

Social Security Advisory Board Statement on the Supplemental Security Income Program

2019

Public Law 104-193 requires that members of the Social Security Advisory Board (“Board”) be given an opportunity, either individually or jointly, to include their views in the Social Security Administration’s (SSA) annual report to the President and the Congress on the Supplemental Security Income (SSI) program. The Board has asked SSA to include the following discussion of SSI dedicated accounts in this year’s annual report.

Introduction

Dedicated accounts are separate accounts required for holding some lump-sum past-due payments owed to children receiving SSI. The funds held in dedicated accounts are subject to spending restrictions not applicable to other SSI payments. The accounts are triggered by, among other things, delays in determining SSI eligibility that qualify children for large initial back payments that may otherwise disqualify them from the program under the income and resource limit. These back payments are considered “past-due” per agency policy because they are payments to which SSA has determined recipients are eligible, but that are paid sometime after recipients became eligible to receive them.¹ In 2019, the minimum value of past-due payments requiring a dedicated account is \$4,626 (six times \$771, the monthly Federal Benefit Rate (FBR) for an individual).² The 31,497 active, non-zero dedicated accounts, as of February 2019, make up just 2.8 percent of child cases in the SSI program³ and hold a combined balance of \$58,761,319.41, an average balance of \$1,865.62 per account.⁴

The available anecdotal evidence suggests that dedicated accounts are burdensome for representative payees (“payees”), most of whom are parents, and that their limited allowable uses

¹ Social Security Administration, Program Operations Manual System, GN 00605.223B.2. *Past-Due Benefits-Definition*, December 10, 1998 <<http://policy.ssa.gov/poms.nsf/lnx/0200605223>>.

² In cases where there is a federally administered state supplement payment, the minimum value of past-due payments requiring a dedicated account includes the supplemental amount; the retroactive payment due is first adjusted to remove any interim assistance that was previously provided to the recipient before determining whether the payment exceeds six times the FBR including any federally administered supplemental amount. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) § 213(a)(2) <<https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>>.

³ Social Security Administration, Office of Retirement and Disability Policy, data by request. On file with the Social Security Advisory Board; Social Security Administration, Office of Retirement and Disability Policy, *SSI Monthly Statistics, March 2019*, Table 2

<https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/>. Active, non-zero dedicated accounts make up .54 percent of SSI cases, when including adults ages 18-64.

⁴ Social Security Administration, Office of Retirement and Disability Policy, data by request. On file with the Social Security Advisory Board.

make accessing awarded funds difficult.⁵ Under current policy, funds are restricted to use for impairment-related expenses for which payees, in many cases, need prior approval from the agency. SSA, in turn, must monitor the use of funds in such accounts. A chorus of past bipartisan recommendations put forth by Commissioners of Social Security, presidents, and the advocacy community as early as 2000 has recommended eliminating dedicated accounts to enable the funds awarded to these children to be used in their best interest.⁶

This statement adds to the Board’s prior work on children receiving SSI. It describes dedicated accounts, their provisions, and the implications of those provisions for children with disabilities in low-income families, their payees, and SSA. The statement will proceed by providing an overview of the SSI program focusing on child recipients. Next, it will describe dedicated accounts and their governing regulations. The statement will then examine the complexities related to understanding, managing, and monitoring the accounts for payees and SSA.

Overview of SSI

SSI provides a federally administered income- and assets-tested monthly cash benefit to individuals who are elderly or blind, and to people with disabilities.⁷

Determining Insufficient Means

SSI provides eligible recipients monthly payments after considering any countable income⁸ and resources an individual can access. Recipients’ monthly SSI payments are determined by subtracting their monthly countable income from the maximum monthly benefit—the FBR.⁹ Recipients with countable income above the FBR are not eligible to receive SSI payments unless their incomes drop below the threshold.¹⁰ To be eligible for SSI, an individual must also have

⁵ O’Connell, Mary. “Supplemental Security Income’s ‘Dedicated Account:’ A Debunked Urban Legend and Twenty Years of Waste,” *Northeastern Public Law and Theory Faculty Research Papers Series*, No. 289, 2017, pp. 2, 5, 67-68 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962370>.

⁶ Stakeholders recommending elimination of dedicated accounts for all recipients: NCSSMA (since 2001); Former Commissioners of Social Security Apfel (2000), Barnhart (2002), Astrue (2008); the Obama (Fiscal Year 2017), and Trump (Fiscal Year 2019) administrations; SSA (Fiscal Year 2017, Fiscal Year 2019, and Fiscal Year 2020); Children’s Disability Project, Greater Boston Legal Services (since 2017); Consortium for Citizens with Disabilities (2017); Stakeholders recommending elimination of dedicated accounts for children whose parent serves as their payee: Former Commissioner of Social Security Barnhart (2004), the Bush administration (Fiscal Year 2005 and Fiscal Year 2006).

⁷ Some states supplement federal payments. The Social Security Administration administers state supplements for California, Delaware, District of Columbia, Hawaii, Iowa, Michigan, Montana, Nevada, New Jersey, Pennsylvania, Rhode Island, and Vermont. States that administer their own supplements are Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Mississippi, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. States or territories that do not supplement the federal SSI payment are Arizona, Northern Mariana Islands, Mississippi, West Virginia, and North Dakota. See: Social Security Administration, “Understanding Supplemental Security Income SSI Benefits—2019 Edition” (webpage) <<https://www.ssa.gov/ssi/text-benefits-ussi.htm>>.

⁸ SSA defines countable income as “income less all applicable exclusions.” See: Social Security Administration, *Annual Report of the Supplemental Security Income Program*, 2018, p. 10 <<https://www.ssa.gov/oact/ssir/SSI18/ssi2018.pdf>>.

