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Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions

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SUMMARY

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Children in Foster Care and Social Security Administration Benefits: Frequently Asked Questions

In a given year, about 27,000 children in foster care receive benefits from the Supplemental Security Income (SSI) program (due to their own disability) or the Social Security program (based on the retirement, disability, or death of an insured parent). Representing a little more than 5% of all children in foster care, these are children who have been removed from their homes, typically due to abuse or neglect at the hands of their parents, and for whom a state child welfare agency has been given responsibility for placement and around-the-clock care. In more than 80% of these cases, the Social Security Administration appoints the state child welfare agency as the child's representative payee to receive and manage the SSI/Social Security benefits on the child's behalf.

Data reported for state FY2018 indicate that 38 states and the District of Columbia were able to use about $179 million in SSI/Social Security benefits received on behalf of children in foster care to offset the child welfare agency's cost of providing care for those children. Various stakeholders have argued in support of, or against, using SSI/Social Security benefits for children in care to cover the cost of foster care.

Some child advocates contend that by using SSI/Social Security benefits to reimburse the cost of foster care, the child welfare agency denies the child beneficiaries funding that rightly belongs to them and effectively forces the children to pay for their own foster care. This practice may also cause the children to miss opportunities to accumulate savings that may aid in their transition from foster care.

On the other hand, child welfare agency administrators and some other advocates argue that they are using the SSI/Social Security benefits to meet the children's current needs, including providing the children with food and housing, much like a parent would do. Without the ability to use SSI/Social Security benefits to pay for a child's foster care, child welfare agencies may stop screening children to determine their eligibility for these programs, leading to missed benefits. Child welfare agencies may also help children in foster care who have qualifying disabilities to maintain their SSI/Social Security benefits into adulthood as they transition out of care.

This report addresses the financing of foster care for children who receive SSI/Social Security benefits. After providing brief background information about the federal foster care program under Title IV-E of the Social Security Act, as well as SSI and Social Security benefits for children, the report answers frequently asked questions about the interplay between these programs. Questions and answers focus on

- the receipt of SSI/Social Security benefits among children in foster care and the characteristics of children in foster care who receive SSI/Social Security benefits;
- the role of representative payees for children in foster care who receive SSI/Social Security benefits;
- state processes for screening and applying for SSI/Social Security benefits on behalf of children in foster care;
- the use of SSI/Social Security benefits by child welfare agencies to cover the cost of foster care, including potential arguments for and against such practices;
- selected court decisions and constitutional issues associated with the use of SSI/Social Security benefits by child welfare agencies to cover the cost of foster care; and
- congressional and executive branch activity to address the use of SSI/Social Security benefits by child welfare agencies to cover the cost of foster care.

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Introduction

Children in foster care are those children who have been removed from their homes, typically due to abuse or neglect at the hands of their parents, and for whom the state child welfare agency has thus been given the responsibility for their placement and care. The state child welfare agency typically places these children in relative or non-relative foster family homes or in group homes or institutions providing around-the-clock care.

This report provides background information about the financing of foster care for children who qualify for benefits under one of two programs administered by the Social Security Administration (SSA):

1. Supplemental Security Income (SSI, Title XVI of the Social Security Act), or
2. Old Age, Survivors, and Disability Insurance (Title II of the Social Security Act), referred to in this report as "Social Security."

Children qualify for SSI based on their own disabilities and for Social Security based on the retirement, disability, or death of an insured parent. Based on the most recent available data, about 27,000 children in foster care (5.3% of all children in foster care) were receiving SSI/Social Security benefits, and some research indicates a larger number may be eligible.[1] Data reported for state FY2018 indicate that 38 states and the District of Columbia had access to about $179 million in SSI/Social Security benefits received on behalf of children in foster care to offset child welfare agency foster care costs.[2]

The report begins with a discussion of foster care, including the federal foster care program (Title IV-E of the Social Security Act), and the SSI and Social Security programs.[3] It then answers frequently asked questions about the interplay between these programs, focusing on the receipt of SSI/Social Security benefits among children in foster care and the use of those benefits by state and local child welfare agencies to cover the cost of foster care. This report also provides background for Congress on the potential merits and drawbacks of using SSI/Social Security

[1] This number is based on CRS analysis of FY2019 data from the Adoption and Foster Care Analysis Reporting System (AFCARS, dataset #239, FC2019v1), available from the National Data Archive on Child Abuse and Neglect (NDACAN) at Cornell University. Data analyzed were submitted to the U.S. Department of Health and Human Services (HHS) by the 50 states and the District of Columbia. (Data from Puerto Rico, which were expected to be re-submitted, were excluded.) The CRS analysis looked at the number of all children who were in foster care at some point during FY2019 and who had been in care for at least six months. The finding of between 5% and 6% of children in foster care receiving SSI/Social Security benefits is consistent with analyses of AFCARS data from earlier years, including some based on the population of children in care on the last day of the fiscal year. For more information on data used for this analysis, including some state-by-state data, see **Appendix B**.

[2] Based on unpublished survey data provided to CRS by Child Trends, a research organization focused on improving the lives of children and youth, especially those who are most vulnerable. Specifically, the Child Trends Survey asked about the amount of certain third-party income "remitted to the state and made available to the child welfare agency to use as offsets to child welfare agency costs for child welfare services/activities." Agencies in three states and Puerto Rico reported receiving $0 in SSI/Social Security benefits; those in eight states were unable to provide information on the amount of SSI/ Social Security benefits received in this manner and one state did not participate in the survey. The $179 million figure generally represents access to SSI/Social Security funds only (during SFY2018). However, funding amounts included in that total from Louisiana and Pennsylvania may include some funds from other third-party income sources. For more information see **Appendix E**, table note a. For the survey question as fielded, see Appendix R, Question 26, p. 28, in Kristina Rosinsky, Sarah Catherine Williams, Megan Fischer, and Maggie Haas, *Child Welfare Financing SFY 2018: A Survey of Federal, State, and Local Expenditures*, Child Trends, March 2021.

[3] **Appendix A** provides an overview and comparison of eligibility and benefits/assistance under these programs.

benefits for this purpose, as well as congressional, judicial, and executive branch actions addressing use of benefits.

Program Background

Foster Care

Children in foster care are children for whom a state or tribal child welfare agency has been given formal responsibility for a child's care and placement by a court or by a voluntary placement agreement between the state and a child's parent or legal guardian.[4] Foster care is the around-the-clock care of a child outside the child's home and is most often determined necessary for the safety of the child due to neglect or abuse of the child by his or her parents.[5] Children who are removed from their homes may be placed in foster family homes, institutions, or group homes by state child welfare agencies. The federal government has established certain protections that are applicable to all children in foster care. These protections are generally included as program plan requirements under Title IV-B and Title IV-E of the Social Security Act. These requirements include that a state has a written case plan detailing, among other things, where the child will live, what the child's case plan or "permanency" goal is, and what services will be provided to ensure that a permanent home is re-established for the child. Children may leave foster care for permanency (via family reunification, adoption, or guardianship) at any age.[6] Once they reach age 18 (or in some states up to age 21), however, they are no longer considered *children* for purposes of state child welfare programs. Youth who have not had permanency established by that point are said to *age out* of care and typically leave care after being *emancipated* (from state child welfare agency responsibility) by a court.[7]

State and tribal child welfare agencies use funding from a variety of federal sources to support children in foster care, notably the federal foster care program authorized by Title IV-E of the Social Security Act. The program is jointly funded by the federal government and states (or participating tribes), and is administered by the Children's Bureau, which is an agency within the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS).[8]

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[4] For more information, see CRS Report R43458, *Child Welfare: An Overview of Federal Programs and Their Current Funding*.

[5] Alone or in combination with one or more other factors, neglect was a circumstance associated with 63% of the children removed from their homes and placed in foster care during FY2019; parent drug abuse was a factor reported in 34% of cases. For additional reported circumstances of removal see HHS, Administration for Children and Families (ACF), Administration on Children Youth and Families (ACYF), Children's Bureau, *The AFCARS Report #27*, p. 2, https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf.

[6] Most children who exited foster care during FY2019 did so via reunification/live with other relative or adoption/legal guardianship. See *The AFCARS Report #27*, p. 3. https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf.

[7] *Emancipation* is by far the most common foster care exit outcome for youth reaching a state's upper age limit for foster care. A small number of youth may, however, be transferred to care of another agency (e.g., agency serving developmentally disabled).

