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The Social Security Administration's Death Data: In Brief

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Introduction

The Social Security Administration (SSA) acquires and maintains death data to administer the Social Security and Supplemental Security Income (SSI) programs, including preventing the improper payment of benefits to deceased individuals and identifying individuals who are potentially eligible for survivor benefits. SSA collects death data from sources such as state vital statistics bureaus, funeral home directors, family members, and financial institutions and adds about 2.9 million new death reports to its records each year. These records prevent over $50 million in Social Security and SSI improper payments each month.[1]

SSA, under authority granted and limitations imposed by the Social Security Act, shares its death information with qualifying federal and state agencies for particular programmatic purposes and with certain external parties for research and statistical purposes. SSA also provides a limited extract of its death data, referred to as the Death Master File (DMF), to the Department of Commerce's National Technical Information Service (NTIS), which in turn distributes it to authorized users. The DMF contains only those death records obtained from non-state sources. SSA does not have legal authority to share its full file of death information (which includes state-reported deaths) with the Treasury Department's Do Not Pay (DNP) portal, a centralized hub that would permit access by numerous federal agencies.

Recently, the Treasury Department's Internal Revenue Service (IRS) and Bureau of the Fiscal Service (BFS) used SSA's death data to prevent payment of economic impact payments (EIPs, also known as "recovery rebates" or "stimulus payments") to deceased individuals under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136). IRS had initially determined that the payment of EIPs to deceased individuals was not prohibited, because the CARES Act was silent on the issue. After consulting with counsel, the Treasury Department and the IRS determined that individuals who were deceased as of the date the payment was made were not entitled to EIPs. Subsequently, the BFS stopped issuing EIPs to deceased individuals and cancelled outstanding checks issued to deceased individuals, and the IRS posted instructions for the repayment of EIPs that were issued to deceased individuals. Debate continues around how deceased individuals should be treated with respect to the EIPs under the CARES Act and potential subsequent payments, as well as the appropriate role of SSA within the federal government in collecting and sharing death data.

This report describes SSA's death data, outlines SSA's authority to share death data and limitations on that authority under current law, describes the use of SSA's death data with respect to EIPs under the CARES Act, and highlights recent bills around access to and sharing of death data within the federal government. The report closes with a discussion of different approaches for enhancing the collection, maintenance, and sharing of death data among federal government agencies and outlines benefits, challenges, and issues for consideration.

Overview of SSA's Death Data

SSA acquires death data from a variety of sources, including state vital statistics bureaus, funeral home directors, family members, financial institutions, and other federal agencies.

[1] SSA, Office of Legislation and Congressional Affairs (OLCA), *Death Information*, August 2020.

State-Reported Data

Working through the National Association for Public Health Statistics and Information Systems (NAPHSIS), SSA negotiates and maintains contracts with all states to obtain death data. The central feature of these contracts is the Electronic Death Registration (EDR) system, which has been adopted by vital records agencies in all but four states. (Connecticut, North Carolina, Rhode Island, and West Virginia submit death reports to SSA outside the EDR system.[2]) SSA's contracts with the states stipulate a sliding payment scale to incentivize faster reporting. In 2018, SSA paid $3.49 for EDR death reports received within six business days of the death.[3] In 2016, SSA's total outlay for state-reported death data was nearly $5.7 million.[4]

Using EDR, state vital records agencies first verify the decedent's name and Social Security number (SSN) against SSA's records and then submit a verified electronic death record that is automatically posted to SSA's Master Files of SSN Holders and SSN Applications, also known as the Numident. Of the approximately 2.9 million death reports added to the Numident in 2019, just over 78% came from states through EDR.[5] Death reports through EDR are timely and highly accurate and are used across SSA's systems to automatically stop Social Security and SSI benefit payments to deceased individuals.[6] SSA receives over 70% of EDR death reports within six days of the individual's death, with over 95% of such reports reaching SSA within 30 days.[7] According to NAPHSIS and a 2017 audit report by SSA's Office of the Inspector General:

> Effective use of an EDR system means that death certificates can be issued more quickly for insurance claims and other benefit or property issues. It also helps ensure the accuracy of the death record. The system checks automatically for many types of errors and prevents unauthorized access or alterations to the information. Electronic systems also help public health professionals analyze data to track outbreaks and trends that affect health.[8]

In a March 2015 hearing before the Senate Committee on Homeland Security and Governmental Affairs, an SSA official stated, "Universal implementation of EDR has the potential to virtually eliminate death reporting errors and would ensure that our death records—whether pertaining to current beneficiaries or other persons—include the most accurate and most current information."[9]

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[2] OLCA, *Death Information*. See also NAPHSIS, "Electronic Death Registration System (EDRS)," https://www.naphsis.org/systems. State vital records agencies may submit death reports outside the EDR system as well.

[3] Social Security Advisory Board (SSAB), *Social Security and the Death Master File*, June 2019, p. 10, https://www.ssab.gov/wp-content/uploads/2019/06/2019-DMF-v10-2019-06-17-Accessible.pdf.

[4] SSAB, *Social Security and the Death Master File*, p. 11.

[5] Email communication between the author and Eric Skidmore, Deputy Commissioner for Legislation and Congressional Affairs, SSA, September 30, 2020.

[6] For additional information about the EDR process and findings with respect to EDR reports that were rejected by SSA, see SSA, Office of the Inspector General (OIG), *SSA's Rejection of State Electronic Death Registration Reports*, Audit Report A-08-18-50499, September 2020, https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-18-50499.pdf.

[7] SSA, OLCA, *Death Information*, August 2020.

[8] NAPHSIS, "Electronic Death Registration System (EDRS);" SSA, OIG, *State Use of Electronic Death Registration Reporting*, Audit Report A-09-15-50023, July 2017, p. A-1, https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-09-15-50023.pdf.