⁹ In 2019, the monthly FBR is \$771 for an individual and \$1,157 for a couple. See: Social Security Administration, Office of the Chief Actuary, “SSI Federal Payment Amounts for 2019” (webpage) <<https://www.ssa.gov/oact/cola/SSI.html>>.

¹⁰ If an individual’s SSI payment is suspended due to ineligibility for 12 consecutive months, they will need to file a new application. See: Social Security Administration, Program Operations Manual System, SI 02301.205.A. *Introduction*, July 22, 2008 <<http://policy.ssa.gov/poms.nsf/lnx/0502301205>>.

less than \$2,000 in countable resources (or “net assets”).¹¹ For the purposes of determining SSI eligibility and payment amounts for child recipients, some of the income and resources of each child’s parent may be “deemed” accessible to the child.¹² Certain income and resources are excluded when determining SSI eligibility and payment amount.¹³ One such exclusion is funds held in a dedicated account. In March 2019, the SSI program provided monthly payments amounting to about \$797 million in federal funds to more than 1.1 million children under age 18—an average monthly federal payment of about \$671 per child.¹⁴

Representative Payees

With few exceptions, SSA requires child recipients to have representative payees manage their payments.¹⁵ A payee is tasked with using payments in the recipient’s best interest for “food, shelter, clothing, medical care and personal comfort items.”¹⁶ In most cases, a child’s parent fulfills this role. In December 2017, about 82 percent of children under age 18 receiving SSI had a parent serving as their payee.¹⁷ Another six percent had a grandparent as their payee and “other relatives” account for an additional eight percent of payees.¹⁸ Less than four percent had a non-familial payee, such as a financial organization, social agency, mental or non-mental health institution, or some other person or entity, managing their payments.¹⁹

As past Board work has emphasized, the responsibilities of a payee are wide-ranging and can be complex, especially for payees in the SSI program. Payees must regularly report changes in the recipient’s income, resources and other circumstances to SSA to ensure the recipient continues to meet the eligibility standards of the program.²⁰ Payees’ responsibilities include establishing and

¹¹ Social Security Administration, *Annual Report of the Supplemental Security Income Program*, 2018, p. 11

<https://www.ssa.gov/oact/ssir/SSI18/ssi2018.pdf>. \$3,000 for a couple. SSA defines resources as “liquid assets, such as cash, or any real or personal property that individuals, spouses of individuals, or parents of a child under the age of 18 own and could convert to cash for their support and maintenance.”

¹² Social Security Administration, “Understanding Supplemental Security Income SSI Benefits—2019 Edition” (webpage)

<https://www.ssa.gov/ssi/text-benefits-ussi.htm>. Deeming of resources does not affect the amount of the SSI payment if countable resources are less than \$2,000.

¹³ For a comprehensive list of income and resource exclusions in the SSI program, see: Social Security Administration, *Annual Report of the Supplemental Security Income Program*, 2018, pp. 11-12, 88-93 <https://www.ssa.gov/oact/ssir/SSI18/ssi2018.pdf>.

¹⁴ Social Security Administration, Office of Retirement and Disability Policy, *SSI Monthly Statistics, March 2019*, Table 2, 6 and 7

https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/. Amount of total federal funds paid to children includes retroactive payments; average monthly federal payment amount excludes retroactive payments. In the twelve states with federally-administered state supplements, SSI provided about \$8.4 million in additional payments to children under 18 in March 2019—an average supplement of about \$63. On average, the supplement payments SSA administers add about nine percent to a child’s average federal payment amount.

¹⁵ Social Security Advisory Board, *Improving Social Security’s Representative Payee Program*, January 2018, p. 4

https://ssab.gov/Portals/0/OUR_WORK/REPORTS/ImprovingRepPayee2018.pdf?ver=2018-01-11-160130-430. Exceptions include, “a minor who is legally recognized as an adult, has demonstrated the ability to handle his or her own finances or is a member of the armed forces on active duty.”

¹⁶ Social Security Advisory Board, *Social Security Advisory Board Statement on the Supplemental Security Income Program*, 2016, p. 7

https://ssab.gov/Portals/0/OUR_WORK/SSI%20STATEMENTS--BRIEFS/2016_SSI_Statement.pdf. The Board has examined the payee program in depth in several prior publications, a chart collection, and during a public forum. Past Board work on the program can be found at <https://ssab.gov/Our-Work>.

¹⁷ Social Security Administration, *SSI Annual Statistical Report*, 2017, Table 7

https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2017/sect02.html#table7.

¹⁸ *SSI Annual Statistical Report*, Table 7.

¹⁹ *Ibid.*

²⁰ Social Security Advisory Board, *Social Security Advisory Board Statement on the Supplemental Security Income Program*, 2016, pp. 1, 7

https://ssab.gov/Portals/0/OUR_WORK/SSI%20STATEMENTS--BRIEFS/2016_SSI_Statement.pdf.

maintaining a dedicated account if the child SSI recipient in their care is owed a large past-due payment from SSA. Unlike regular monthly SSI payments for which a payee is also responsible, dedicated account funds may be used only to purchase certain impairment-related items and services that SSA determines allowable. As demonstrated in the following sections, managing these accounts in accordance with complex account rules may be confusing for payees and, in some cases, render funds effectively unusable.²¹

Determining Medical Eligibility

Once the SSA field office (FO) verifies a child claimant's non-medical eligibility, the claim proceeds to the state Disability Determination Service (DDS) agency that determines medical eligibility.²² The disability determination process is complex, as it calls upon examiners to weigh several types of medical evidence and make decisions about whether individuals meet the statutory definition of disability.²³ SSA advises parents and others caring for children with disabilities that it may take between three and five months for a child to receive a disability decision from the DDS.²⁴ If a child claimant is initially denied and seeks an appeal, the determination process can last well beyond that time period, sometimes for years.²⁵

SSI claimants who are awarded benefits are eligible to receive benefits retroactively, starting at the date SSA first determined eligibility, which is the first day of the month after they filed an application and met all the statutory requirements of the program.²⁶ Because of the lengthy waiting period that many SSI applicants experience before receiving a final determination, upon receipt, some recipients are owed a significant amount of past-due payments. If the amount of past-due payments owed to a child at the time they receive a favorable decision exceeds six times the FBR, the child's payee must establish a dedicated account.