[8] States and tribes must administer the Title IV-E foster care program consistent with federal policies, but implementation and certain policies may vary by jurisdiction. As of September 2021, there were 53 *states* participating in the Title IV-E program, including each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. In addition, 17 tribes are approved for participation (although a few of those have not implemented the program). See Children's Bureau, "Tribes with Approved Title IV-E Plans," https://www.acf.hhs.gov/cb/grant-funding/

Under the Title IV-E program, as the program is commonly called, states and participating tribes are entitled to federal reimbursement for a part of the cost of making monthly foster care maintenance payments on behalf of each child in care who meets federal Title IV-E foster care eligibility criteria.[9] Title IV-E defines *foster care maintenance payment* to include the cost of securing and providing food, shelter, daily supervision, school supplies, and other items, including certain transportation costs.[10] Eligibility for Title IV-E foster care assistance is based on the income associated with the household from which the child was removed along with other factors.[11] Around 40% of children in care meet those Title IV-E eligibility criteria.[12] States pay the costs for children in foster care who are not federally eligible with nonfederal dollars, as well as some dollars from federal funding streams not solely dedicated to child welfare purposes.[13] States/tribes and the federal government also share Title IV-E costs for related case management activities, training, data collection, and other costs of program administration.[14]

States may choose the level of foster care maintenance payment they will provide for children in care.[15] Payment rates vary widely across states, and within them, by various factors, such as the age of the child, any special needs of a child, and the child's placement setting.[16] Children who are not Title IV-E eligible are not statutorily required to receive foster care maintenance payments.[17] All the same, states and tribes may be unable to place children with non-kin families

tribes-approved-title-iv-e-plans.

[9] All Title IV-E program costs are shared by the federal government and states (or participating tribes). This means all Title IV-E funding – whether spent by a state out of nonfederal sources or whether supported by the state with federal dollars—must be spent only for Title IV-E eligible activities on behalf of eligible children.

[10] Section 475(4)(A) of the Social Security Act (42 U.S.C. §675(4)(A)).

[11] Among these factors: the child must have been removed from a household with very low income and the removal must have been accomplished through a judicial finding that the home was "contrary to the welfare" of the child or through a voluntary placement agreement entered into by the child's parent/guardian and the state child welfare agency. Further, the child must be living in a licensed foster family home or selected group settings and with caregivers who meet certain background check requirements. Additionally, the child must be under the age of 18, or under the age of 19, 20, or 21 as elected by states that extend federal foster care. Youth in care at age 18 or older must meet certain education or work participation requirements, unless they have a documented medical reason why they cannot do this. See Sections 472(a) and 475(8) of the Social Security Act (42 U.S.C. §§672(a) and 675(8)). See also **Appendix A**.

[12] According to the HHS, ACF *FY2022 Justifications of Estimates for the Appropriations Committee*, p. 313, nationally during FY2020, about 39% of children in foster care on an average monthly basis received Title IV-E foster care maintenance payments. The Child Trends survey of state child welfare agency spending, which used two different methods to estimate costs covered by Title IV-E in state FY2018, reported average Title IV-E foster care coverage rates of 43% (based on share of children) and 46% (based on share of care days). See Kristina Rosinsky et al., *Child Welfare Financing SFY 2018: A Survey of Federal, State, and Local Expenditures*, pp. 20-22.

[13] Kristina Rosinsky et al., *Child Welfare Financing SFY 2018*.

[14] The portion of each eligible foster care maintenance payment reimbursed by the federal government is determined by the state's Federal Medical Assistance Percentage (FMAP), which may range from 50%, in states with the highest per capita income, to a maximum of 83%, in the lowest per capita income states. Title IV-E administrative costs are reimbursed at 50% of a state's eligible spending, and training costs are reimbursed at 75% of the state's eligible claims.

[15] There are no reliable administrative data to determine an average foster care maintenance payment across all children in care (i.e., those eligible and those not eligible for IV-E maintenance payments). A CRS analysis of FY2019 Title IV-E foster care expenditures suggests an average *Title IV-E* foster care maintenance payment of $1,441 per month, including about $801 in federal dollars and $640 in nonfederal dollars. However, as the range of payments made is known to vary widely, this *average* payment amount may under- or over-state payments for many IV-E eligible children. Title IV-E expenditure claims data for FY2019 are available on the HHS Children's Bureau website at https://www.acf.hhs.gov/cb/report/title-iv-e-programs-expenditure-and-caseload-data.

[16] See U.S. Congress, House Committee on Ways and Means, *2008 Green Book*, Section 11, p. 58 https://web.archive.org/web/20091202071210/http://waysandmeans.house.gov/media/pdf/111/s11cw.pdf#page=58.

[17] Under Section 472(a)(1) of the Social Security Act (42 U.S.C. §672(a)(1)), states and tribes participating in the Title IV-E program must provide a "foster care maintenance payment" for each child in care who meets federal Title IV-E

without the offer of some support. Some children placed with relative caregivers are offered payment under the Temporary Assistance for Needy Families (TANF) block grant.[18] TANF payments are typically less than a Title IV-E foster care maintenance payment.[19]

Supplemental Security Income (SSI) and Social Security Programs

Children in foster care may be eligible for monthly cash benefits from the Social Security Administration (SSA) due to their own qualifying disabilities or based on the retirement, disability, or death of an insured parent. Based on the most recent data available, approximately 27,000 children in foster care (about 5.3% of all children in care, including those eligible or not eligible for Title IV-E foster care maintenance payments) were receiving these benefits and some research indicates a larger number may be eligible.[20] For children with qualifying disabilities, these SSA benefits are paid under the SSI program. Children of retired, disabled, or deceased parents with qualifying work records may receive benefits under the Social Security program.

In administering these benefits, SSA generally appoints representative payees to receive and manage the SSI/Social Security benefits of minor child beneficiaries. For children in foster care, the representative payee may be a foster parent or relative. However, in the large majority of cases, the representative payee is the state or county child welfare agency that administers the Title IV-E foster care program. As the representative payee, the child welfare agency (typically referred to as the "foster care agency" by SSA) is required to manage the child's benefits and to use the benefits for the child's current maintenance needs, such as food, clothing, shelter, medical care, and personal comfort items (see "Representative Payees").

States typically use the SSI/Social Security benefits of child beneficiaries in foster care to pay for daily living needs of those children, primarily food, clothing, and shelter. These items are commonly provided on behalf of all children in care as part of a foster care maintenance payment.[21] Additionally, state child welfare agencies may use SSI/Social Security benefits to meet education or medical-related costs of beneficiary children in care. (Such costs may not generally be supported with Title IV-E dollars.) Like any representative payee, state child welfare agencies are expected to conserve for the beneficiary in foster care any SSI/Social Security

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eligibility criteria. Federal child welfare policy does not include any comparable language for children in care who do not meet federal Title IV-E eligibility criteria.

[18] Twelve states reported using federal TANF funds in FY2019 to assist relatives caring for children in foster care (Arizona, California, Florida, Georgia, Kentucky, Maryland, Michigan, New Hampshire, New Jersey, North Dakota, Oklahoma, and South Carolina). In addition, seven of those same states (Arizona, Georgia, Kentucky, Michigan, New Hampshire, North Dakota, Oklahoma) plus seven additional states (Idaho, Kansas, New York, Oregon, South Dakota, Texas, West Virginia) used federal TANF funds to provide foster care maintenance payments for non-Title IV-E eligible children as "authorized under prior law authority." See *FY2019 Federal TANF and State MOE Financial Data*, Table C-1, p. 16. https://www.acf.hhs.gov/sites/default/files/documents/ofa/tanf_financial_data_fy_2019_91020.pdf.

[19] The average TANF child-only payment (payment for a single child living with a relative caregiver not receiving their own TANF assistance) was $261 per month in FY2019. However, that amount varied by state ranging from a high of $624 per month in New Hampshire to a low of $81 per month in Arkansas. See Urban Institute, *Welfare Rules Database, Policy Tables*, Table II.A.5, https://wrd.urban.org/wrd/tables.cfm.

[20] Based on CRS analysis of FY2019 AFCARS data; (for more information see **Appendix B)**. See also HHS, ACF, National Survey of Child and Adolescent Well-Being, *Estimates of Supplemental Security Income Eligibility for Children in Out of Home Placements*, Research Brief No. 12.