[9] Statement of Sean Brune, Senior Advisor to the Deputy Commissioner, Office of Budget, Finance, Quality, and Management, SSA, before the Senate Committee on Homeland Security and Governmental Affairs, March 16, 2015, https://www.ssa.gov/legislation/testimony_031615.html. See also OLCA, *Death Information*, August 2020.

Other Sources of Death Data

SSA also receives so-called first-party and third-party death reports from non-EDR and non-state sources. First-party reports come from close relatives and representative payees.[10] Third-party reports come from other federal agencies (e.g., Department of Veterans Affairs, Centers for Medicare and Medicaid Services); state agencies other than vital records agencies (such as state welfare offices); and other data exchanges, as well as friends and neighbors. SSA may take action to terminate Social Security and SSI benefits based on first-party reports without further verification, whereas third-party reports must be verified before SSA terminates benefits.[11] While SSA records death information for non-beneficiaries, it does not verify death information for non-beneficiaries, and it notes that SSA's records are not a comprehensive record of all deaths in the United States.[12]

Sharing Death Data by SSA

SSA shares its full file of death information with qualifying federal and state agencies for particular programmatic purposes as permitted under Section 205(r) of the Social Security Act. SSA also produces an extract of its death data, the DMF, which is distributed to qualifying, authorized users through the Department of Commerce's NTIS.

Full File of Death Information

Section 205(r) of the Social Security Act requires SSA to compensate states for furnishing death records and provides limited legal authority for SSA to share state-reported death data.[13] Specifically, SSA may share state-reported death data (received from state vital records agencies via EDR or outside the EDR system) for program administration purposes only with federal-benefits-paying agencies and certain state agencies administering specified federally funded benefit programs, including state-funded state supplementary payment programs under the SSI program. SSA may also share state-reported death data with federal and state agencies for research and statistical purposes. Notably, Section 205(r) does not authorize SSA to share its state-reported death data with the Treasury Department's DNP portal, although a FY2021 Trump Administration legislative proposal would require SSA to share its full file of death information (including state-reported deaths) with DNP for use in preventing improper payments.[14] SSA is authorized to use state-reported death data for certain verification purposes for outside entities, including verification systems for employers and state driver's license agencies. Section 205(r)

[10] SSA appoints a representative payee to receive benefits on behalf of a beneficiary who has been determined to be unable to manage his or her own finances. For additional information about representative payees, see SSA, "When People Need Help Managing Their Money—Representative Payee," https://www.ssa.gov/payee/index.htm.

[11] SSA, "Program Operations Manual System, GN 02602.050 Reports of Death," https://secure.ssa.gov/poms.nsf/lnx/0202602050.

[12] OLCA, *Death Information*, August 2020. See also U.S. Government Accountability Office (GAO), *Social Security Death Data: Additional Action Needed to Address Data Errors and Federal Agency Access*, GAO-14-46, November 2013, pp. 10-11 and Figure 2, https://www.gao.gov/assets/660/659289.pdf. In August 2020, over 69.7 million individuals received benefits from Social Security, SSI, or both. SSA, "Monthly Statistical Snapshot," August 2020, Table 1, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/index.html?qs.

[13] 42 U.S.C. §405(r).

[14] OLCA, *Death Information*, August 2020; and SSA, *FY 2021 Congressional Justification*, p. 23, https://www.ssa.gov/budget/FY21Files/FY21-JEAC.pdf. See also SSAB, *Social Security and the Death Master File*, June 2019, p. 15, https://www.ssab.gov/wp-content/uploads/2019/06/2019-DMF-v10-2019-06-17-Accessible.pdf.

protects SSA's state-reported death data from disclosure under the Freedom of Information Act (FOIA).

SSA developed a formal request process for agencies wishing to gain access to death data.[15] Agencies obtaining death data from SSA must reimburse SSA for the reasonable cost of providing such information, which has been interpreted by SSA to cover only the cost of sharing the data, not the cost of purchasing the data from the states.

SSA has data sharing agreements to provide its full file of death information (including state-reported deaths) to the U.S. Government Accountability Office (GAO) and the following federal-benefit-paying agencies:

- Railroad Retirement Board,
- Pension Benefit Guaranty Corporation,
- Department of Defense,
- Department of Veterans Affairs,
- Department of Agriculture,
- Department of Housing and Urban Development,
- Office of Personnel Management,
- Federal Retirement Thrift Investment Board,
- Centers for Medicare and Medicaid Services, and
- Internal Revenue Service.[16]

In addition, beginning in FY2020, SSA will share its full file of death information with the National Institutes of Health for research and statistical purposes as authorized under Section 205(r)(5) of the Social Security Act.[17]

In its data exchange agreements, SSA informs recipients that the death data file is not a comprehensive record of every death in the country, that SSA cannot confirm the veracity of the death records in the file, and that recipients will verify the death information before they use it for business purposes (such as suspending or terminating benefits).[18]

Death Master File (DMF)

SSA created a version of its death data, the DMF, which contains only those death records obtained from non-state sources (i.e., obtained from close relatives, representative payees, other federal agencies, other state agencies such as state welfare offices, friends, and neighbors). This information is not covered by the provisions of Section 205(r) of the Social Security Act and is disclosable under FOIA, as deceased individuals generally do not have privacy rights.[19]

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[15] SSA, "Requesting SSA's Death Information," https://www.ssa.gov/dataexchange/request_dmf.html.

[16] OLCA, *Death Information*, August 2020. See also SSAB, *Social Security and the Death Master File*, June 2019, p. 12; and GAO, *Social Security Death Data*.

[17] OLCA, *Death Information*, August 2020; 42 U.S.C. §405(r)(5).