Understanding Dedicated Accounts

A dedicated account is an account in a financial institution established on behalf of a child under age 18 by their payee to hold lump-sum SSI payments. Such accounts must be established when a child's past-due SSI payment, including any state supplemental amount, exceeds six times the

²¹ O'Connell, Mary. "Supplemental Security Income's 'Dedicated Account': A Debunked Urban Legend and Twenty Years of Waste," *Northeastern Public Law and Theory Faculty Research Papers Series*, No. 289, 2017, p. 2 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962370>.

²² Social Security Administration, "Disability Determination Process" (webpage) <<https://www.ssa.gov/disability/determination.htm>>.

²³ Social Security Advisory Board, *Social Security Advisory Board Statement on the Supplemental Security Income Program*, 2013, p. 1 <[https://ssab.gov/Portals/0/Supplemental%20Security%20Income%20\(SSI\)/2013_SSI_Statement.pdf](https://ssab.gov/Portals/0/Supplemental%20Security%20Income%20(SSI)/2013_SSI_Statement.pdf)>; Social Security Advisory Board, *Social Security Advisory Board Statement on the Supplemental Security Income Program: Work Incentives and Work Supports in the SSI Program*, July 2017, p. 2 <https://ssab.gov/Portals/0/OUR_WORK/SSI STATEMENTS--BRIEFS/2017_SSI_Statement.pdf>.

²⁴ Social Security Administration, *Benefits For Children With Disabilities*, 2019, p. 4 <<https://www.ssa.gov/pubs/EN-05-10026.pdf>>.

²⁵ Social Security Advisory Board, *Social Security Advisory Board Statement on the Supplemental Security Income Program: Work Incentives and Work Supports in the SSI Program*, July 2017, p. 4 <https://ssab.gov/Portals/0/OUR_WORK/SSI STATEMENTS--BRIEFS/2017_SSI_Statement.pdf>.

²⁶ Social Security Administration, Program Operations Manual System, SI 00501.001 *Eligibility Under the Supplemental Security Income Provisions*, January 18, 2005 <<http://policy.ssa.gov/poms.nsf/lnx/0500501001>>.

FBR. The purpose of dedicated accounts is, in part, to segregate the large awards that result when it takes SSA a long time to determine a child's eligibility for SSI. The funds held in this separate account are excluded from a child's income and resources for the purposes of determining SSI eligibility.

SSA deposits these lump-sums directly into the recipient's dedicated account in three installments at six-month intervals. Both the first and second installments must not be greater than the sum of three times the FBR (\$2,313 for an individual in 2019) and any federally administered state supplement; the last installment consists of the remaining amount.²⁷ Any other past-due payment or underpayment that is greater than or equal to one times the FBR *may* also be deposited into the dedicated account *at the option* of the payee. But, any payment that exceeds six times the FBR *must* be deposited into the dedicated account. Payments that do not meet either standard *may not* be deposited into the account.²⁸ Dedicated accounts are restricted to checking, savings, or money market accounts; they cannot be certificates of deposit, mutual funds, stocks, bonds, or trusts.²⁹ The dedicated account must be:

- Kept separate from the account to which other monthly benefits are paid; and
- Spent only on “medical treatment, education, and job skills training” or “if related to the child's impairment: personal needs assistance, special equipment, housing modification, therapy, rehabilitation, or other items and services that SSA determines appropriate.”³⁰

If those conditions are met, the dedicated account balance and any interest or other earnings on the funds held in the account do not count toward the income or resource limit for the purposes of determining eligibility for SSI. Even after a child turns 18, unspent funds must continue to be held in a dedicated account subject to the same restrictions and exclusions until depletion or termination of the recipient's SSI eligibility.³¹

To understand how current SSA policy differs for recipients with and without dedicated accounts, we can examine how SSA's Program Operations Manual System (POMS) would address three hypothetical recipients with payees who apply for SSI on the same day. The first recipient, age 15, receives a favorable decision five months after applying. The second recipient, age 20, and the third recipient, age 15, receive favorable decisions seven months after applying.³²

²⁷ Social Security Administration, Program Operations Manual System, SI 02101.020.B.3. *Amount and Timing of Installment Payments*, February 7, 2014 <<http://policy.ssa.gov/poms.nsf/lnx/0502101020>>.

²⁸ Social Security Administration, Program Operations Manual System, GN 00605.223 *How to Evaluate Payee Response About Deposits in Dedicated Accounts*, December 10, 1998 <<http://policy.ssa.gov/poms.nsf/lnx/0200605223>>; Social Security Administration, Program Operations Manual System, SI 01130.601.A. *Background*, September 3, 2011 <<http://policy.ssa.gov/poms.nsf/lnx/0501130601>>.

²⁹ Social Security Administration, Program Operations Manual System, GN 00603.025.B. *Policy*, October 22, 2008 <<http://policy.ssa.gov/poms.nsf/lnx/0200603025>>.

