
Comparing Representative Payees and Guardians

Pamela B. Teaster, Ph.D.
Professor and Director, Center for Gerontology
Virginia Tech
E-mail: pteaster@vt.edu

Establishing Need

Guardianship

- ✓ Petition to court
- ✓ Any interested person

Versus

Representative Payeeship

- ✓ Application to SSA
- ✓ Proposed payee
- ✓ Beneficiary
- ✓ Third party referral

Note: State and local oversight versus federal oversight

Appointment

Guardianship

- ✓ Statutory definition of incapacity
- ✓ Finding based on clear & convincing evidence

Versus

Representative Payeeship

- ✓ Incapacity to manage or direct the management of payments
- ✓ Court finding of legal incompetency
- ✓ Most children under age 18 unless emancipated

Process

Guardianship

- ✓ Notice
- ✓ Medical statement;
possible visitor or guardian
ad litem investigation
- ✓ Possible appointment of
counsel
- ✓ Hearing, testimony,
possible presence of
person
- ✓ Court order

Versus

Representative Payeeship

- ✓ Reviewing SSA field office
investigates and reviews legal,
medical and lay evidence

Selection

Guardianship

- ✓ Nominee in petition
- ✓ Statutory preference
 - Family
 - Corporate
 - Professional
 - Public
 - Volunteer
- ✓ Possible background check

Versus

Representative Payeeship

- ✓ Nominee in application
- ✓ Regulation guidance
 - Custodial Parent or Spouse
 - Legal guardian
 - Relative
 - Friend
 - Public or nonprofit agency
- ✓ Background check, if applicable

Authority

Guardianship

- ✓ Full or limited
- ✓ Property
- ✓ Person
- ✓ Both property and person

Versus

Representative Payeeship

- ✓ Only over the SSA benefit

“A payee has no legal authority to manage non-Social Security income or medical matters. A representative payee, however, may need to help a beneficiary get medical services or treatment.”

– SSA Guide for Representative Payees

Reporting

Guardianship

- ✓ Inventory
- ✓ Accounting
- ✓ Possible guardianship plan
- ✓ Status report

Versus

Representative Payeeship

- ✓ Annual Accounting
 - Expenditures
 - Conserved funds
- ✓ Report changes that may affect the beneficiary's entitlement or amount of payment

(See slide 19 for complete list)

Last Resort Function

Guardianship

- ✓ Public guardianship program in many states or localities

Versus

Representative Payeeship

- ✓ A private institution operated for profit and licensed under State law, which has custody of the beneficiary; as well as
- ✓ Persons other than above who are able and willing to serve as a payee for a beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary

Managing Finances

Guardianship

- ✓ Fiduciary duty
- ✓ Possible bond; restricted accounts
- ✓ Marshal assets
- ✓ Separate bank account
- ✓ Possible statutory guidance on investment
- ✓ Possible court approval of real estate and asset sale
- ✓ Account to court

Versus

Representative Payeeship

- ✓ Fiduciary duty
- ✓ Maintain current needs
- ✓ Special bank account
- ✓ Savings account
- ✓ Guidance on creditors' claims
- ✓ No contracts
- ✓ Personal responsibility for misused funds

Involvement of the Protected Person

Guardianship

- ✓ Notice of hearing
- ✓ May attend hearing
- ✓ Appeal to higher state court
- ✓ May file for termination & restoration of rights

Versus

Representative Payeeship

- ✓ Advance notice of need for a payee
- ✓ Opportunity to protest
- ✓ Notice of payee appointment
- ✓ Appeal to SSA

Who Needs a Guardian?

Most children under age of 18

Adults declared by court as incompetent

Adults incapable of mgming/ directing property/ finances, both

Most children under age of 18

Adults declared by court as incompetent

Adults incapable of mgming/ directing Social Security funds

Who Needs a Representative Payee?