[18] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Examining Federal Improper Payments and Errors in the Death Master File*, 114th Cong., 1st sess., March 16, 2015 (Washington, DC: GPO, 2015), p. 30; SSA, "Requesting SSA's Death Information," https://www.ssa.gov/dataexchange/request_dmf.html.

[19] SSA, "Program Operations Manual System, GN 03315.010 Disclosing a Deceased Individual's Information," January 6, 2017, https://secure.ssa.gov/apps10/poms.nsf/lnx/0203315010. See also 20 C.F.R. §401.190 and statement

SSA contracts with NTIS to make the DMF available to the public. NTIS sells a public version of the DMF, which, in addition to excluding death data from state vital statistics bureaus, also *excludes* records for individuals who died within the last three years.[20] NTIS developed a certification program to sell a limited-access version of the DMF. The limited-access DMF *includes* the records of those who died within the last three years and is available only to entities that have demonstrated a legitimate business need for the information.[21] The limited-access DMF is thus somewhat larger than the public DMF but still considerably smaller than SSA's full file of death information. The limited-access DMF was created in response to concerns about fraud and identity theft, which prompted Congress to exempt from FOIA information about individuals who died in the last three calendar years.[22]

In June 2019, the Congressional Budget Office (CBO) noted that SSA's full file of death information (*including* state-reported deaths and aggregated over time) contained more than 124 million death records and that the limited-access DMF (*excluding* state-reported deaths and aggregated over time) contained about 101 million death records.[23] Over time, the utility of the DMF will decline as growing use of EDR will increase the gap in the number of records between SSA's full file of death information and the DMF.[24]

Recent Recommendations

In 2016, GAO recommended amending the Social Security Act to permit SSA to share its full file of death information with the DNP portal.[25] In 2019, the Social Security Advisory Board (SSAB) explicitly recommended that Congress shift responsibility for the collection of death data within the federal government from SSA to the Treasury Department's DNP portal.[26] The SSAB further recommended that during the transition from SSA to the Treasury Department, Congress expressly authorize SSA to share its full file of death information (including state-reported death data) with DNP and be appropriately reimbursed for its data collection costs. As noted above, a FY2021 Trump Administration legislative proposal would require SSA to share its full file of

of Michael J. Astrue, Commissioner, SSA, before the House Committee on Ways and Means, Subcommittee on Social Security, February 2, 2012, https://www.ssa.gov/legislation/testimony_020212.html.

[20] 42 U.S.C. §1306c. NTIS, "Limited Access Death Master File Download," https://dmf.ntis.gov/.

[21] 42 U.S.C. §1306c. NTIS, "Limited Access Death Master File," https://classic.ntis.gov/products/ssa-dmf/#. See also NTIS, *Limited Access Death Master File Certification Program (Publication 100)*, June 2016, https://classic.ntis.gov/assets/pdf/NTIS-DMFsecurityGuidelinesv14.pdf.

[22] OLCA, *Death Information*, August 2020; and Continuing Appropriations Resolution, 2014 (P.L. 113-67).

[23] The public version of the DMF had fewer than 101 million death records because it also excludes records for individuals who died within the last three years. CBO, S. 1333, *Stopping Improper Payments to Deceased People Act: As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 15, 2019*, June 10, 2019, https://www.cbo.gov/publication/55355.

[24] As the use of EDR grows over time, the share of new death reports that SSA records from state sources will increase. Because the DMF is compiled from non-state sources, the growth in EDR use will result in fewer new death records being posted to the DMF each year relative to the full file of death information, which includes death records from both state and non-state sources. For more information, see GAO, *Social Security Death Data*, pp. 12 (footnote 25) and 22.

[25] GAO, *Improper Payments: Strategy and Additional Actions Needed to Help Ensure Agencies Use the Do Not Pay Working System as Intended*, GAO-17-15, October 2016, p. 26, https://www.gao.gov/assets/690/680464.pdf.

[26] SSAB, *Social Security and the Death Master File*, June 2019, p. 15, https://www.ssab.gov/wp-content/uploads/2019/06/2019-DMF-v10-2019-06-17-Accessible.pdf.

death information (including state-reported deaths) with DNP for use in preventing improper payments.[27]

An Alternative Source of Death Information

NAPHSIS created the Electronic Verification of Vital Events (EVVE) Fact of Death (FOD) system as an alternative to SSA death data.[28] For a fee, organizations (including federal, state, and local government agencies) can submit records to EVVE FOD to match directly against state vital records databases to determine, in seconds, whether an individual is deceased and when and where he or she died. Currently, 44 states and jurisdictions fully participate in EVVE FOD.[29]

COVID-19 Direct Payments and Deceased Individuals

Three major legislative packages that include payments to individuals to help alleviate the economic effects of the Coronavirus Disease 2019 (COVID-19) pandemic have been proposed or enacted. Depending on the specific provisions of the legislation, SSA's death information may be needed to prevent sending payments to deceased individuals.

CARES Act (P.L. 116-136)

The CARES Act provides direct payments (referred to in the law as "2020 recovery rebates") for most individuals, structured as automatically advanced tax credits disbursed by the Treasury Department.[30] The IRS refers to these payments issued in 2020 as economic impact payments, or EIPs. Eligible individuals can receive EIPs of $1,200 per person ($2,400 for married joint filers), reduced by $5 for every $100 of adjusted gross income (AGI) above $75,000 for individuals, $112,500 for heads of households, and $150,000 for married joint filers. Eligible individuals can also receive an additional $500 for each dependent child under 17 years old. Most individuals received these payments via direct deposit, while others received them as checks by mail or prepaid debit cards.