³⁰ Social Security Administration, Program Operations Manual System, GN 00602.140.B.1. *Use of Funds in a Dedicated Account*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

³¹ Social Security Administration, Program Operations Manual System, GN 00605.200.B. *Policy for Overview of Monitoring Representative Payees with Dedicated Accounts*, April 1, 2011 <<http://policy.ssa.gov/poms.nsf/lnx/0200605200>>. A past version misstated that after termination from the program, a recipient could access any remaining dedicated account funds consistent with program rules for regular payments. This clause has been removed in this version for technical accuracy because if a recipient is terminated from the program, the program rules no longer apply to any residual funds.

³² Examples assume all three recipients have no countable income. If there is countable income, six months of benefits may not sum to an amount that triggers installment payments or a dedicated account.

Since the first recipient waited five months and the past-due payment owed is greater than three times the FBR, per agency policy, the recipient's payee receives the payment in installments, but is not required to establish a dedicated account. Like virtually all other future SSI payments the payee will receive on behalf of the recipient, these funds must be used for the benefit of the child.

The second recipient, an adult age 20, also receives a back payment exceeding three times the FBR and is paid in installments in accordance with agency policy. Like the 15-year-old's payee, the 20-year-old's payee is not required to establish a dedicated account. The payee must use the lump-sum payment for the benefit of the recipient, consistent with future payments the payee receives on behalf of the recipient.

Even though the third recipient receives the same back payment as the second recipient and is the same age as the first recipient, this recipient's funds are treated differently: the recipient's payee is required to open a dedicated account. Unlike the payments made to the first and second recipient that may be used by their payees for any purpose that is in the recipients' interest, the payee of the third recipient may only use the past-due benefits, held in a dedicated account, for a narrower set of items and services, as described above. Even when the third recipient becomes an adult at age 18, the unused funds remain in the dedicated account and must continue to be subject to these spending limitations until depleted or until the recipient's eligibility for SSI is terminated.

Legislative History and Rationale

Congress created dedicated accounts as part of a more comprehensive legislative enactment, the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA).³³ Before dedicated accounts existed, two provisions protected lump-sum past-due payments from disqualifying recipients from eligibility for SSI: the six-month exclusion period of underpayments from income and resources³⁴ and the requirement to pay lump-sum payments in installments.³⁵

In response to the *Social Security Disability Benefits Reform Act of 1984*³⁶ and the 1990 *Sullivan v. Zebley* Supreme Court decision,³⁷ in the early 1990s, SSA implemented new standards for

³³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) § 213 <<https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>>.

³⁴ Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) § 9114.

³⁵ Deficit Reduction Act of 2005 (Public Law 109-171) § 7502 <<https://www.govinfo.gov/content/pkg/PLAW-109publ171/pdf/PLAW-109publ171.pdf>>.

³⁶ The Social Security Disability Benefits Reform Act of 1984 expanded the medical listings for children to include a greater number of mental impairments as well as new, more functionally based, standards for evaluating mental impairments in children. Social Security Disability Benefits Reform Act of 1984 (Public Law 98-460) <<https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1794.pdf>>.

³⁷ In *Sullivan v. Zebley*, the court held that SSA's disability determination process for children violated the Social Security Act because the children's process did not provide a mechanism analogous to the residual functional capacity assessments in the adult process for children who did not meet the medical listings. As a result of the decision, SSA implemented new regulations, including adding an individualized functional assessment to the disability determination process for children. *Sullivan v. Zebley*, 493 U.S. 521 (1990).

assessing disability for child SSI applicants. In the following years, the number of children receiving SSI increased substantially from 264,890 children receiving payments in 1989 to 917,048 in 1995, prompting congressional and media attention.³⁸ In March 1995 testimony before the Special Committee on Aging, the Director of Income Security Issues in the Health, Education, and Human Services Division at the General Accounting Office (GAO),³⁹ Jane L. Ross notes that despite “limited empirical data...widespread media reports have weakened public confidence in the integrity of the SSI program.”⁴⁰ These reports, which alleged instances of “parents coach[ing] their children to fake mental impairments...so that they can qualify for cash benefits,” drew Congressional attention and prompted discussion about changes to the SSI children’s program during the welfare reform debates.⁴¹ The passage of the PRWORA in 1996 narrowed the SSI eligibility standards for children in response to these concerns.⁴² It also established the dedicated account requirement.

While the dedicated account provision can be traced through earlier versions of welfare reform legislation, there is little documentation of congressional rationale for the provision or its ultimate adoption in the PRWORA.⁴³ House Report 104-651 accompanying one such bill, the *Welfare and Medicaid Reform Act of 1996*, provides some reasoning for including the provision: “The committee has found that large lump-sum payments have been subject to misuse. Requiring the establishment of special accounts is designed to increase the likelihood that benefits will be spent on the needs of the child.”⁴⁴ SSA’s POMS provides a different perspective for excluding lump-sum payments from resources that is not recorded in the legislative history: The exclusion of dedicated account funds from resources “gives a payee the use of the funds over a longer period without jeopardizing the child’s eligibility to receive SSI payments.”⁴⁵

³⁸ Rogowski, Jeannette, Lynn A. Karoly, Jacob Alex Klerman, Moira Inkelas, Melissa Rowe, and Randall Hirscher. “Final Report for Policy Evaluation of the Effect of the 1996 Welfare Reform Legislation on SSI Benefits for Disabled Children,” *RAND*, DRU-2559-SSA, 2002, pp. 8-9 <<https://www.rand.org/pubs/drafts/DRU2559.html>>; Social Security Administration, *Annual Statistical Supplement, 2018*, Table 7.A9 <<https://www.ssa.gov/policy/docs/statcomps/supplement/2018/index.html>>.