Duties of a Representative Payee

- **Determine basic needs** and use benefit for those needs
- Ensure that beneficiaries who reside in a facility receive a minimum personal needs **allowance of \$30** per for personal needs expenses
- **Save benefits** not needed for current needs
- Keep **accurate written records** of what benefits received and how spent
- Provide the **Annual Representative Payee Accounting Report** and make supporting documentation available upon SSA's request
- **Report changes** that may affect payments

Representative Payee Reporting Requirements

Payee must report these changes

- ✓ Beneficiary moves
- ✓ Beneficiary starts or stops working
- ✓ Beneficiary's medical condition improves
- ✓ Beneficiary marries
- ✓ Beneficiary no longer needs a payee
- ✓ Beneficiary dies
- ✓ Rep payee can no longer serve

Representative Payee Accounting

- **Separately identify**
 - ✓ Amount spent on beneficiary's basic needs and personal items
 - ✓ Amount saved, if any
- **Submit**
 - ✓ By Mail
 - ✓ Online -
www.socialsecurity.gov/payee/form/index.htm

Virginia Annual Report Form for an Incapacitated Person

Clear All Data

REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON
COMMONWEALTH OF VIRGINIA
VA. CODE § 64.2-2020

Name of Incapacitated Person:			
Address of Incapacitated Person:			
Circuit Court where Guardian appointed:		Age:	
Circuit Court Case No.:	Date Appointed:		
Guardian's Name:			
Address:			
Telephone Number:			
Conservator's Name:			
Address:			
<input type="checkbox"/> Same as Guardian			
Telephone Number:			
<input type="checkbox"/> Initial four-month report	<input type="checkbox"/> Annual report		

The period covered by this report is: _____ to _____

1. Describe the incapacitated person's living arrangements:
2. Describe the current mental, physical and social condition of the incapacitated person (attach additional pages if necessary):
 Mental: _____
 Physical: _____
 Social: _____
 State any changes in the condition of the incapacitated person in the past year:
3. Describe all medical, educational, vocational and professional services provided to the incapacitated person for the period covered by this report, and state your opinion of the adequacy of the care received by the incapacitated person:

4. State the number of times you visited the incapacitated person, the nature of your visits and describe your activities on behalf of the incapacitated person (Guardians are required to visit the incapacitated person as often as necessary to know of his or her capabilities, limitations, needs and opportunities):

5. State whether or not you agree with the current treatment or care plan:

6. State your recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and the steps to be taken to make those changes, and any other information useful, in your opinion, to a consideration of the guardianship:

7. If you incurred expenses in exercising your duties as guardian and if you requested reimbursement or compensation for those expenses, itemize the expenses and list the person(s) from whom you requested reimbursement or compensation:

I certify that the information contained in this Annual Report is true and correct to the best of my knowledge.

DATE SIGNATURE OF GUARDIAN

DSS Use Only:	
Date Received: _____	Date Reviewed: _____
_____ REVIEWER'S SIGNATURE AND TITLE	



Representative Payee Accounting Form

Social Security Administration Representative Payee Report

Why You Received This Form

We must regularly review how representative payees used the benefits they received on behalf of the Social Security and/or Supplemental Security Income (SSI) beneficiaries. We do this to ensure the benefits are used properly. When you were appointed representative payee, you were informed of the duties and responsibilities of a representative payee, including keeping records and reporting on the use of benefits.

What You Need To Do

You must report to SSA on your use of benefits if you received any Social Security and/or SSI payments during the 12 month period shown on the enclosed form. You must do this if you wish to continue receiving benefits on behalf of another person. You should use the records you have saved to answer the questions on the enclosed form.

You may submit this form online via www.ssa.gov/payee. Please follow the instructions for Internet Payee Accounting Report. If you complete the form online, you will be able to print a receipt and a copy of your report. If you report online, you should have all your records and the enclosed form handy to help you answer the questions. You should not send in a paper form if you complete the online version.

Any records you have saved such as bank statements, cancelled checks, receipts for rent, etc., should be kept for two years from the time you file your report with SSA. You should not send in any of these records with your report form. If we have any questions or require proof, we will contact you.