The CARES Act is silent as to whether EIPs can be issued to deceased individuals.[31] The IRS initially determined that it did not have legal authority to deny an EIP to an individual who had died at any time before the payment was issued.[32] In addition, the IRS was mandated to deliver

[27] SSA, *FY 2021 Congressional Justification*, p. 23, https://www.ssa.gov/budget/FY21Files/FY21-JEAC.pdf. As outlined in SSA's *FY 2021 Congressional Justification*, the proposal is silent as to whether the Treasury Department's BFS, as the agency responsible for the DNP portal, would be required to reimburse SSA for the cost of sharing its full file of death information. Traditionally, SSA must be reimbursed for non-programmatic work such as sharing death information.

[28] NAPHSIS, "EVVE Fact of Death (FOD)," https://www.naphsis.org/evve.

[29] NAPHSIS, "EVVE Fact of Death (FOD)."

[30] CRS Insight IN11282, *COVID-19 and Direct Payments to Individuals: Summary of the 2020 Recovery Rebates/Economic Impact Payments in the CARES Act (P.L. 116-136)*, by Margot L. Crandall-Hollick.

[31] Testimony of Charles P. Rettig, Commissioner, IRS, in U.S. Congress, Senate Committee on Finance, *2020 Filing Season and IRS COVID-19 Recovery*, 116th Cong., 2nd sess., June 30, 2020, https://www.finance.senate.gov/hearings/2020-filing-season-and-irs-covid-19-recovery.

[32] GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, GAO-20-625, June 2020, p. 26, https://www.gao.gov/assets/710/707839.pdf.

the payments as rapidly as possible and administered them in a similar fashion to the 2008 direct payments (when decedents received payments).[33] Hence, although the IRS receives SSA's full file of death information (including state-reported deaths data) under a data exchange agreement with SSA, the IRS initially did not use SSA's death data to prevent the payment of EIPs to deceased individuals.[34]

Subsequently, the Treasury Department and the IRS, in consultation with counsel, determined that individuals who are deceased as of the date the payments are to be made are not entitled to EIPs.[35] The IRS and BFS then stopped issuing EIPs to deceased individuals. As of May 21, 2020, the Treasury Inspector General for Tax Administration reported that $1.6 billion in EIPs were issued to over 1.1 million deceased individuals.[36] Information on the IRS's website now states that EIPs issued to deceased individuals should be returned to the IRS, and the BFS has cancelled checks issued to deceased individuals.[37] A Treasury Department official reported that "the IRS has already recovered about 70% of the $1.6 billion in improper payments to the deceased, and expects more returned checks to turn up as the agency returns to full staffing at its processing facilities."[38] Some reports have indicated that the denial of payments to deceased individuals has resulted in burdens for some living taxpayers. For example, certain married individuals with deceased spouses have reported that their portions of the payment have been erroneously withheld.[39] GAO reported an IRS estimate that nearly 700,000 individuals may have had their EIPs stopped because their spouses had died. IRS planned to issue EIPs to such individuals by late summer.[40]

Heroes Act (H.R. 6800 and H.R. 925)

The House of Representative passed the Heroes Act (H.R. 6800) on May 15, 2020. The Heroes Act would provide a second round of payments equal to $1,200 per person ($2,400 for married joint files), gradually phased out with AGI above $75,000 for individuals, $112,500 for heads of

[33] Testimony of Charles P. Rettig, Commissioner, IRS, in U.S. Congress, Senate Committee on Finance, *2020 Filing Season and IRS COVID-19 Recovery*, 116th Cong., 2nd sess., June 30, 2020, https://www.finance.senate.gov/hearings/2020-filing-season-and-irs-covid-19-recovery. See also GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, p. 26. For more information on the 2008 stimulus payments, see CRS Insight IN11255, *COVID-19 and Direct Payments to Individuals: How Did the 2008 Recovery Rebates Work?*, by Margot L. Crandall-Hollick

[34] In its 2013 report, GAO explained that SSA's stated reason for providing the full file of death information to the IRS is "for purposes that include allowing IRS to confirm or deny taxpayers' requests for exemptions and standard deductions." GAO, *Social Security Death Data*, p. 20.

[35] GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, p. 27.

[36] U.S. Department of the Treasury, Treasury Inspector General for Tax Administration, *Interim Results of the 2020 Filing Season: Effect of COVID-19 Shutdown on Tax Processing and Customer Service Operations and Assessment of Efforts to Implement Legislative Provisions*, Report Number 2020-46-041, June 2020, p. 6 and Figure 3, https://www.treasury.gov/tigta/auditreports/2020reports/202046041fr.pdf.

[37] IRS, "Economic Impact Payment Information Center—Topic A: EIP Eligibility," Q A5, updated November 10, 2020, https://www.irs.gov/newsroom/economic-impact-payment-information-center-topic-a-eip-eligibility.

[38] Jory Heckman, "IRS Recovers More Than $1B in Coronavirus Stimulus Payments to Deceased," *Federal News Network*, July 22, 2020, quoting Treasury's Fiscal Assistant Secretary David A. Lebryk, https://federalnewsnetwork.com/agency-oversight/2020/07/irs-recovers-more-than-1b-in-coronavirus-stimulus-payments-to-deceased/.

[39] Letter from Reps. DelBene, Heck, Walorski, and McMorris Rodgers to Charles Rettig, Commissioner, IRS, July 16, 2020, https://delbene.house.gov/uploadedfiles/final_eip_letter.pdf.

[40] GAO, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions*, GAO-20-701, September 2020, p. 50, https://www.gao.gov/assets/710/709492.pdf. As of the date of this report, no further information was publicly available as to whether IRS had achieved this objective.

households, and $150,000 for married joint filers, plus $1,200 for each dependent (up to three dependents, including older children, students, and adult dependents).[41] It would also modify certain aspects of the EIPs provided under the CARES Act.[42] Similar to the CARES Act, the Heroes Act does not contain language that would preclude payments to deceased individuals, leaving interpretation and implementation to the Treasury Department and the IRS.