[21] U.S. Government Accountability Office (GAO), *Social Security Administration: New Data Exchanges for Some States Provide Limited Information on Foster Care Beneficiaries*, June 2021, p. 12, https://www.gao.gov/products/gao-21-441r. This recent GAO finding is consistent with a 2011 survey carried out by the American Public Health Services Association (APHSA), *Study on Title II and Title XVI Benefits for Children in Out-of-Home Placements*, 2012.

benefits that are not needed to meet the current needs of the child in foster care.[22] A 2020 Government Accountability Office (GAO) survey found that 37 of 50 responding states reported conserving some benefits for children in foster care.[23]

SSI Payments for Children[24]

SSI is a federal means-tested program that provides monthly cash payments to seniors aged 65 or older, blind or disabled adults, and blind or disabled children under the age of 18.[25] The program is intended to provide eligible individuals with a guaranteed minimum income to meet their basic needs, such as food and shelter. SSI is commonly known as a program of "last resort" because individuals must first apply for certain other benefits for which they may be eligible. Cash assistance is provided only to those whose income and resources (i.e., assets) from all applicable sources are within prescribed limits. The program provides a flat benefit, which is reduced by any countable income on a dollar-for-dollar basis. In 2021, the SSI federal benefit rate is $794 per month for individuals, including minor children.[26] Some states supplement federal SSI payments with state supplementary payments, which are made solely with state funds.[27] In most states, SSI recipients are automatically eligible for Medicaid.[28]

To qualify for SSI, individuals must be aged, blind, or disabled and meet the program's income and resource tests. Minor children are considered *disabled* if they have a medically determinable physical or mental impairments that result in marked and severe functional limitations and are expected to last for at least one year or to result in death.[29] Minor children typically qualify as disabled if they have severe impairments that limit their ability to engage in age-appropriate childhood activities at home, in childcare, at school, or in the community. If minor children are working, then their earnings must also be within the substantial gainful activity limit to be considered disabled.[30] The SSI program uses a different definition of *disability* for individuals

[22] 20 C.F.R. §§404.2045 and 416.645. See also SSA, POMS, "GN00502.114 Payee Responsibilities and Duties" https://secure.ssa.gov/poms.nsf/lnx/0200502114 and "GN 00603.001 Conservation of Benefits - Basic Policy," April 25, 2016, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200603001.

[23] GAO, *Social Security Administration: New Data Exchanges for Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441-R, p. 12.

[24] CRS Report R44948, *Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI): Eligibility, Benefits, and Financing*, provides a detailed discussion of SSI eligibility and benefits.

[25] *Means testing* refers to the consideration of one or more financial circumstances in determining program eligibility or the amount or type of benefit or service provided by the program. SSI considers both income and resource (i.e., assets) in determining program eligibility. It also considers income in determining the payment amount.

[26] Social Security Administration (SSA), Office of the Chief Actuary (OCACT), "SSI Federal Payment Amounts," https://www.ssa.gov/oact/cola/SSIamts.html. The federal benefit rate for a couple where both members are SSI eligible is $1,191 per month in 2021.

[27] Not all states with supplementation programs provide state supplementary payments (SSPs) to child SSI recipients. For more information, see SSA, "Supplemental Security Income (SSI) for Children," https://www.ssa.gov/ssi/text-child-ussi.htm.

[28] See CRS Report R46111, *Medicaid Eligibility: Older Adults and Individuals with Disabilities*.

[29] Individuals of any age (including minor children) are considered *blind* if they have 20/200 or less vision in the better eye with the use of a correcting lens or tunnel vision of 20 degrees or less.

[30] In 2021, the substantial gainful activity (SGA) limit is $1,310 per month. See SSA, OCACT, "Substantial Gainful Activity," https://www.ssa.gov/oact/cola/sga.html. Due to certain work incentives, the SGA limit under the SSI program effectively applies only at the time of application for individuals with disabilities other than blindness. Statutorily blind individuals are not subject to the SGA limit under the SSI program.

aged 18 or older.[31] Child SSI recipients who attain age 18 may continue to qualify for SSI if they meet the adult definition of *disability* (and all other eligibility criteria).[32]

SSI's countable income limit is set at the same level as the federal benefit rate, which in 2021 is $794 per month for an individual. SSI counts most types of income, such as Social Security benefits and Title IV-E foster care maintenance payments (including both the federal and state shares of that payment). Certain income is excluded in determining SSI eligibility and the payment amount, such as the first $20 per month of any income (earned or unearned), as well as the first $65 per month of earned income plus one-half of any earned income above $65 per month.[33] The countable resource limit is $2,000 for an individual.[34] Certain resources are excluded in determining SSI eligibility, such as the individual's primary residence, household goods and personal effects, one vehicle, property essential to self-support, and the first $100,000 in an Achieving a Better Life Experience (ABLE) account.[35]

SSA typically counts both a minor child's income and resources, and a portion of the income and resources of any parents who live in the same household as the child, under a process known as *deeming*.[36] However, if the minor child does not live with any parents, then SSA counts only the income and resources of the child. (The income and resources of non-parent household members are not counted under the program.) If SSA appoints a representative payee to receive and manage SSI payments on a recipient's behalf—which is the case with nearly all child SSI recipients under the age of 18—then the recipient's current maintenance must be prioritized and any leftover funds must be conserved (see "Representative Payees").

In June 2021, SSI provided federally-administered payments to nearly 1.1 million children under the age of 18, which was about 14% of the total SSI recipient population.[37] The average federally administered payment for child SSI recipients that month was $685. Approximately 6% of child SSI recipients also received Social Security benefits. In December 2020, about three-fourths of child SSI recipients were eligible for payments due to a mental impairment, such as an intellectual or developmental disability.[38]

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[31] Under the SSI program, individuals aged 18 or older are considered *disabled* if they are unable to engage in any SGA due to any medically determinable physical or mental impairment that is expected to last for at least one year or to result in death. The SSI definition of *disability* for adults is the same as the one used by Social Security.

[32] SSA, *What You Need to Know About Your Supplemental Security Income (SSI) When You Turn 18*, https://www.ssa.gov/pubs/EN-05-11005.pdf.

[33] SSI's general and earned income exclusions are not indexed to inflation and have remained at their current levels on an annualized basis since the program was enacted in 1972. *Earned income* includes wages, self-employment income, and other compensation related to work. *Unearned income* refers to all other income, such as Social Security benefits, veterans' benefits, interest income, and cash from friends or relatives. SSI also counts *in-kind support and maintenance*, which is unearned income in the form of food or shelter that an individual receives from someone else.

[34] The SSI resource limit for a couple is $3,000. SSI's resource limits are not indexed to inflation and have remained at their current levels since 1989.

[35] SSA, "Understanding Supplemental Security Income: SSI Resources," https://www.ssa.gov/ssi/text-resources-ussi.htm.

[36] SSA, "Supplemental Security Income (SSI) for Children," https://www.ssa.gov/ssi/text-child-ussi.htm.

[37] SSA, "SSI Monthly Statistics, June 2021," https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/index.html. States may administer their supplementation programs themselves, or they may contract with SSA to administer the supplementation programs on their behalf. The recipient and payment data reported in the agency's monthly statistics include individuals who receive only a federally-administered SSP.

[38] SSA, *SSI Annual Statistical Report, 2020*, October 2021, Table 20, https://www.ssa.gov/policy/docs/statcomps/ssi_asr/.

Social Security Benefits for Children[39]

Social Security is a federal social insurance program that provides insured workers and their families with a measure of protection against the loss of earnings due to the worker's retirement, disability, or death. Workers obtain insurance protection by working for a certain number of years in jobs covered by Social Security (i.e., jobs in which the worker's earnings were subject to the Social Security payroll tax). Monthly cash benefits are provided to retired or disabled workers and their eligible family members and to the eligible surviving family members of deceased workers.[40] Minor children of retired, disabled, or deceased workers are eligible for benefits if they are unmarried and under the age of 18. Social Security also provides benefits to certain student children aged 18-19 and to disabled adult children aged 18 or older.[41] Child beneficiaries who attain age 18 may continue to qualify for Social Security on their parent's record if they meet the eligibility criteria for students' benefits (but only up to age 19) or disabled adult child's benefits, which has no upper age limit.[42]

The amount of a worker's basic monthly benefit, known as the primary insurance amount, is based on the worker's career-average earnings in Social Security covered employment or self-employment. Children of retired or disabled workers are eligible to receive up to 50% of the worker's basic benefit, while children of deceased workers are eligible to receive up to 75% of the worker's basic benefit. Benefits for children may be reduced if the total amount of benefits payable to family members on a worker's record exceeds an upper limit, known as the family maximum.[43] As with SSI payments, if SSA certifies Social Security benefits to a representative payee to manage on a beneficiary's behalf—which is the case with nearly all child beneficiaries under the age of 18—then the beneficiary's current maintenance must be prioritized and any leftover funds must be conserved (see "Representative Payees").

In June 2021, Social Security provided benefits to more than 2.7 million child beneficiaries under the age of 18, which was 4.2% of the total Social Security beneficiary population.[44] The average benefit for minor child Social Security beneficiaries that month was $656.[45] Children of deceased workers made up 45% of minor child Social Security beneficiaries, while children of disabled workers made up 43% and children of retired workers made up 12%.

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[39] CRS Report R42035, *Social Security Primer* provides a detailed discussion of Social Security eligibility and benefits.

[40] The term *retired or disabled workers* refers to individuals who are entitled to Social Security retired- or disabled-worker benefits. The term *deceased workers* refers to deceased individuals who received Social Security retired- or disabled-worker benefits at the time of their deaths, as well as non-beneficiary workers who were insured for Social Security at the time of their deaths.

