual's alternative representative payee of an amount equal to the misused benefits. In any case in which a representative payee that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II, subchapter XVI, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative rep-

resentative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (7)(2). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(j) Misuse of benefits

For purposes of this subchapter, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person under this subchapter and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term "use and benefit" for purposes of this subsection.

(k) Periodic onsite review

(1) In general

In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II or subchapter XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 405(j) of this title, or section 1383(a)(2) of this title in any case in which—

(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

(2) Report

Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(A) the number of such reviews;

(B) the results of such reviews;

(C) the number of cases in which the representative payee was changed and why;

(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(E) the number of cases discovered in which there was a misuse of funds;

(F) how any such cases of misuse of funds were dealt with by the Commissioner;

(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(H) such other information as the Commissioner deems appropriate.

(I) Liability for misused amounts

(1) In general

If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, 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 subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

(2) Limitation

The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(Aug. 14, 1935, ch. 531, title VIII, §807, as added Pub. L. 106-169, title II, §251(a), Dec. 14, 1999, 113 Stat. 1846; amended Pub. L. 108-203, title I, §§101(b), 102(b)(2), 103(b), 105(b), 106(b), Mar. 2, 2004, 118 Stat. 495, 499, 501, 504, 506; Pub. L. 115-165, title I, §102(b), title II, §§202(b), 203(b), Apr. 13, 2018, 132 Stat. 1260, 1268, 1272.)

Editorial Notes

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(B), (3), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2018—Subsec. (b)(2)(G). Pub. L. 115-165, §202(b)(1)(A), added subpar. (G).

Subsec. (b)(4), (5). Pub. L. 115-165, §202(b)(1)(B), added pars. (4) and (5).

Subsec. (d)(1)(F). Pub. L. 115-165, §202(b)(2)(A), added subpar. (F).

Subsec. (d)(1)(G). Pub. L. 115-165, §203(b), added subpar. (G).

Subsec. (d)(2)(D). Pub. L. 115-165, §202(b)(2)(B), added subpar. (D).

Subsec. (h)(3) to (6). Pub. L. 115-165, §102(b), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

2004—Subsec. (a). Pub. L. 108-203, §101(b)(3), substituted “for his or her use and benefit” for “for his or her benefit”.

Subsec. (b)(2)(D) to (F). Pub. L. 108-203, §103(b)(1), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (b)(3). Pub. L. 108-203, §103(b)(2), added par. (3).

Subsec. (d)(1)(D), (E). Pub. L. 108-203, §103(b)(3), added subpars. (D) and (E).

Subsec. (h)(3) to (5). Pub. L. 108-203, §106(b), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (i). Pub. L. 108-203, §101(b)(1), inserted second and third sentences.

Subsec. (j). Pub. L. 108-203, §101(b)(2), added subsec. (j).

Subsec. (k). Pub. L. 108-203, §102(b)(2), added subsec. (k).

Subsec. (l). Pub. L. 108-203, §105(b), added subsec. (l).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 202(b) of Pub. L. 115-165 applicable to any individual appointed to serve as a representative payee pursuant to this section on or after Jan. 1, 2019, subject to provisions relating to prior appointments, see section 202(d) of Pub. L. 115-165, set out as a note under section 405 of this title.

Amendment by section 203(b) of Pub. L. 115-165 applicable to any individual appointed to serve as a representative payee under this subchapter on or after Jan. 1, 2019, with provisions relating to prior appointments, see section 203(d) of Pub. L. 115-165, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b) of Pub. L. 108-203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 103(b) of Pub. L. 108-203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 105(b) of Pub. L. 108-203 applicable to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 106(b) of Pub. L. 108-203 effective 180 days after Mar. 2, 2004, see section 106(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

§ 1008. Overpayments and underpayments

(a) In general

Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, as follows:

(1) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which the overpaid person (if a qualified individual) is entitled, or shall require the overpaid person or his or her estate to refund the amount in excess of the correct amount, or, if recovery is not obtained under these two methods, shall seek or pursue recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury, as authorized under section 3720A of title 31.