On September 29, 2020, the House of Representatives introduced a revised version of the Heroes Act (H.R. 8406). It was adopted on October 1, 2020, as a House amendment to the Senate amendment to H.R. 925.[43] As compared with H.R. 6800, the revised version of the Heroes Act in H.R. 925 would reduce the dependent payments to $500, drop the limitation on the number of dependent payments, and drop the previously proposed modifications to the EIPs provided under the CARES Act. H.R. 925 does not contain language that would preclude payments to deceased individuals.[44]

American Workers, Families, and Employers Assistance Act (S. 4318)

On July 27, 2020, the American Workers, Families, and Employers Assistance Act (S. 4318) was introduced in the Senate as one component of a COVID-19 relief package that is broadly referred to as the Health, Economic Assistance, Liability Protection, and Schools Act (HEALS Act).[45] S. 4318 would provide a second round of payments equal to $1,200 per person ($2,400 for married joint files), gradually phased out with AGI above $75,000 for individuals, $112,500 for heads of households, and $150,000 for married joint filers, plus $500 for each dependent (including older children, students, and adult dependents).[46] Individuals who died before January 1, 2020, would be statutorily ineligible for the payment.[47] In addition, the CARES Act would be modified to make individuals who died before January 1, 2020, ineligible for the CARES Act EIPs. Those who died at any time in 2020 would be made eligible for the CARES Act EIPs as well as the new payments proposed under this bill, consistent with the tax treatment of the recently deceased.[48]

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[41] CRS Insight IN11397, *COVID-19: Summary of the Direct Payments Proposed in the Heroes Act (H.R. 6800)*, by Margot L. Crandall-Hollick.

[42] CRS Insight IN11398, *How Would the Heroes Act (H.R. 6800) Modify the Direct Payments Enacted in the CARES Act (P.L. 116-136)?*, by Margot L. Crandall-Hollick.

[43] See also H.Res. 1161, which amended the text of H.R. 925 with the text of Rules Committee Print 116-66. U.S. Congress, House Rules Committee, *Text of the House Amendment to the Senate Amendment to* H.R. 925 *H.R. 925*, committee print, 116th Cong., 2nd sess., September 29, 2020, H. Prt. 116-66 (Washington, DC: GPO, 2020).

[44] CRS Insight IN11513, *COVID-19 and Direct Payments to Individuals: Comparison of Recent Proposals for a Second Round of Payments*, by Margot L. Crandall-Hollick.

[45] Sen. Mitch McConnell, "McConnell Outlines Historic Relief Proposal for 'An Important Crossroads in this Battle,'" press release, July 27, 2020, https://www.mcconnell.senate.gov/public/index.cfm/2020/7/mcconnell-outlines-historic-relief-proposal-for-an-important-crossroads-in-this-battle.

[46] CRS Report R46470, *The American Workers, Families, and Employers Assistance Act (S. 4318): Title II—Revenue Provisions and Other "HEALS Act" Tax Provisions*, coordinated by Molly F. Sherlock.

[47] CRS Insight IN11473, *COVID-19: Summary of Direct Payments in the American Workers, Families, and Employers Assistance Act (S. 4318)*, by Margot L. Crandall-Hollick.

[48] IRS, "Deceased Persons—Filing the Final Return(s) of a Deceased Person," March 27, 2020, https://www.irs.gov/businesses/small-businesses-self-employed/deceased-taxpayers-filing-the-final-returns-of-a-deceased-taxpayer.

Recent Bills Pertaining to Death Data

As of this writing, debate continues around how deceased individuals should be treated with respect to payments to help alleviate the economic effects of the COVID-19 pandemic (e.g., EIPs). Some Members of Congress raised concerns about the issuance of EIPs to deceased individuals under the CARES Act.[49] Noting the differing initial interpretations of whether deceased individuals are entitled to EIPs under the CARES Act and highlighting the fact that the Social Security Act does not authorize SSA to share its full file of death information with the Treasury Department and BFS (which distributes payments), GAO restated its previous recommendation that "providing Treasury with access to SSA's full set of death records, and requiring that Treasury consistently use it, could help reduce similar types of improper payments in other circumstances."[50] Alternatively, the IRS could conceivably use the death data it currently receives from SSA (including state-reported death data) to screen out deceased individuals whom it has determined to be ineligible for such payments before sending payment information to BFS.

The paragraphs below summarize recent bills that have been introduced with respect to sharing death data and the role of SSA.

Stopping Improper Payments to Deceased People Act (S. 4104)

On June 30, 2020, the Stopping Improper Payment to Deceased People Act (S. 4104) was passed in the Senate without amendment by unanimous consent.[51] Just prior to its passage in the Senate, Senator Rand Paul's bill (S. 4104) was joined by unanimous consent with S. 1333, which had been introduced by Senator Tom Carper on May 6, 2019, and reported favorably by the Committee on Homeland Security and Governmental Affairs on June 25, 2019.[52] H.R. 2543, a companion bill to S. 1333, was introduced by Representative Cheri Bustos on May 7, 2019.

In the context of payments to help alleviate the economic effects of the COVID-19 pandemic, S. 4104 would require SSA to provide the Treasury Department with access to its complete file of death information for administering such payments. (A summary released by SSA notes that SSA already has such authority and provides its complete file of death information to the IRS.[53]) The Treasury Department would be required to "suspend, cancel, and recover payments issued to individuals shown on SSA records disclosed to Treasury as being deceased before January 1, 2020" (S. 4104, §6). Also relevant to the administration of such payments, Section 2 of S. 4104

[49] See, for example, Sen. Tom Carper, "Sens. Carper, Kennedy and Reps. Bustos, Gianforte Lead Bipartisan Inquiry: Why Are the Deceased Receiving Coronavirus Stimulus Checks?," press release, May 8, 2020, https://www.carper.senate.gov/public/index.cfm/2020/5/sens-carper-kennedy-and-reps-bustos-gianforte-lead-bipartisan-inquiry-why-are-the-deceased-receiving-coronavirus-stimulus-checks; and U.S. Senate Committee on Homeland Security and Governmental Affairs, "Peters Releases New Report Condemning $1 Billion in Wrongful CARES Act Payments to Deceased Individuals," press release, June 29, 2020, https://www.hsgac.senate.gov/media/minority-media/peters-releases-new-report-condemning-1-billion-in-wrongful-cares-act-payments-to-deceased-individuals.