General Instructions If You Complete and Return The Enclosed Form

Please read these instructions before you complete the enclosed report form or submit your report online. You should either complete and return the report form, or submit the online report, within 30 days.

To help us process your report, please follow these instructions:

1. Use black ink.
2. Keep your numbers and "X's" inside the boxes.
3. Do not use dollar signs.
4. Show money amounts in dollars only. Do not show cents.

For example, show \$1,540.30 like this:

DOLLAR AMOUNT

	1		5		4		0
--	---	--	---	--	---	--	---

5. Use the REMARKS section on the back of the form to provide additional information as requested.
6. Review the payee mailing address and correct if necessary. If you change the payee mailing address to a P.O. Box, show the payee's actual physical address in REMARKS.
7. Be sure you, the representative payee, sign the form.

Some Definitions To Help You

Benefits – The Social Security and/or SSI money that you receive.
Payee – You. The person (or organization) who receives Social Security and/or SSI benefits for someone else.

Beneficiary – The person for whom you receive Social Security and/or SSI benefits.

Legal Guardian – The person or organization appointed by a State court to manage the affairs of a beneficiary.

Report Period – The 12-month period shown on the report for which you must account for the benefits you received.

Total Accountable Amount – The amount of benefits paid to you during the report period **plus** any amount you reported as saved on last year's report.

HOW TO FILL OUT THE FORM

QUESTION 1 - Payee Felony Convictions

Place an "X" in the "YES" box if during the report period, you (the payee) were convicted of a crime considered to be a felony and explain the type of crime under REMARKS. Otherwise, place an "X" in the "NO" box.

QUESTION 2 - Beneficiary Custody Changes

Place an "X" in the "YES" box if the beneficiary continued to live alone, or with the same person, or in the same institution during the entire report period. Place an "X" in the "NO" box if different people or different institutions took care of the beneficiary during any part of the report period. Explain the change and provide the beneficiary's current address under REMARKS.

QUESTION 3 - Accounting For Benefits

The total accountable amount includes the benefits you received during the report period **plus** any benefits you reported as saved on last year's report.

A. Who Decided How Benefits Were Used?

Place an "X" in the "YES" box if **you** (the payee) decided how the benefits were to be spent or saved. Place an "X" in the "NO" box if the beneficiary or someone else decided how to use the money, and explain under REMARKS.

B. Food And Housing

Show the total amount of benefits spent for food and housing for the beneficiary during the report period. If the beneficiary lives in an institution or nursing home and you pay monthly charges, multiply the monthly charge by 12 and show this total amount.

C. Personal Items

Show the total amount of benefits spent on clothing, medical/dental care, education, and recreational items like toys, movies, cameras, radios, candy, stationary, grooming aids, etc. during the report period. **Note:** If the beneficiary lives in an institution or other care facility, you should spend at least \$360 a year for the beneficiary's personal needs. If you spent less than \$360, explain under REMARKS.

D. Unused Benefits

Show the total amount of benefits you have saved for the beneficiary at the end of the report period, including any interest earned. Show zeroes if you did not save any of the benefits.

Note

For Social Security beneficiaries who are residing in an institution, use REMARKS to provide the amount of benefits, if any, the state Medicaid agency has determined are for the use of the community spouse and other dependents, if applicable.



Representative Payee Accounting Form

QUESTION 4 - Savings Information Answer this question if you showed an amount in 3.D.

- A. Type Of Account** Place an "X" in the box which shows how you are saving the benefits. Place an "X" in the "Other" box if your method of saving the benefits is not listed.
- B. Account Title** Place an "X" in the box which most accurately describes the wording of the account title you have on the beneficiary's savings. Place an "X" in the "Other" box if the account title is different or if you have not placed the savings in any type of account. **Note:** A savings or checking account title should always show that the money belongs to the beneficiary, but the beneficiary should not have direct access to the funds.