[41] Student children are eligible for Social Security benefits if they are unmarried, aged 18-19, and enrolled full-time in elementary or secondary school (grade 12 or below). Disabled adult children are eligible for Social Security benefits if they are unmarried, aged 18 or older, and have qualifying disabilities that began before age 22. Under the Social Security program, individuals are considered *disabled* if they are unable to engage in any SGA due to any medically determinable physical or mental impairment that has lasted or is expected to last for at least one year or to result in death. The Social Security definition of *disability* for adults is the same as the one used by the SSI program.

[42] SSA, *Benefits for Children*, https://www.ssa.gov/pubs/EN-05-10085.pdf.

[43] For more information on the Social Security family maximum, see Kathleen Romig and Dave Shoffner, "Understanding the Social Security Family Maximum," *Social Security Bulletin*, vol. 75, no. 3 (August 2015), https://www.ssa.gov/policy/docs/ssb/v75n3/v75n3p1.html.

[44] SSA, OCACT, "Benefits Paid By Type Of Beneficiary," https://www.ssa.gov/oact/ProgData/icp.html. In June 2021, Social Security also provided benefits to about 98,100 student child beneficiaries and more than 1.1 million disabled adult child beneficiaries.

[45] Ibid. The average benefit in June 2021 was $858 for student child beneficiaries and $849 for disabled adult child beneficiaries.

Frequently Asked Questions

Characteristics of Children in Foster Care by Receipt of SSI/Social Security Benefits

During FY2019, states reported that about 27,000 children who had been in foster care for at least six months were receiving support from SSI, Social Security, or certain other programs.[46] This number represents about 5.3% of the roughly 505,500 children who at some point during FY2019 had been in foster care for at least six months. Throughout this report, these children are described as receiving SSI/Social Security benefits.[47] This section describes characteristics of children in foster care who did not receive an SSI/Social Security benefit alongside two groups of children in foster care receiving SSI/Social Security benefits (i.e., those *with*, and those *without,* a clinically diagnosed disability).[48] (For data by state for these groups, see **Appendix B**.)

What is the disability status of children receiving SSI/Social Security benefits?

Among children in foster care for at least six months, those receiving SSI/Social Security benefits were more likely to have clinical diagnoses of a disability (48%) than those who were not receiving such benefits (24%). Because children who receive SSI benefits must have qualifying disabilities as a condition of eligibility for that benefit, the population of children in foster care who are reported as receiving SSI/Social Security benefits and who also have clinical diagnoses of disability (about 13,000) are assumed the most likely to be receiving SSI.[49]

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[46] Based on CRS analysis of FY2019 AFCARS data (dataset #239, FC2019v1). Data from this analysis is used throughout this report. The analysis looked at the number of all children who were in foster care at some point during FY2019 and who had been in care for at least six months. Among these 505,499 children, a total of 26,957 were recorded as receiving assistance under SSI or from any other program authorized under the Social Security Act, not otherwise specifically reported on in AFCARS. For purposes of this report, these children are assumed to primarily be children receiving SSI and/or Social Security benefits. (For more information on these data see **Appendix B**.)

[47] For the purpose of submitting AFCARS data (through FY2022), states are instructed to report separately on the number of children receiving assistance under various titles or parts of the Social Security Act, including those authorizing foster care and adoption assistance (Title IV-E), TANF assistance (Title IV-A), child support (Title IV-D), and Medicaid (Title XIX). Finally, states are to report on children receiving assistance via SSI or from *any other program authorized under the Social Security Act, not otherwise specifically reported on in AFCARS*. For this report and analysis, children reported in this last group are presumed to be children receiving SSI (Title XVI) and/or Social Security (Title II) benefits. However, in certain generally limited circumstances, funds provided under the Stephanie Tubbs Jones Child Welfare Services (CWS) program (Title IV-B, Subpart 1) or via the Social Services Block Grant, SSBG (Title XX, Subtitle A) may be used to support children in foster care. Accordingly, while this report assumes roughly 27,000 children who were in care for at least six months received an SSI/Social Security benefit during FY2019, it is possible that some of those children were instead receiving only CWS or SSBG benefits.

[48] In the subsequent Figures 1 through 4, characteristics of children in foster care are shown in three mutually exclusively groups. The largest group includes those children in foster care who *Did not receive SSI/Social Security benefit* (n=478,380). Characteristics of children in foster care who received SSI/Social Security benefits are shown for two groups: *those who Received SSI/Social Security benefits with reported disability, (n =12,958) and those who Received SSI Social Security without reported disability (n=13,999).*

[49] A child does not need to be disabled to receive Social Security benefits. However, some children who receive Social Security benefits may also have clinically diagnosed disabilities, and some children may receive both SSI and Social Security benefits. For example, **Figure 6** shows that about 7% of minor child beneficiaries in foster care who have child welfare agencies as their representative payees receive both SSI and Social Security benefits.

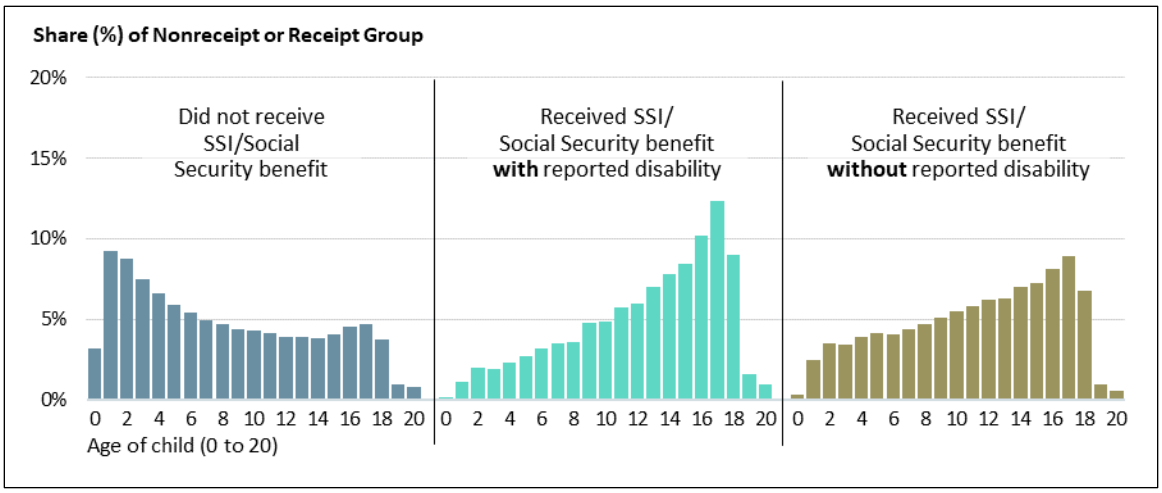
What types of disabilities are diagnosed?

Compared to children in foster care who were not receiving SSI/Social Security benefits, those who were receiving such benefits were more likely to have been clinically diagnosed as "emotionally disturbed" (34.2% with SSI/Social Security benefits versus 15.8% without).[50] Those receiving SSI/Social Security benefits were also more likely to have been clinically diagnosed as having an intellectual disability (10.1% vs. 2.7%), a hearing or visual impairment (5.2% vs. 2.7%), a physical disability (3.9% vs. 0.9%), or another medical condition requiring special care (27.1% vs. 14.0%).[51]

What are the demographic characteristics of children by receipt of SSI/Social Security benefits?

Children in foster care receiving SSI/Social Security benefits were, on average, older than those children in care who were not receiving such benefits. **Figure 1** shows that the share of children in foster care for at least six months who were receiving SSI/Social Security benefits, with or without reported disabilities, generally increased with age. By clear contrast, among the larger group of children in care who were not receiving SSI/Social Security benefits, the share of children decreased with age across most years.

Figure 1. Age of Children in Foster Care by Receipt of SSI/Social Security Benefit and Reported Disability



Source: Figure prepared by CRS based on analysis of FY2019 AFCARS data from the 50 states and the District of Columbia. See **Appendix B** for more information on data used in this analysis.