[50] GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, p. 74.

[51] Senate debate, *Congressional Record*, vol. 166, no. 120 (June 30, 2020), pp. S3998-S3999, https://www.congress.gov/116/crec/2020/06/30/CREC-2020-06-30-pt1-PgS3998.pdf.

[52] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Stopping Improper Payments to Deceased People Act*, report to accompany S. 1333, 116th Cong., 1st sess., S.Rept. 116-49 (Washington, DC: GPO, 2019).

[53] SSA, "Senate Passes S. 4104, the 'Stopping Improper Payments to Deceased People Act,'" Social Security Legislative Bulletin 116-18, July 2020, https://www.ssa.gov/legislation/legis_bulletin_071420.html.

would require SSA to enter into a cooperative agreement to share its complete file of death information with the DNP portal.

More generally, S. 4104 would expand SSA's authority under Section 205(r) or the Social Security Act to share death information (including state-reported death data) and to seek compensation for the reasonable cost of both sharing death information and collecting and maintaining death information. The provisions of S. 4104 would sunset five years after enactment. Subsequent to a review of potential non-federal sources of death data to be conducted by SSA and the Treasury Department, the Office of Management and Budget would be required to submit a recommendation to Congress within four years after enactment as to whether the provisions of S. 4104 should be extended beyond the sunset date. SSA would also be required to submit to Congress a plan and cost estimate for improving the accuracy and completeness of its death data, including death data for individuals who are not receiving Social Security or SSI benefits, as well as improved policies and procedures for identifying and correcting erroneous death records. Finally, the bill includes several provisions to improve the use of death data by federal, state, and local government agencies and tribal organizations.

In its cost estimate for S. 1333, which contains the same provisions as S. 4104 except for those specific to payments to help alleviate the economic effects of the COVID-19 pandemic, CBO estimated that the bill would have a negligible effect on federal spending because agencies that make the largest benefit payments already have access to SSA's full file of death information.[54]

Stopping Payments to the Deceased Act (H.R. 7696)

On July 21, 2020, Representative John Curtis introduced the Stopping Payments to the Deceased Act (H.R. 7696). The bill specifies that, notwithstanding any other provision of law—including Section 205(r) of the Social Security Act—SSA would be required to disclose to the Treasury Department all death records collected and maintained by SSA, including state-reported death data. The Treasury Department would be required to integrate the SSA death records into relevant databases for verifying eligibility for payments under programs administered by the Treasury Department, including tax refunds.

S. 4330

On July 27, 2020, Senator John Kennedy introduced S. 4330, a bill to provide for the collection of death information from states for use in the DNP portal. The bill would require BFS, as the agency operating the DNP portal, to establish voluntary contracts with states to obtain state death information that would be accessed and used by federal agencies through the DNP portal to detect and prevent improper payments. Unlike other bills that would authorize or require SSA to provide its full file of death information to DNP, this bill calls for the establishment of a direct data feed from the states to BFS, in some sense replicating the EDR system developed by SSA, NAPHSIS, and the states.

[54] CBO, S. 1333, *Stopping Improper Payments to Deceased People Act*.

FY2021 Financial Services and General Government Funding Measure

On November 10, 2020, the Senate Committee on Appropriations released the bill text and explanatory statements for the FY2021 funding measures.[55] The bill text for financial services and general government for FY2021 includes in Section 126 language that would amend Section 205(r) of the Social Security Act.[56] The bill would require SSA to share all death information furnished to or maintained by SSA (including state-reported death data) with any federal or state agency providing federally funded benefits or administering a federal program for such benefits, including the BFS as the agency operating the DNP portal. The bill would authorize recipient agencies to use SSA's death data to ensure proper payments under a federal program or the proper payment of federally funded benefits, including the prevention, identification, or recoupment of improper payments. Authorized uses would also include the tax administration or debt collection duties of the recipient agency, as well as use by policing agencies of the federal government. SSA would be authorized to enter into similar agreements with states for use in programs wholly funded by states. Agencies receiving SSA's death information would be required to reimburse SSA for the reasonable cost of both sharing death information and collecting and maintaining death information. The explanatory statement accompanying the bill text directs BFS to report to the Senate Committee on Appropriations within 120 days of enactment on the feasibility of shifting responsibility for collection and dissemination of death data from SSA to DNP.[57] The report would address projected implementation costs, recurring annual costs, and costs that would need to be funded by direct appropriations.

You Must Be Alive to Vote Act of 2020 (H.R. 8830)

On December 2, 2020, Representative Brian Babin introduced H.R. 8830, a bill to require states to obtain death information from SSA for voter registration list maintenance. Section 8(a)(4)(A) of the National Voter Registration Act of 1993 would be amended to require states to remove from the list of voters registered for elections for federal office deceased individuals as determined based on state records and information obtained from SSA.[58] The bill would also amend Section 205(r) of the Social Security Act to require SSA to enter into agreements with states to share death information for this purpose. The bill is silent as to whether states would be required to independently verify the death information from SSA before acting on it, and it is not clear whether SSA could impose such a requirement in the data exchange agreements required by this bill as it does in its other data exchange agreements related to death data. Finally, the bill would require each state to certify annually to the Secretaries of Education and Transportation that it has the required data sharing agreement in place with SSA. In calendar years in which a state does not comply, the Secretaries of Education and Transportation would be prohibited from providing federal funds to the state. The provisions of the bill would take effect one year after enactment.