³⁹ In 2004, the name of the General Accounting Office changed to the Government Accountability Office. See: GAO Human Capital Reform Act of 2004 (Public Law 108-271) § 8 <<https://www.congress.gov/108/plaws/publ271/PLAW-108publ271.pdf>>.

⁴⁰ Hearing before Senate Special Committee on Aging, Federal Disability Programs Face Major Issues (prepared statement of Jane L. Ross, Director, Income Security Issues, General Accounting Office), Serial No. 104-1, 104th Congress, March 2, 1995, pp. 10-11 <<https://www.aging.senate.gov/imo/media/doc/publications/321995.pdf>>.

⁴¹ General Accounting Office, *Social Security: New Functional Assessments for Children Raise Eligibility Questions*, GAO/HEHS-95-66, March 1995, p. 1 <<https://www.gao.gov/assets/230/220953.pdf>>.

⁴² Coe, Norma B., and Matthew S. Rutledge. “What is the Long-Term Impact of Zebley on Adult and Child Outcomes?” *Center for Retirement Research at Boston College*, CRR WP 2013-3, 2013, p. 1 <https://crr.bc.edu/wp-content/uploads/2013/01/wp_2013-3-508.pdf>; Government Accountability Office, *Rapid Rise in Children on SSI Disability Rolls Follows New Regulations*, September 1994, pp. 2,4,8,9 <<https://www.gao.gov/assets/230/220229.pdf>>; Levere, Michael. “The Labor Market Consequences of Receiving Disability Benefits During Childhood,” *Mathematica Policy Research*, Working Paper 51, 2017, p. 6 <<https://www.mathematica-mpr.com/our-publications-and-findings/publications/the-labor-market-consequences-of-receiving-disability-benefits-during-childhood>>; Rogowski, Jeannette, Lynn A. Karoly, Jacob Alex Klerman, Moira Inkelas, Melissa Rowe, and Randall Hirscher. “Final Report for Policy Evaluation of the Effect of the 1996 Welfare Reform Legislation on SSI Benefits for Disabled Children,” *RAND*, DRU-2559-SSA, 2002, pp. 8-9 <<https://www.rand.org/pubs/drafts/DRU2559.html>>.

⁴³ O’Connell, Mary. “Supplemental Security Income’s ‘Dedicated Account’: A Debunked Urban Legend and Twenty Years of Waste,” *Northeastern Public Law and Theory Faculty Research Papers Series*, No. 289, 2017, p. 48 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962370>.

⁴⁴ House Committee on the Budget, *House Report 104-651 accompanying H.R. 3734, the Welfare and Medicaid Reform Act of 1996*, June 27, 1996, p. 1392 <<https://www.congress.gov/104/crpt/hrpt651/CRPT-104hrpt651.pdf>>.

⁴⁵ Social Security Administration, Program Operations Manual System, GN 00602.140.A. Introduction to Dedicated Accounts, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

Despite the creation of dedicated accounts, both the pre-PRWORA exclusion period and installment payment provisions remain in place for some SSI recipients receiving lump-sum past-due payments and have since been amended to protect a larger number of payments. The *Social Security Protection Act of 2004* extended the resource exclusion period for past-due payments from six to nine months.⁴⁶ The *Deficit Reduction Act of 2005* changed the amount of past-due benefits requiring installments from payments that equal or exceed 12 times the FBR to those that equal or exceed three times the FBR.⁴⁷ As dedicated accounts are required for past-due payments exceeding six times the FBR, any payment requiring a dedicated account is covered by both existing provisions, whether it is paid into a dedicated account, or not. Given existing statutory requirements around lump-sum payments,⁴⁸ and absent empirical evidence supporting or refuting claims about misuse of funds, the utility of dedicated accounts is unclear.

Dedicated Accounts as an Area of Complexity

Despite the small number of accounts and the relatively modest balances they hold in most cases, dedicated accounts constitute a burdensome and unduly complex administrative workload for both payees and SSA frontline staff. The source of this burden is primarily the spending approval process and the account monitoring requirements. Moreover, existing literature suggests that current dedicated account policy hinders children in low-income families from accessing needed funds to which the agency has already found them entitled.

Seeking Approval for Spending

By design, recipients with dedicated accounts and their payees have limited options for how to spend dedicated account funds. Funds held in a dedicated account are explicitly available for use on medical treatment, education, and job skills training. In most states, child recipients of SSI have access to low- or no-cost medical care through programs such as Medicaid and the Children's Health Insurance Program (CHIP).⁴⁹ Under the *Individuals with Disabilities Education Act* (IDEA), children ages three to 21 with disabilities are entitled to "free appropriate public education"⁵⁰ and IDEA, as well as the *Rehabilitation Act of 1973*, mandates schools provide vocational opportunities for students with disabilities.⁵¹ In cases where payees cannot use dedicated account funds on one of the explicitly allowable items or services, they are limited

⁴⁶ The Social Security Protection Act of 2004 (Public Law 108-203) §431 <<https://www.congress.gov/108/plaws/publ203/PLAW-108publ203.pdf>>.

⁴⁷ Deficit Reduction Act of 2005 (Public Law 109-171) § 7502 <<https://www.govinfo.gov/content/pkg/PLAW-109publ171/pdf/PLAW-109publ171.pdf>>.

⁴⁸ O'Connell, Mary. "Supplemental Security Income's 'Dedicated Account': A Debunked Urban Legend and Twenty Years of Waste," *Northeastern Public Law and Theory Faculty Research Papers Series*, No. 289, 2017, p. 60 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962370>.