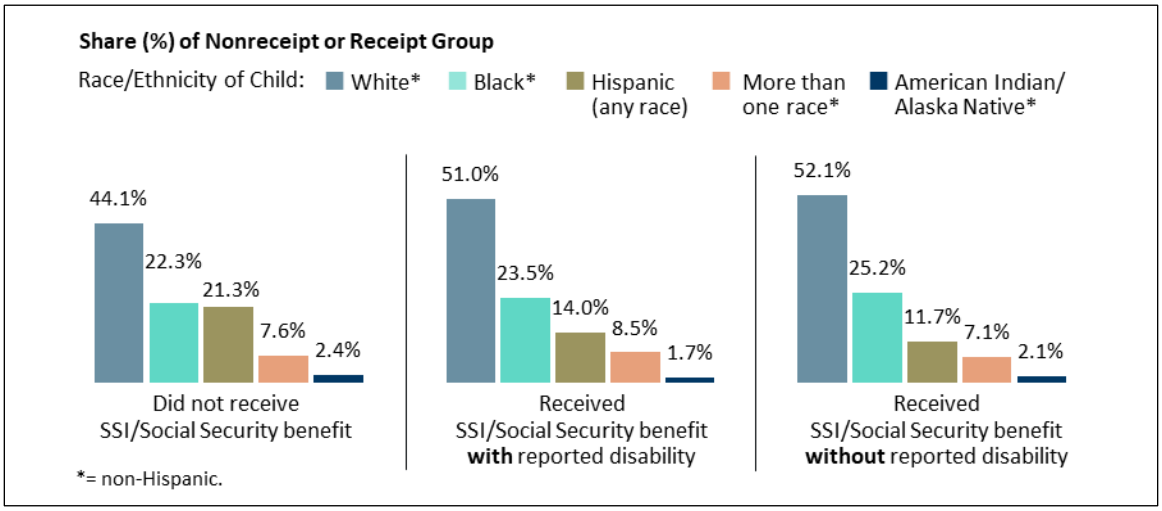
Notes: Children included in this analysis had spent at least six months in care, including at least one day during FY2019. Infants (age 0) are under-represented because this analysis included only children in care for at least 6 months and this necessarily excludes children who are not yet six months. Not all 18-, 19- or 20-year-olds are eligible to remain in foster care and states are not required to report data to AFCARS concerning all youth in care at those ages; (see HHS, Children's Bureau, *Child Welfare Policy Manual*, Section 1.3, Question 2.).

[50] Per AFCARS reporting guidance this diagnosis must be based on the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association. The current version of that manual is DSM-V.

[51] There were 12,958 children reported, via AFCARS, as both receiving SSI/Social Security benefits and having clinically diagnosed disabilities. See description of data element #18, which incorporates each of the diagnoses described in data elements #19 through #22, in *AFCARS Foster Care Annual File Code Book*, revised July 28, 2021, pp. 29-34. https://www.ndacan.acf.hhs.gov/datasets/pdfs_user_guides/afcars-foster-care-file-codebook.pdf.

As shown in **Figure 2**, children in foster care who were receiving SSI/Social Security benefits were more often non-Hispanic White, and less often Hispanic (of any race). This was generally true without regard to whether the child receiving an SSI/Social Security benefit did or did not have a reported disability.

Figure 2. Race/Ethnicity of Children in Foster Care by Receipt of SSI/Social Security Benefit and Reported Disability



Source: Figure prepared by CRS based on analysis of FY2019 AFCARS data from the 50 states and the District of Columbia. See also **Appendix B** for more information on data used in this analysis.

Notes: Children included in this analysis had spent at least six months in care, including at least one day during FY2019. Among Asian children included in this analysis, but not shown in the figure, the percentage with no SSI/Social Security benefit was 0.5%, with SSI/Social Security benefit and a reported disability 0.4%, and with SSI/Social Security benefit but no reported disability 0.3%. Among Native Hawaiian/Other Pacific Islander children the comparable percentages were 0.2%, 0.1%, and 0.1%, respectively. Percentages in each group sum to less than 100% because the share of children for whom race/ethnicity was not reported, or was reported as unknown, are not shown.

What selected circumstances were associated with a child's removal from the home and entry to foster care?

Children receiving SSI/Social Security benefits were more likely to have "child behavior problems"[52] and "child disability" listed as circumstances of their removal from home (16.4% and 5.0%, respectively) than were those who were not receiving this benefit (7.0% and 1.8%, respectively). Although still relatively rare, those receiving SSI/Social Security benefits were also more likely to have a parent's death given as a circumstance of removal (2.3%) compared to those not receiving such a benefit (0.8%).[53]

[52] For purposes of this reporting, a "child behavior problem" refers to behavior in the school and/or the community that "adversely affects socialization, learning, growth, and moral development." The category includes children who run away from home and can include children who have, or have not, been a part of juvenile justice court proceedings. See NDACAN, *AFCARS Foster Care Annual File Codebook*, revised July 28, 2021, p. 55, https://www.ndacan.acf.hhs.gov/datasets/pdfs_user_guides/afcars-foster-care-file-codebook.pdf.

[53] Ibid, pp. 47-61. States may report on 15 different conditions or circumstances associated with a child's removal from home and placement in foster care and each child may be associated with more than one circumstance. For this analysis, only the removal circumstances referenced in the text were studied.

Do children in foster care receiving SSI/Social Security benefits also receive Title IV-E foster care maintenance payments?

Children in foster care who were receiving SSI/Social Security benefits were less likely to be receiving Title IV-E foster care maintenance payments (20.1%), compared to those in care who were not receiving SSI/Social Security benefits (42.1%). In some circumstances, this might be due to interaction of the benefit receipt with the Title IV-E income test. However, for children receiving SSI benefits and for children who did not receive Social Security benefits in the month they entered foster care, these benefits do not affect a child's income eligibility for Title IV-E foster care.[54] (For related information see, "Which factors are considered when determining whether children in foster care should apply for SSI/Social Security benefits?")

What are the case plan goals of children in foster care by receipt of SSI/Social Security benefits?

Foster care is intended to be a temporary living arrangement and for each child in foster care, the state must develop a written case plan, including a case plan goal for the child.[55] Most case plan goals include re-establishing "permanency" for a child through reuniting the child with parents or other family (*reunification/live with other relative*) or by finding a new permanent family for the child through *adoption* or *legal guardianship,* with a relative or non-relative. States may also report case plan goals of *long-term foster care* or *emancipation*, in which case the child is expected to age out of care without the state returning the child to family or placing the child in a new family.[56] Finally, they may report that no case plan goal is yet established.

Reunification is the most common case plan goal for children in foster care. This was generally true for children in care whether they did, or did not, receive SSI/Social Security benefits. However, among children receiving those benefits the presence of a clinically diagnosed disability made *reunification* less likely as a case plan goal. This was especially the case for those children age 13 or younger who received SSI/Social Security benefits and had clinically diagnosed disabilities. Among this group a case plan goal of *adoption* was more common than *reunification.*

Assignment of a case plan goal of *emancipation* or *long-term foster care* varies little by receipt of SSI/Social Security benefits. Assignment of one of those case plan goals appears somewhat more

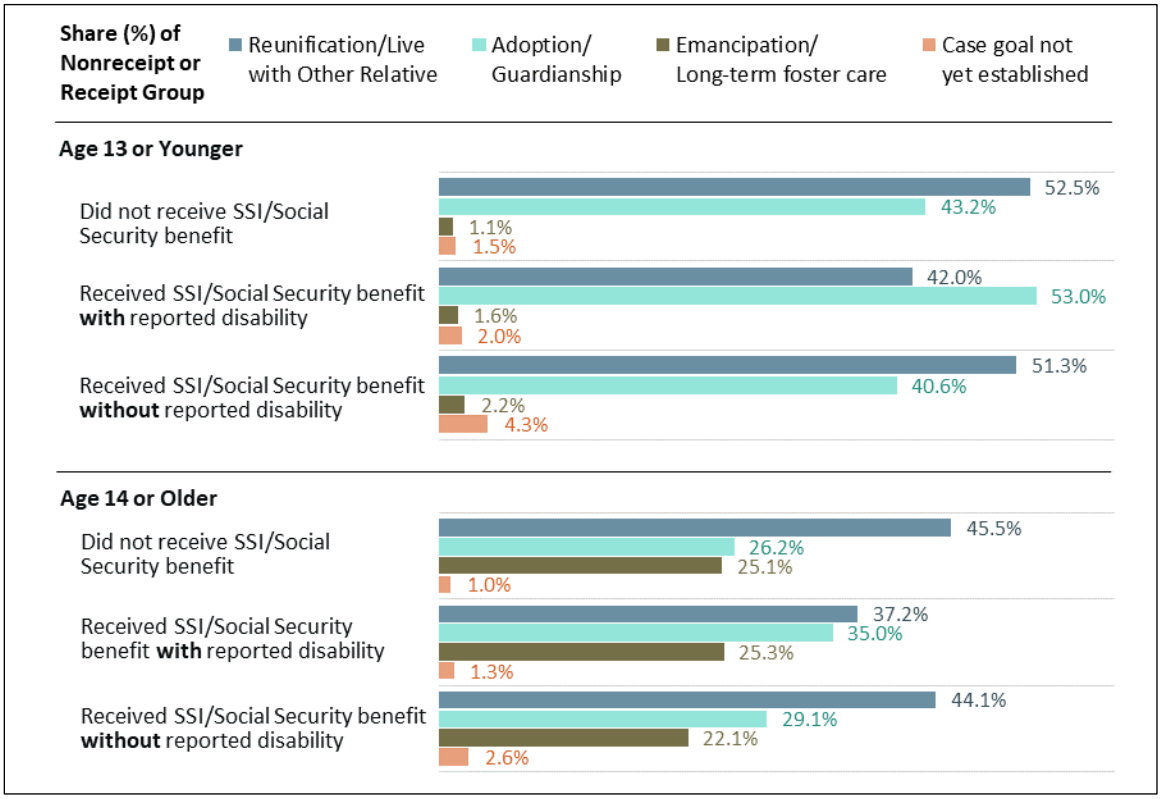
[54] Title IV-E foster care income eligibility is determined based on application of income eligibility rules for Aid to Families with Dependent Children (AFDC) program. AFDC was repealed in 1996 (P.L. 104-193), but that same legislation maintained the AFDC eligibility rules, as they existed on July 16, 1996, for purposes of determining Title IV-E foster care income eligibility. Under those rules, SSI must be disregarded when determining income, but Social Security benefits are counted (see 45 C.F.R. §233.20.1 and HHS, ACF, *Child Welfare Policy Manual,* Section 8.4A, Question 18, https://acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=8). However, as of April 6, 2010, federal policy has stated that this income test is applicable only in the month the child is removed from the home. There is no required re-determination of eligibility for as the long as the child remains in foster care. HHS, ACF, *Child Welfare Policy Manual,* Section 8.4A, Question 24, https://acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=8.