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[55] U.S. Congress, Senate Committee on Appropriations, "Committee Releases FY21 Bills in Effort to Advance Process, Produce Bipartisan Results," press release, November 10, 2020, https://www.appropriations.senate.gov/news/committee-releases-fy21-bills-in-effort-to-advance-process-produce-bipartisan-results.

[56] U.S. Congress, Senate Committee on Appropriations, "A bill making appropriations for financial services and general government for the fiscal year ending September 30, 2021, and for other purposes," https://www.appropriations.senate.gov/imo/media/doc/FSGGFY2021.pdf.

[57] U.S. Congress, Senate Committee on Appropriations, "Explanatory Statement for Financial Services and General Government Appropriations Bill, 2021," p.15, https://www.appropriations.senate.gov/imo/media/doc/FSGGRept.pdf.

[58] 52 U.S.C. §20507(a)(4)(A).

Considerations for Congress

Drawing upon the proposals in recent bills, and considering the EVVE FOD system being developed by NAPHSIS, three basic approaches emerge as candidates for enhancing the collection, maintenance, and sharing of death data among federal government agencies: (1) expand SSA's sharing of death data with federal and state agencies and other authorized users; (2) authorize or require an agency other than SSA to collect, maintain, and share death data on behalf of the federal government; and (3) develop and utilize a third-party, non-governmental clearinghouse for death data. Each approach has benefits and challenges along with issues for further consideration.

Expand SSA's Sharing of Death Data

One approach to enhance death data sharing within the federal government would be to amend Section 205(r) of the Social Security Act to expand SSA's authority to share all death data furnished to or maintained by SSA (including state-reported death data).

Benefits

This approach would have the advantage of capitalizing on the systems and infrastructure that SSA has developed over many years, including contracts with NAPHSIS and the states, data exchange agreements with other federal (and state) agencies, and expertise receiving and processing death reports from states and other sources. If SSA were to be allowed to recoup the costs of obtaining (purchasing) death data from the states, rather than charging recipient agencies only for the cost of transmitting death data, the financial burden on SSA (and the Social Security Trust Funds) would be lessened. The federal government as a whole would benefit from SSA serving as a single clearinghouse for death information.

Challenges

The primary challenge associated with this approach would be that it would add a potentially substantial amount of non-mission work to an agency that is already facing large and growing programmatic challenges. One would anticipate a large increase in the demand for death data for both programmatic and research purposes, which may require SSA to develop new policy around death data and death data exchange, provide legal review of numerous additional data exchange requests, negotiate and implement new data exchange agreements, and expand its systems capacity. Requiring SSA to serve as the clearinghouse of death data for federal and state agencies could create increased pressure for SSA to verify death data for individuals other than the Social Security and SSI beneficiaries who are directly served by SSA. If SSA would also be required to verify the accuracy and completeness of its death data for individuals who are not receiving Social Security or SSI benefits and/or develop improved policies and procedures for identifying and correcting erroneous death records, the additional strain on the agency could be considerable. Unless additional resources were to be provided to SSA, the death data exchange workload may compete with mission critical workloads for scarce agency resources.

Issues for Consideration

- Would the states push back against an expansion of death data sharing by SSA? Historically, the state-reported death data has been considered to be owned by the state. The Social Security Act imposes meaningful restrictions on SSA's

authority to share state-reported death data, in part to protect the interests of the states.

- To what extent would states demand higher prices for the death records they sell to SSA? If SSA were to become the clearinghouse for death data for federal government agencies, states may argue that they would lose potential revenue from other federal agencies and thus increase the prices they charge SSA for death records. In recent years, EDR contract negotiations between NAPHSIS (representing the states) and SSA have been contentious.
- As noted earlier, four states (Connecticut, North Carolina, Rhode Island, and West Virginia) currently do not participate in the EDR process with SSA. To further improve the efficiency and accuracy of state death data reporting to the federal government, would Congress be willing to require (and perhaps provide resources to support) full EDR participation and implementation by all states?

Designate Another Agency (e.g., Treasury's BFS/DNP) as the Repository of Federal Death Data

Another approach to death data sharing would be to designate another federal agency, such as the Treasury Department's BFS, to serve as the federal repository of death data. This agency would need to develop a death data infrastructure similar to SSA's, including, for example, policies and regulations, systems functionality, contracts with states, reporting and verification processes, and data exchange policies and agreements.

Benefits

One benefit of this approach would be that it would establish a single set of authorities, requirements, processes, and systems for federal death data collection and sharing. This would include, for example, policies and processes for collecting, verifying, maintaining, correcting, and sharing death data for all federal agencies (and authorized state agencies and non-government users). In addition, this approach would remove a large, non-mission workload from SSA. SSA has never claimed to be, nor wanted to be, the federal clearinghouse for death data. SSA's only focus in this area has been the collection and utilization of death data for the administration of the Social Security and SSI programs. It is conceivable that designating the BFS as the federal repository for death data could lead to improvements in the accuracy of death data because of the broad range of interactions between BFS (and other Treasury Department agencies such as the IRS) and the American public.

Challenges

One challenge of this approach would be that it would be duplicative and costly if another agency, such as BFS, were to replicate rather than replace the SSA death data infrastructure. If, on the other hand, another agency were to replace the SSA death data infrastructure (i.e., remove death data collection from SSA), SSA would face challenges as it would need to develop and implement new policies, processes, and systems requirements to obtain death data from another agency to meet SSA program needs. SSA requires on-demand access to death records to prevent improper payments as well as to ensure proper and timely payment of survivor benefits. Moreover, if another agency were to be charged with coordinating federal death data collection and sharing, all current SSA data exchanges involving death data would have to be transitioned to the new clearinghouse agency. In many cases, death data is only one component of an SSA data

exchange agreement, meaning that an undetermined number of SSA data exchange agreements would need to be renegotiated.