⁴⁹ Social Security Administration, *Benefits for Children with Disabilities*, 2019, pp. 11-13 <<https://www.ssa.gov/pubs/EN-05-10026.pdf>>.

⁵⁰ Individuals with Disabilities Education Act (Public Law 101-476) §1401(9).

⁵¹ Rehabilitation Act of 1973 (Public Law 93-112) <<https://legcounsel.house.gov/Comps/Rehabilitation%20Act%20Of%201973.pdf>>.

to holding funds in the accounts for future use or spending funds on “other items and services that SSA determines appropriate.”⁵²

Obtaining spending approval from SSA for basic items and services is time-intensive and demanding for both payees and FO staff. Before a payee spends funds held in a recipient’s dedicated account on items or services that may fall into the “other” category, SSA recommends that they seek prior approval from the agency to protect against a subsequent finding of misapplication—the use of dedicated account funds on non-permitted items or services.⁵³ Guidance provided by the Children’s Disability Project at Greater Boston Legal Services lists information that payees should compile to submit to SSA along with an expenditure request. Suggested information includes: a description of the item, its cost, its connection to the child’s impairment and documentation of its medical or educational use (e.g. a letter from a doctor or teacher).⁵⁴ However, not all payees receive this type of information.⁵⁵ SSA does not provide guidance to payees about the supporting documentation necessary to justify an expenditure request. The limited agency guidance that exists merely states that payees are responsible for justifying the relationship of the item or service to the child’s impairment but does not provide guidance about what is needed to do so.⁵⁶

Determining allowable expenditures is complex and generates a considerable workload for payees, who are often confused why the funds in these accounts are subject to different rules from those that apply to regular monthly payments for which they are also responsible. The SSA POMS explicitly recognizes that dedicated account rules are a “significant departure from the traditional use of SSI benefits by [payees]” and “limit a payee’s discretion” to use the funds held in the account on behalf of the child.⁵⁷ Northeastern University Law Professor Mary O’Connell states, “the labor and time required to free [dedicated account] money for use is frequently ludicrous, and sometimes a failure.”⁵⁸ As a result, “[v]ery poor parents, whose child has established his or her disability and has been awarded benefits, sometimes simply give up trying to access the funds in the dedicated account.”⁵⁹

⁵² Social Security Administration, Program Operations Manual System, GN 00602.140.B.1. *Use of Funds in a Dedicated Account*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

⁵³ Social Security Administration, Program Operations Manual System, SI 02220.060.B.3. *Misapplication of Funds*, October 30, 2015 <<http://policy.ssa.gov/poms.nsf/lnx/0502220060>>.

⁵⁴ Greater Boston Legal Services, Children’s Disability Project, *Saving and Spending Workbook* <http://www.gbbs.org/sites/default/files/cdp_spending_kit_full.pdf>.

⁵⁵ O’Connell, Mary. “Supplemental Security Income’s ‘Dedicated Account’: A Debunked Urban Legend and Twenty Years of Waste,” *Northeastern Public Law and Theory Faculty Research Papers Series*, No. 289, 2017, p. 2 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962370>.

⁵⁶ Social Security Administration, Program Operations Manual System, GN 00602.140.C.1. *Approving or Disapproving Dedicated Account Expenditure Requests*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

⁵⁷ Social Security Administration, Program Operations Manual System, GN 00602.140.A. *Introduction to Dedicated Accounts*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

⁵⁸ O’Connell, Mary. “Supplemental Security Income’s ‘Dedicated Account’: A Debunked Urban Legend and Twenty Years of Waste,” *Northeastern Public Law and Theory Faculty Research Papers Series*, No. 289, 2017, p. 2 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962370>.

⁵⁹ O’Connell, p. 2.

At SSA, dedicated account spending rules are far from straightforward for staff and contribute to variation in policy application. When considering requests, POMS indicates that “FO staff should use their best judgement to decide on a case-by-case basis whether the expenditure relates to, results from, or would improve the child’s condition.”⁶⁰ This may lead to inconsistencies in what is approved across offices and even among FO staff within the same office considering the same item.⁶¹ As the guidance demonstrates, obtaining permission to access needed funds is a subjective, and sometimes arbitrary, process that is contingent on the expertise and perception of the particular FO employee reviewing the request.

FO staff may lack the expertise necessary to make a fully-informed decision about the relation of a requested expenditure to a given impairment or its prospect for improving a child’s quality of life. While it may be relatively straightforward to determine whether an expenditure is appropriate for a child with a physical disability, it may be more difficult to assess whether an expenditure relates to the impairment of a child with a non-physical disability. The POMS does not provide clear guidance on which expenditures from dedicated accounts are permitted. The POMS provides examples to guide FO staff, but these examples cannot cover all cases. As a result, FO staff must rely on personal judgements when considering the appropriateness of requests.⁶² This workload calls on FO staff to make medical and vocational decisions that are often outside of their area of expertise.

Account Monitoring

SSA has made public comments about the burdensome workload created by dedicated account provisions, particularly the monitoring requirements. Former Commissioner Jo Anne Barnhart stated in 2002 that “SSA [FO] employees spend an inordinate amount of time explaining the dedicated account requirement, discussing allowable expenses, monitoring how the funds are spent, determining whether the funds were misapplied, and trying to recoup misapplied funds.”⁶³ In SSA’s Fiscal Year 2017 Budget Overview, the administration stated that monitoring dedicated accounts is “labor-intensive for both SSA and [payees].”⁶⁴ Limited and imprecise agency policy and lack of clear guidance for payees about dedicated account rules may result in inconsistent implementation of agency policy by FO staff and confusion in understanding and navigating a volume of complex and subjective rules for payees.