[55] The plan must be written no later than 60 days after a child's removal from the home (i.e., entry to foster care) (45 C.F.R. §1356.21(g)). The first review of a child's "status" in foster care, including re-assessment of appropriateness of plan and plan activities, is to be held within six months of that date and the first hearing to review the child's "permanency plan" within 12 months of that date (sections 475(1) and 475(5)(B)-(C) of the Social Security Act; 42 U.S.C. §675(1) and (5)(B)-(C)).

[56] About 18% of youth in care at age 14 or older have emancipation as a goal as compared to 2% with a long-term foster care goal. In AFCARS guidance, one key difference between *emancipation* and *long-term foster care* is that a child with an emancipation case plan goal is expected to have some established permanent connection with an adult. See NDACAN, *AFCARS Foster Care Annual File Codebook,* revised July 28, 2021, p. 66.

common for younger children who were receiving SSI/Social Security benefits than those who were not. However, the number and percentage of younger children with an *emancipation* or *long-term foster care* goal was quite limited and any difference between the groups disappears when the comparison is done among children in care at age 14 or older. Among these older children, however, those who were receiving SSI/Social Security benefits and who did not have reported disabilities were least likely to have a case plan goal of *emancipation* or *long-term foster care*. Finally, children who were receiving SSI/Social Security benefits and who did not have reported disabilities were the most likely to be reported as without established case plan goals, regardless of the age group. Again, however, the number and percentage of children in this group were small. See **Figure 3**.

Figure 3. Case Plan Goals for Children in Foster Care by Receipt of SSI/Social Security Benefit and Reported Disability



Source: Figure prepared by CRS based on analysis of FY2019 AFCARS data from the 50 states and the District of Columbia. See also **Appendix B** for more information on data used in this analysis.

Notes: Children included in this analysis had spent at least six months in care, including at least one day during FY2019. Percentages for each group may not sum to 100% because share of children with *case plan goal not yet established* are not shown.

What are the reasons children exit foster care by receipt of SSI/Social Security benefits?

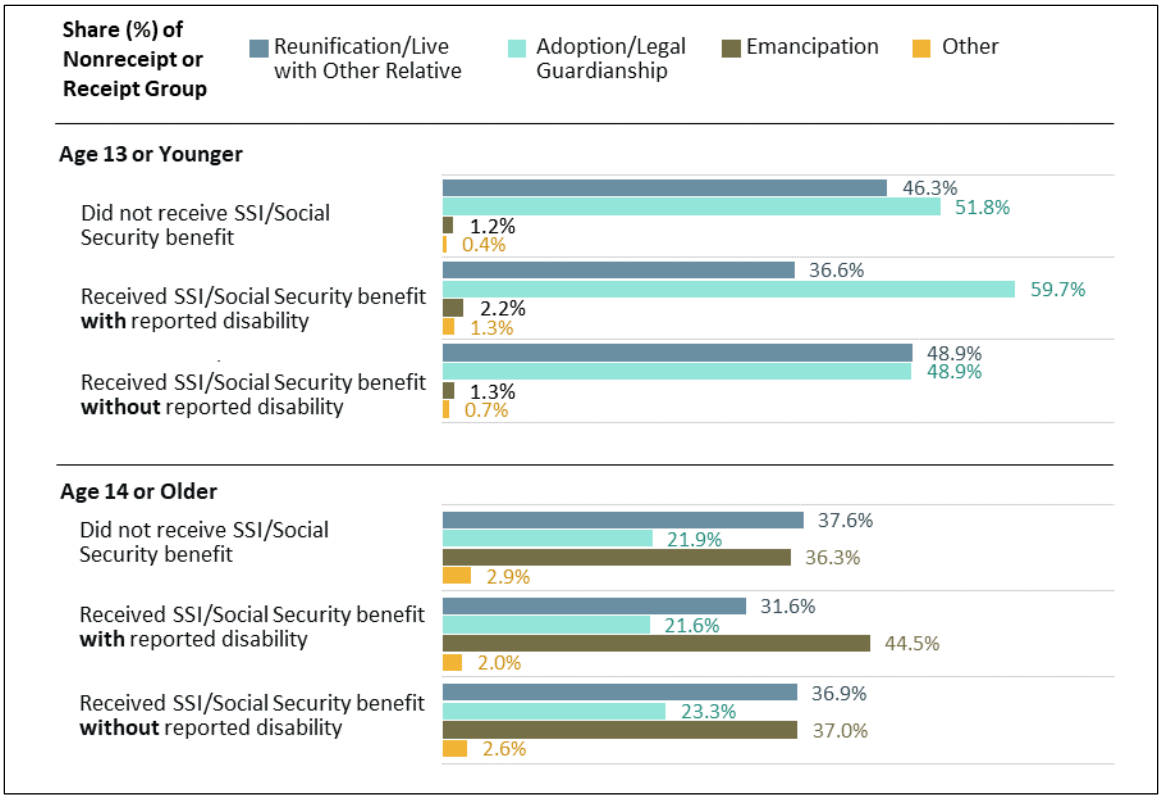
Children are said to have exited foster care when courts formally discharge them from care and placement responsibility of the state. Most children leave foster care by reuniting with family or by placement with a new family (via *adoption* or *guardianship*). Some children who do not achieve permanency are discharged from care to *emancipation*. This may occur when youth reach

the age where they are no longer considered children for purposes of the state foster care program. Such youth are said to "age out" of care and this typically occurs at age 18, or in some states at age 21.

Children in foster care who were receiving SSI/Social Security benefits and who had reported disabilities were less likely to leave care to be reunited with family. This was true whether exiting care at an older or younger age. Among children exiting care at age 13 or younger, they were most likely to leave care for adoption or guardianship.

Among children leaving care at age 14 or older, those receiving SSI/Social Security benefits and who had clinically diagnosed disabilities were the most likely to leave care for emancipation while they were about equally as likely as other children to be leaving care for adoption or guardianship. See **Figure 4**.

Figure 4. Reason for Exit from Foster Care by SSI/Social Security Benefit Receipt and Reported Disability



Source: Figure prepared by CRS based on analysis of FY2019 AFCARS data from the 50 states and the District of Columbia. See also **Appendix B** for more information on data used in this analysis.

Notes: Children included in this analysis had spent at least six months in care prior to leaving it during FY2019. In this figure, "Other" includes children whose reason for exiting care was reported as *transfer to another agency*, *runaway*, or *death of child*. Percentages for each group may not sum to 100% due to rounding.

Representative Payees

Minor children (i.e., children under the age of 18) who receive SSI/Social Security benefits are typically assigned representative payees to receive and manage the benefits on their behalf. For more than 8 out of every 10 minor children who are in foster care and receive SSI/Social Security

benefits, state child welfare agencies serve as their representative payees.[57] A state child welfare agency typically uses SSI/Social Security benefits to pay for a child's food, clothing, and shelter. It may also conserve these funds for the child's later use.

When is a representative payee appointed?

The Social Security Act gives the Commissioner of Social Security the authority to issue benefits to a representative payee if the Commissioner determines that it is clearly in the best interest of the beneficiary to do so.[58] With limited exceptions, SSA requires a child under the age of 18 to have a representative payee.[59] An adult aged 18 or older may be assigned a payee if SSA determines that the individual is incapable of managing or directing the management of benefits, or if a court finds the individual to be legally incompetent.[60] Payees can be individuals (e.g., parents, relatives, friends, unrelated guardians, foster parents) or organizations (e.g., state or local governments, nonprofit agencies, social services agencies, financial organizations). State child welfare agencies—often referred to as "foster care agencies" by SSA—are typically classified as "social services agencies" or "social agencies" in SSA's payee reporting system.[61]

What are the duties of a representative payee?