Issues for Consideration

- What obstacles would a federal clearinghouse agency such as BFS face in negotiating EDR-like contracts with NAPHSIS and the states and establishing an EDR-like death data reporting and collection system? Would the lack of a working relationship between the federal clearinghouse agency and NAPHSIS and the states lead to price increases for the federal government or create implementation delays?
- What would be the implications for SSA's ability to cease payments based on death reports obtained from a federal clearinghouse agency? Would SSA be able to treat the death reports as first-party reports and immediately cease payments? Or would SSA have to take additional steps to verify the data as a third-party report before ceasing payments? If the latter, what would be the impacts for SSA in terms of timeliness, cost, workload, and improper payments?
- SSA currently operates verification services for other federal and state government agencies and external entities. For example, SSA verifies SSNs for state driver's license agencies under Section 303 of the Help America Vote Act of 2002 (P.L. 107-252)[59] and is implementing an electronic consent-based SSN verification service as required under Section 215 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174).[60] These verification routines generally include a death indicator. The You Must Be Alive to Vote Act of 2020 (H.R. 8830), described above, would create a new requirement for SSA share death data with states to allow states to remove deceased individuals from the list of voters registered for elections for federal office. Would the creation of a death data clearinghouse outside SSA compromise these existing verification services or the proposed new exchange for registered voters?
- To further improve the efficiency and accuracy of state death data reporting to the federal government, would Congress be willing to require (and perhaps provide resources to support) full EDR participation and implementation by all states?

Use a Third-Party Death Data Clearinghouse (e.g., NAPHSIS/EVVE FOD)

A third approach to death data sharing would be to utilize a third-party, nongovernmental death data clearinghouse. One example would be the EVVE FOD system under development by NAPHSIS and the states. EVVE FOD is a fee-based system under which organizations can submit records to match directly against state vital records databases to determine whether an individual is deceased and when and where he or she died. As noted previously, 44 states and jurisdictions currently participate in EVVE FOD.

[59] SSA, "User Agreement for the Voter Registration Information Verification System Services," https://www.ssa.gov/dataexchange/documents/66005—HAVA%20MOU%20MVA.pdf.

[60] SSA, "Electronic Consent Based Social Security Number Verification (eCBSV) Service," https://www.ssa.gov/dataexchange/eCBSV/.

Benefits

This approach would have the benefit of avoiding duplicate development of death data collection and sharing operations across multiple federal agencies. It would also remove the non-mission death data exchange workload from SSA. It could potentially lead to the establishment of a single set of authorities, requirements, and processes for collecting, verifying, maintaining, correcting, and sharing death data for all federal agencies. This approach would also eliminate potential conflicts with states over state ownership of death records and lost revenue from expanded sharing of state-reported death data.

Challenges

One challenge of this approach is that it would place a great deal of responsibility on a nongovernmental organization as the centerpiece for collection and provision of death data on behalf of the federal government. As stated above, SSA alone relies on death data to prevent over $50 million in Social Security and SSI improper payments each month. This approach would also have the potential to lessen federal protection of death data, ceding control to state laws and policies and the nongovernmental entity operating the clearinghouse. In terms of cost and pricing, this approach may cause the death data clearinghouse and the state agencies that provide records to the clearinghouse to demand higher prices, capitalizing on monopoly incentives as the sole provider of death records to the entire federal government. SSA in particular would need to develop and implement new policies, processes, and systems requirements to obtain death data from the third-party provider to meet SSA program needs. SSA requires on-demand access to death records to prevent improper payments as well as to ensure proper and timely payment of survivor benefits. Moreover, if a third-party provider were to be charged with coordinating death data collection and sharing on behalf of the federal government, all current SSA data exchanges involving death data would have to be transitioned to the new clearinghouse provider. In many cases, death data is only one component of an SSA data exchange agreement, meaning that an undetermined number of SSA data exchange agreements would need to be renegotiated. To the extent that multiple agencies may be independently verifying death reports from the third-party provider before acting on them, this approach may create duplication of effort.

Issues for Consideration

- To create an efficient and accurate system of death records, and to achieve desired operating capacity and response times, would Congress be willing to require (and perhaps provide resources to support) full participation and implementation by all states?
- If the third-party clearinghouse were to depend on general revenue funding through annual appropriations, would the system be at risk of shutting down or operating at partial capacity in years in which Congress does not timely pass a budget or imposes funding reductions?
- Could SSA and other federal agencies achieve the on-demand access they need to prevent improper payments and properly pay survivor benefits? Would federal agencies be able to develop and enforce service level agreements with the death data clearinghouse?
- What would be the implications for SSA's ability to cease payments based on death reports obtained from a third-party, nongovernmental clearinghouse? Would SSA be able to treat the death reports as first-party reports and immediately cease payments? Or would SSA have to take additional steps to

- verify the data as a third-party report before ceasing payments? If the latter, what would be the impacts for SSA in terms of timeliness, cost, workload, and improper payments?
- If agencies using death reports from the third-party clearinghouse discover and correct errors in the data, how would those errors be corrected by the clearinghouse, and how would the corrected records be shared with other users?
- Would a third-party, nongovernmental clearinghouse be able to develop, implement, and enforce policies with respect to verification, correction, accuracy, and timeliness of death data that meet the requirements of all federal data users?
- How would data protection be established and enforced? Would the Privacy Act apply? Would the records be subject to Freedom of Information Act requests?

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