QUESTION 5 - Other Savings/ Account Titles Answer this question only if you checked "OTHER" in 4.A. or 4.B.

- A. Type Of Account** Indicate whether the saved benefits are in cash, Treasury Bills, or some other investment such as mutual funds. For mutual funds, be sure to show the name of the fund in your response (e.g., "XYZ Growth" mutual fund).
- B. Title Of Account** Show the title of the account if the savings are in an account or other investment. Show "none" if the savings are not in an account or investment.

6. Payee's Signature **Sign your name in this block.** If you sign by mark ("X"), please have two witnesses sign their names and show the date. If the payee is an institution or agency, the form must be signed by an authorized person.

Your Responsibilities As Representative Payee

We appreciate your services as representative payee. As payee, you must use the Social Security and/or SSI benefits you receive for the care and well being of the beneficiary. You need to know the beneficiary's needs so that you can use the money properly.

In addition to reporting on the use of benefits, you must report any changes which may affect the beneficiary's eligibility for benefits, or the payment amount. You should report the changes as soon as possible by calling SSA at 1-800-772-1213, or by calling or writing your local SSA office. For example, you must tell us if the beneficiary:

- dies,
- moves (especially if he/she enters or leaves a hospital or other institution),
- marries,
- starts or stops working,
- is imprisoned,
- is adopted,
- no longer needs a payee, or
- you are no longer responsible for the beneficiary.

If you are payee for a child receiving SSI benefits, we may ask you for proof that the child is receiving medical treatment for his/her disabling condition. We may ask for this information at the time we review the child's case. If we do ask for this information, you must give it to us.

If you are no longer payee for the beneficiary, you must return any Social Security funds you have saved to SSA.

Privacy Act Statement Collection and Use of Personal Information

Sections 205(j) and 1631(a) of the Social Security Act, as amended, authorize us to collect this information to enable us to account for the beneficiary's payments and to ensure that you use the payments for the beneficiary's needs. Your responses are voluntary. However, without the information, we may not be able to continue sending the beneficiary's payments to you.

We rarely use the information you give us for any purpose other than for accounting purposes. However, we may use it for the administration and integrity of Social Security programs.

We may also disclose information to another person or to another agency in accordance with approved routine uses, which include, but are not limited to, the following:

1. To comply with Federal laws requiring the release of information from Social Security records (e.g. to the Government Accountability Office and Department of Veterans Affairs);
2. To facilitate statistical research, audit , or investigative activities necessary to assure the integrity and improvement of Social Security programs;
3. To respond to a request on your behalf from a Congressional office or the Office of the President; and
4. To other Federal agencies and our contractors, including external data sources, to assist us in efficiently administering our programs.

We may also use the information you give us in computer matching programs. Matching programs compare our records with records kept by other Federal, State, or local government agencies. We use the information from these programs to establish or verify a person's eligibility for federally funded or administered benefit programs and for repayment of incorrect payments or delinquent debts under these programs.

A complete list of routine uses for this information is available in our Privacy Act System of Records Notice (SORN) entitled, Master Representative Payee File (60-0222). The complete SORN, additional information about this form, routine uses of information, and our programs and systems are available online at www.socialsecurity.gov or your local Social Security office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. §3507, as amended by section 2 of the Paperwork Reduction Act of 1995 . You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 15 minutes to read the instructions, gather the facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 6401 Security Blvd, Baltimore, MD 21235 . Send only comments relating to our time estimate to this address, not the completed form.*

If You Have Any Questions

If you have any questions, please call us at 1-800-772-1213. We can answer most questions over the phone. If you prefer to visit one of our offices, please use the 800 number and we will give you the address and telephone number of the office nearest you. Please take this report with you if you visit an office. You may also visit our website at www.socialsecurity.gov.



Guardians and Representative Payees

Of course, a guardian can also be a representative payee and a power of attorney can also be a representative payee~

Thank you!

Special Thanks to Erica Wood, J.D., ABA, who suggested and then provided me with a great deal of this presentation.