A representative payee's job is to use SSI/Social Security benefits received on behalf of a beneficiary for the sole use and benefit of the beneficiary.[62] Decisions about how to spend such benefits are required to be made in the beneficiary's best interest, according to the payee's best judgement. A payee's first priority is to use the benefits for the beneficiary's *current maintenance*, which refers to immediate or reasonably foreseeable needs for food, shelter, clothing, utilities, medical care, and personal comfort items.[63] Benefits not needed for current maintenance must be conserved or invested for the beneficiary, generally in a checking or savings account insured under federal or state law.[64] A payee serving a minor child SSI recipient must

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[57] GAO, *Social Security Administration: New Data Exchanges for Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441-R, Figure 4, p. 9. Under the Title IV-E foster care program rules, certain youth may be considered *children* until their 21st birthday. The term *minor children* (or *minor child)* refers only to individuals who are under the age of 18.

[58] 42 U.S.C. §§405(j)(1)(A) and 1383(a)(2)(A)(ii)(I).

[59] In general, SSA requires children under the age of 18 to have representative payees unless they have been emancipated under state law. However, children aged 15-17 who are not legally emancipated may be paid directly if they demonstrate the ability to manage their benefits and meet certain other conditions. See 20 C.F.R. §§404.2010(b) and 416.610(b), as well as SSA, Program Operations Manual System (POMS), "GN 00502.070 Determining Capability – Children," October 23, 2020, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502070.

[60] 20 C.F.R. §§404.2010(a) and 416.610(a). See also SSA, POMS, "GN 00502.001 Capability Determination and Representative Payee Payment Overview," January 26, 2017, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502001.

[61] Ibid. See also SSA, POMS, "EM-18012 REV 7: Clarifying State Overpayment Liability for Minors in Foster Care," October 26, 2021, https://secure.ssa.gov/apps10/reference.nsf/links/10262021123211PM.

[62] 20 C.F.R. §§404.2040 and 416.640, as well as SSA, POMS, "GN 00602.001 Use of Benefits," April 25, 2016, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200602001.

[63] Ibid. See also SSA, "Frequently Asked Questions (FAQs) for Representative Payees: What Is the Proper Use of Benefits?." https://www.ssa.gov/payee/faqrep.htm?; SSA, "Guide for Organizational Representative Payees: Proper Use of Benefits," https://www.ssa.gov/payee/NewGuide/toc.htm#Proper_Use_Benefits; and SSA, "Training Organizational Representative Payees: UNIT 6—USE OF BENEFITS," https://www.ssa.gov/payee/LessonPlan-2005-2.htm#UNIT6.

[64] 20 C.F.R. §§404.2045 and 416.645, as well as SSA, POMS, "GN 00603.001 Conservation of Benefits - Basic Policy," April 25, 2016, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200603001.

deposit certain large past-due benefits in a special *dedicated account*.[65] Funds in dedicated accounts may be used only for certain expenses (e.g., medical treatment, education, job skills training, certain expenses related to the child's impairment), and the balance of the account is excluded from SSI's resource test.[66]

A representative payee is required to notify SSA of (1) any change that could affect the beneficiary's eligibility or benefit amount and (2) any change in circumstances that would affect the payee's performance (e.g., a change in custody or legal responsibility). A payee must also maintain detailed and accurate records of how the beneficiary's benefits are being used or conserved and must provide these records to SSA upon request. The Social Security Act requires SSA to review written accounting reports from certain payees at least once a year,[67] and to conduct periodic onsite reviews of certain payees (generally every three to four years).[68]

Which factors are considered for assigning representative payees to minor child beneficiaries in foster care?

SSA personnel are responsible for identifying, reviewing, and selecting representative payees. The agency's regulations and guidance specify lists of preferred payees in the preferred order of selection based on the type of beneficiary. Under the order of preference list for minor child SSI/Social Security beneficiaries, parents with custody and legal guardians are ranked first, while social services agencies—which include state child welfare agencies—are ranked seventh (see **Table C-1**).[69]

When a child enters foster care, the state child welfare agency is granted responsibility for the care and placement of the child, typically by a court. Legal responsibility for the child's care and placement allows the agency to determine, for example, where the child lives. However, initially at least, the child's parents may retain certain decisionmaking rights for the child (e.g., educational or medical decisionmaking). In circumstances where returning home is no longer considered the permanency plan for a child in foster care, the child welfare agency may be named by the court as the child's legal guardian (or an equivalent term used by a state). This might be the case when, for example, all parental rights to a child have been terminated.

If the state child welfare agency is not the child's legal guardian, then SSA personnel must use the order of preference list to review higher-ranked candidates before considering the child welfare agency. On the other hand, if the child welfare agency has been named by a court as the child's

[65] 42 U.S.C. §1383(a)(2)(F). See also 20 C.F.R. §416.546 and SSA, POMS, "GN 00603.025 Dedicated Accounts for Disabled/Blind SSI Recipients Under Age 18," April 25, 2016, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200603025; and SSA, "Spotlight on Dedicated Accounts for Children," https://www.ssa.gov/ssi/spotlights/spot-dedicated-accounts.htm.

[66] SSA, POMS, "GN 00602.140 Permitted Expenditures from Dedicated Accounts," October 22, 2020, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200602140. See also 42 U.S.C. §1382b(a)(12), 20 C.F.R. §416.1247, and SSA, POMS, "SI 01130.601 Dedicated Accounts for Past-Due Benefits Due to Individuals Under 18 Who Have a Representative Payee," December 13, 2013, https://secure.ssa.gov/poms.nsf/lnx/0501130601. The interest or other earnings on dedicated account balances are also excluded from counting as income under SSI.

[67] 42 U.S.C. §§405(j)(3) and 1383(a)(2)(C). See also SSA, POMS, "GN 00605.001 Overview of Annual Representative Payee Accounting," March 13, 2019, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200605001.

[68] 42 U.S.C. §§405(j)(6) and 1383(a)(2)(G)(i).

[69] 20 C.F.R. §§404.2021 and 416.621, as well as also SSA, POMS, "GN 00502.105 Preferred Representative Payee Order of Selection Charts," June 21, 2017, https://secure.ssa.gov/poms.nsf/lnx/0200502105#a. Beneficiaries who are capable adults or emancipated minors may designate in advance one or more individuals to potentially serve as payee. SSA personnel will consider a beneficiary's advance designee(s) before those on the applicable order of preference list.

legal guardian, then its order of preference is much higher. In either case, SSA is not required to select the child welfare agency to be the child's representative payee.[70] SSA's policy guidance on payees and child welfare agencies notes, "In the absence of a parent, be sure to consider whether other concerned relatives are a better payee candidate."[71] If any higher-ranked candidates are not interested in applying to be the child's payee, then SSA's policy guidance instructs personnel to document the reasons for their lack of interest.

In evaluating the state child welfare agency, SSA personnel examine and document (1) the nature and extent of the agency's responsibility and care and (2) whether the agency has temporary or permanent custody. SSA personnel must also ascertain from the child welfare agency whether the child beneficiary has a living parent or any concerned relatives. SSA's policy guidance specifies that when a child welfare agency is awarded custody of a child, the agency retains custody regardless of whether the child is placed in a foster home or group living household.[72] It also notes that the child welfare agency is generally the preferred payee over the foster parent.

SSA's policy guidance reminds personnel that it may be appropriate to appoint the parent as the representative payee, even when the state child welfare agency has custody of the child (e.g., the child is placed voluntarily under the care of the child welfare agency by the parent).[73] The guidance advises that a parent should not be ruled out as a payee solely because the child beneficiary has been placed in care, and that personnel must consider the continued interest of the parent in the child and the probability that the child will return to the parent's custody.

How many minor children receiving SSI/Social Security benefits have child welfare agencies as their representative payees?

Over 99% of all SSI/Social Security beneficiaries under the age of 18 are assigned representative payees.[74] Focusing on minor child beneficiaries in foster care, recent data published by GAO indicate that 81% had state child welfare agencies as their representative payees as of November 30, 2020 (**Figure 5**).[75]

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[70] SSA, POMS, "GN 00502.159 Additional Considerations When Foster Care Agency is Involved," June 4, 2020, https://secure.ssa.gov/POMS.NSF/lnx/0200502159. SSA personnel are not required to appoint the state child welfare agency as the child's representative payee when the agency is the child's legal guardian. A parent whose parental rights have been terminated or who is barred from contact with the child cannot be considered higher in preference than the child welfare agency.

[71] SSA, POMS, "GN 00502.159 Additional Considerations When Foster Care Agency is Involved," June 4, 2020, https://secure.ssa.gov/POMS.NSF/lnx/0200502159.