⁶⁰ Social Security Administration, Program Operations Manual System, GN 00602.140.C.1. *Approving or Disapproving Dedicated Account Expenditure Requests*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

⁶¹ Letter from Taramattie Doucette, Esq., Project Director, The Children’s Disability Project, Greater Boston Legal Services; Linda Landry, Esq., Senior Attorney, Disability Benefits Project, Disability Law Center; and Mary E. O’Connell, Professor Emerita, Northeastern University School of Law to Emma Tatem, Policy Analyst, Social Security Advisory Board, *Re: Recommendations Concerning the Dedicated Account*, March 29, 2019, p. 5. On file with the Social Security Advisory Board.

⁶² Social Security Administration, Program Operations Manual System, GN 00602.140.C.1. *Approving or Disapproving Dedicated Account Expenditure Requests*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

⁶³ Social Security Administration, *Letters of Commissioner Jo Anne B. Barnhart to Honorable J. Dennis Hastert and Honorable Richard B. Cheney accompanying proposed Supplemental Security Income Program Amendments of 2002*, September 26, 2002 <<https://www.ssa.gov/legislation/Bills/SSIAmend2002.pdf>>.

⁶⁴ Social Security Administration, *Fiscal Year 2017 Budget Overview*, p. 23 <<https://www.ssa.gov/budget/FY17Files/2017BO.pdf>>.

After a payee establishes a dedicated account, but before receipt of the past-due payment, a payee must sign the SSA-522 form, which requires the signee to certify that they “understand how dedicated account funds can and cannot be used” and agree to several additional statements outlining their record-keeping and reporting obligations.⁶⁵ As demonstrated in the previous section, understanding what constitutes an allowable expenditure is far from straightforward. In accordance with the responsibilities defined in the form, a payee or recipient in direct payment agrees to keep detailed documentation of how funds in the dedicated account are spent and report on expenditures and the account balance to SSA each year in an annual accounting form, the Representative Payee Report of Benefits and Dedicated Account (SSA-6233-BK). Collecting and maintaining the necessary documentation to report to SSA—which the agency recommends a payee keep for two years⁶⁶—may constitute a considerable burden for payees, most of whom are parents.

SSA monitors dedicated account deposits and spending by payees or recipients in direct payment through collection of the annual accounting forms.⁶⁷ Past Board work has found that collection of a similar payee annual accounting form that, with the passage of recent legislation, has been retired for natural and adoptive parent and spouse payees, “amounts to an expensive, time-consuming and pointless process that yields no useful information about benefit expenditures, investments or the [payee’s] management of [recipient] money.”⁶⁸ Regarding dedicated account monitoring, in May 2008 testimony before the United States Senate Committee on Finance, National Council of Social Security Management Associations (NCSSMA) Past President Richard Warsinsky referenced a NCSSMA survey finding that dedicated accounts constitute one of many “workloads that were not being processed timely” for the agency.⁶⁹ The Office of the Inspector General (OIG) for Social Security also found that the agency is not always in compliance with its own monitoring guidelines for dedicated accounts. Namely, SSA did not always collect payees’ annual accounting reports or change the recorded account balances to reflect the reports they did receive.⁷⁰ In addition, the OIG noted the agency did not always comply with policies for evaluating payee responses to the annual accounting form.⁷¹

⁶⁵ Social Security Administration, Program Operations Manual System, GN 00602.140.C. *Procedure for Dedicated Accounts*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>; Social Security Administration, Program Operations Manual System, SI 02101.200 *Exhibit – SSA-552—Dedicated Account Use of Funds Statement*, October 7, 2002 <<http://policy.ssa.gov/poms.nsf/lnx/0502101200>>.

⁶⁶ Greater Boston Legal Services, Children’s Disability Project, *Saving and Spending Workbook* <http://www.gbbs.org/sites/default/files/cdp_spending_kit_full.pdf>.

⁶⁷ Social Security Administration, Program Operations Manual System, GN 00602.140.B.2. *Monitoring the Use of Dedicated Account Funds*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

⁶⁸ Social Security Advisory Board, *Improving Social Security’s Representative Payee Program*, January 2018, p. 16 <https://ssab.gov/Portals/0/OUR_WORK/REPORTS/ImprovingRepPayee2018.pdf?ver=2018-01-11-160130-430>.

⁶⁹ Hearing before Senate Committee on Finance, *More Work, Less Resources: Social Security Field Offices Struggle to Deliver Service to the Public* (response to question posed to Richard E. Warsinsky, Immediate Past President, National Council of Social Security Management Associations), S. Hrg. 110-1043, 110th Congress, May 8, 2008, p. 127 <<https://www.finance.senate.gov/imo/media/doc/56618.pdf>>.

⁷⁰ Social Security Administration, Office of the Inspector General, *The Social Security Administration’s Monitoring of Dedicated Accounts for Supplemental Security Income Recipients*, A-13-06-16032, August 2007, pp. 4, 6 <https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-13-06-16032_0.pdf>.

⁷¹ *The Social Security Administration’s Monitoring of Dedicated Accounts for Supplemental Security Income Recipients*, pp. 4, 6.

Based on the information provided in the annual accounting form, SSA determines if dedicated account funds have been misapplied or misused by the payee or recipient in direct payment. There is a notably lower threshold in place to determine a payee has *misapplied* dedicated account funds than the threshold in place to determine a payee has *misused* funds. Misuse is “when a payee uses funds for a purpose *other than for the use and benefit of the beneficiary*.”⁷² A payee who *misuses* a recipient’s dedicated account funds must repay those funds to the dedicated account. In contrast, misapplication occurs when dedicated account funds are knowingly used to purchase items or services that are not permitted, *even if they benefit the recipient*.⁷³ A payee who *misapplies* funds must repay those funds to the Department of the Treasury general revenues; they do not go back into the child’s dedicated account.⁷⁴

According to POMS, “a signed SSA-552...or other statement from a [payee] certifying that the payee understood the dedicated account restrictions can support a finding that a payee knowingly misapplied funds,” however, some payees may not fully understand the intricacies of the dedicated account rules to which they are agreeing when signing the form.⁷⁵ As most payees overseeing dedicated accounts are parents of the recipient, a determination of misapplication may leave low-income families worse off collectively if the parent must use their own funds to pay back the government. A fear of misapplication may discourage payees from using funds for items or services other than those explicitly stated in POMS. Based on data provided by SSA, about 26.5 percent of active non-zero dedicated account balances have remained unchanged since opening.⁷⁶ Fear of misapplication may be a contributing factor for unused funds.⁷⁷

Empirical Data on Dedicated Accounts are not Available

While anecdotal evidence suggests dedicated accounts are complex and burdensome, little can be said empirically about the accounts and their impact on program integrity, agency workloads, and SSI recipients. Congress asserted the prevalence of misuse of lump-sums as justification for establishing the accounts. However, the Board has been unable to locate empirical evidence to support or refute that claim. Furthermore, agency data on dedicated accounts is scant, and data on the frequency of misapplication of dedicated account funds, if it exists, are not available to the Board.

⁷² Social Security Administration, Program Operations Manual System, GN 00602.140.B.3. *Misapplication of Dedicated Account Funds*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>. Emphasis added.

⁷³ GN 00602.140.B.3. *Misapplication of Dedicated Account Funds*.

⁷⁴ *Ibid*.

⁷⁵ Letter from Taramattie Doucette, Esq., Project Director, The Children’s Disability Project, Greater Boston Legal Services; Linda Landry, Esq. Senior Attorney, Disability Benefits Project, Disability Law Center; and Mary E. O’Connell, Professor Emerita, Northeastern University School of Law to Emma Tatem, Policy Analyst, Social Security Advisory Board, *Re: Recommendations Concerning the Dedicated Account*, March 29, 2019, p. 6. On file with the Social Security Advisory Board; Social Security Administration, Program Operations Manual System, GN 00602.140.C.3. *Misapplication Determination*, December 4, 2012 <<http://policy.ssa.gov/poms.nsf/lnx/0200602140>>.

⁷⁶ Social Security Administration, Office of Retirement and Disability Policy, data by request.

⁷⁷ O’Connell, Mary. “Supplemental Security Income’s ‘Dedicated Account’: A Debunked Urban Legend and Twenty Years of Waste,” *Northeastern Public Law and Theory Faculty Research Papers Series*, No. 289, 2017, pp. 2, 9 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962370>.

The Board requested data from SSA on dedicated account spending requests, agency account monitoring activities, frequency of misapplication and misuse of account funds, and administrative costs of the dedicated accounts workload. The agency stated that it does not have data on these questions.⁷⁸ Data on the administrative costs of the dedicated accounts workload and the frequency of misapplication and misuse of dedicated account funds presumably would assist the agency in better articulating an informed policy regarding dedicated accounts.

Board Findings

Dedicated accounts are complex and burdensome for both payees and SSA. While empirical data evaluating the utility of dedicated accounts are not available, bipartisan recommendations to eliminate the accounts made by former Commissioners of Social Security, presidents, practitioners, the advocacy community, and those directly impacted by dedicated account policy point to the complexity and confusion generated by existing account provisions. Since dedicated accounts were created in 1996, and despite consistent and bipartisan calls for their elimination starting shortly thereafter, there has been no legislative action on the provision. Meanwhile, the existing literature suggests that the administration of dedicated accounts impose burdens on both the agency and the people who the agency serves. The Board intends to further explore dedicated accounts and their varied impacts on SSI recipients, payees, and SSA.

Kim Hildred, Chair

Henry J. Aaron • Nancy J. Altman • Robert Joondeph

Board member Jagadeesh Gokhale withholds signature on this Report. His independent statement is attached.

⁷⁸ Email from Stephen Evangelista, Acting Assistant Deputy Commissioner for the Office of Retirement and Disability Policy, Social Security Administration to Emma Tatem, Policy Analyst, Social Security Advisory Board, *Re: Reply: Data Request – Dedicated Accounts*, May 6, 2019. On file with the Social Security Advisory Board.

Independent Supplemental Statement

The initial motivation for establishing dedicated accounts was to prevent misuse that was reportedly found by legislators and staff in Congress prior to establishing those accounts. The Statement cites that the Board “has been unable to locate empirical evidence to support or refute that claim.” The report then offers several declarative statements about the problems and complexities of dedicated accounts without citing any applicable standards for judging complexity or empirical evidence on the frequency and magnitude of undue burdens on payees and SSA field office staff.

Rather than offering statements that strongly suggest a conclusion toward disfavoring and eliminating dedicated accounts, the key and only message of the report should be that the alleged but thus-far-unevaluated problems of SSI dedicated accounts warrant data collection and research by SSA. The research should explore the nature of administrative burdens and how they could be reduced; the required training and access to vocational expertise for field office staff and how it could be provided; the burdens on payees of navigating rules and how those rules could be better described and communicated. In addition, this statement could suggest that SSAB and SSA officials should develop proposals for minimizing the need for dedicated accounts in the future. This could be achieved, for instance, through a one-time system of documenting and reimbursing post application maintenance expenses incurred by payees or others on behalf of newly approved child SSI beneficiaries.

Jagadeesh Gokhale