[72] Ibid.

[73] Ibid.

[74] SSA, *Annual Statistical Supplement, 2021*, Tables 5.L1 and 7.E4, https://www.ssa.gov/policy/docs/statcomps/supplement/2021/index.html. Data are for December 2020. SSA regularly publishes data on the type of representative payee for SSI recipients and Social Security disability beneficiaries but not for other types of Social Security beneficiaries (e.g., minor Social Security beneficiaries). For December 2020 data on the type of representative payee for SSI recipients, see SSA, *SSI Annual Statistical Report, 2020*, Table 7, https://www.ssa.gov/policy/docs/statcomps/ssi_asr/. For December 2020 data on the type of representative payee for Social Security disability beneficiaries, see SSA, *Annual Statistical Report on the Social Security Disability Insurance Program, 2020*, Table 14, https://www.ssa.gov/policy/docs/statcomps/di_asr/. See also Social Security Advisory Board, "Representative Payee Chart Collection," January 11, 2018, https://www.ssab.gov/Details-Page/ArticleID/1238/Representative-Payee-Chart-Collection.

[75] GAO, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441R, Figure 4 and Table 14. For reference, GAO's Table 14 is reproduced as **Table D-1**. The estimates are derived from data provided to GAO by SSA from SSA's electronic Representative Payee System.

Figure 5. Minor Child SSI/Social Security Beneficiaries in Foster Care, by Type of Payee, November 30, 2020

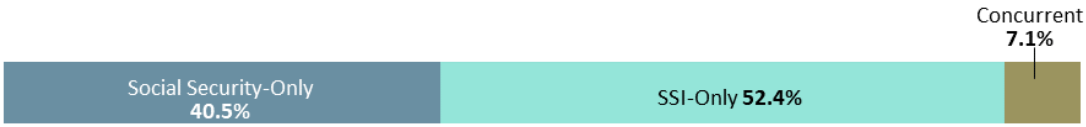
Child welfare agency includes state, county, or local government agencies, as well as social agencies, which can include government agencies and nongovernmental organizations. **Other organizational payee** includes financial organizations, public officials, mental institutions, and nonmental institutions, among others. **Another individual** includes relatives, room and board providers, and friends, among others, who are not the foster parents.

Source: CRS, based on U.S. Government Accountability Office (GAO), *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441R, June 3, 2021, Figure 4 and Table 14, https://www.gao.gov/products/gao-21-441r. See also **Table D-1**.

Notes: As of November 30, 2020, an estimated 25,424 minor children received SSI and/or Social Security benefits and were in foster care. These data were reported by GAO from the SSA's electronic Representative Payee System (eRPS). According to SSA, and as noted by GAO, eRPS asked about foster care as of June 2019, and may undercount minor child beneficiaries in foster care.

About 52% of minor child beneficiaries in foster care with child welfare agency representative payees received only SSI payments, while about 41% received only Social Security benefits and about 7% were concurrently receiving SSI and Social Security benefits (see **Figure 6**).[76]

Figure 6. Minor Child SSI/Social Security Beneficiaries in Foster Care with Child Welfare Agency Representative Payees, by Type of Benefit, November 30, 2020



Source: CRS, based on GAO, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441R, June 3, 2021, Table 14, https://www.gao.gov/products/gao-21-441r. See also **Table D-1**.

Notes: This figure represents the 20,676 minor children in foster care who as of November 30, 2020, were receiving SSI and/or Social Security benefits and had child welfare agency representative payees. Minor children in foster care receiving SSI and/or Social Security benefits who had representative payees other than child welfare agencies (n=4,748) are not shown.

Does SSA notify minor child beneficiaries of its decision to appoint representative payees?

Once SSA selects a candidate to serve as a beneficiary's representative payee, the agency is required to provide the beneficiary with advance written notice of the determination and the right

GAO noted that, according to SSA, the data reflect questions about foster care that were added to the system in June 2019 and may undercount the total number of minor child beneficiaries in foster care.

[76] Distributions by type of benefit for other representative payee types (other organizational payees, foster parents, other individuals) can be derived from **Table D-1**, reproduced from GAO, *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441R, Table 14.

to appeal it before making the appointment.[77] However, if the beneficiary is under the age of 15 or under the age of 18 and not legally emancipated—as is the case with most children in foster care—then the Social Security Act requires the advance notice to be issued solely to the beneficiary's legal guardian or legal representative.[78] SSA's guidance clarifies that if the legal guardian or legal representative is also the proposed payee, then the advance notice is not sent to the legal guardian or legal representative.[79]

When the proposed payee of a minor child beneficiary is someone other than a parent (e.g., a state child welfare agency), SSA personnel must notify the child's parents of the determination unless the parents have relinquished their parental rights or had them permanently terminated by a court.[80] If a child welfare agency is both the legal guardian and proposed payee of a minor child beneficiary in foster care and the parents of the child had their parental rights terminated, then presumably no advance notice is issued by SSA to any party. In such cases, the child welfare agency would most likely receive a single notice when its appointment as the child's representative payee becomes effective.[81]

How do representative payees hold and track beneficiaries' SSI/Social Security benefits?

A representative payee must typically have a checking or savings account to receive SSI/Social Security benefits on behalf of a beneficiary and to conserve any benefits not needed for the beneficiary's current maintenance. In general, the title of the account must show that the payee has only a fiduciary interest in the account and that the beneficiary is the account owner. A payee who manages benefits on behalf of multiple beneficiaries may hold such benefits in separate individual accounts or in a single depository account, known as a *collective account*.[82] SSA must approve the use of a collective account, and the payee is required to maintain a separate account ledger for each beneficiary, along with separate accounting records.

In general, a payee may not commingle a beneficiary's SSI/Social Security benefits with other funds in the payee's personal or operating account. However, under certain conditions, SSA permits state or local governments to deposit beneficiary funds into a general depository account (e.g., a state general fund) in order to route the funds to a subordinate agency's subaccount (e.g., state child welfare agency).[83] In addition, state or local governments may use operating accounts

[77] 42 U.S.C. §§405(j)(2)(E)(ii) and 1383(a)(2)(B)(xii). See also 20 C.F.R. §§404.2030 and 416.630.

[78] Ibid. Likewise, if the beneficiary is legally incompetent, then the advance notice is issued solely to the beneficiary's legal guardian or legal representative.

[79] SSA, POMS, "GN 00503.100 Advance Notice," September 4, 2019, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200503100.

[80] Ibid. If someone other than a parent is selected as the payee, then SSA typically notifies only one of the parents.

[81] SSA, POMS, "GN 00503.130 Final Notice," April 25, 2016, https://secure.ssa.gov/poms.nsf/lnx/0200503130. While the reporting policies discussed here apply to SSA, some child welfare advocates have separately argued that the *state child welfare agency* has a duty (under the due process provision of the Constitution) to inform a child in foster care if/when the agency is appointed representative payee for that child. Lower courts have disagreed on this issue. See "Have courts addressed alleged due process rights violations with regard to notice of use of funds for foster care?" for more information.

[82] SSA, POMS, "GN 00603.020 Collective Checking and Savings Accounts Managed by Representative Payees," June 2, 2021, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200603020. See also SSA, "Guide for Organizational Representative Payees: Collective Accounts," https://www.ssa.gov/payee/NewGuide/toc.htm; and SSA, "Training Organizational Representative Payees: UNIT 9—COLLECTIVE ACCOUNTS AND PROPER TITLING OF ACCOUNTS," https://www.ssa.gov/payee/LessonPlan-2005-2.htm.

[83] SSA, POMS, "GN 00603.020 Collective Checking and Savings Accounts Managed by Representative Payees," June

established for paying certain child welfare expenses (i.e., a state child care or foster care account) to hold the benefits of beneficiaries in foster care, provided certain requirements are met.[84]

Are representative payees allowed to use beneficiaries' SSI/Social Security benefits to reimburse themselves for expenses incurred on the beneficiaries' behalf?

Representative payees may reimburse themselves from beneficiaries' SSI/Social Security benefits for reasonable, actual out-of-pocket expenses incurred on behalf of beneficiaries.[85] *Out-of-pocket expenses* are actual costs incurred in obtaining food, housing, medical items, clothing, transportation, and personal needs items on the beneficiary's behalf. Payees may reimburse themselves for certain out-of-pocket expenses not mentioned above if they obtain SSA's approval before the reimbursements are made. Pursuant to SSA's out-of-pocket reimbursement policy and the Supreme Court's decision in *Washington State Dept. of Social and Health Services v. Guardianship Estate of Keffeler*, state child welfare agencies may use SSI/Social Security benefits for the cost of providing care to child beneficiaries in foster care (see "How has the Supreme Court ruled on the states' use of SSI/Social Security benefits to support children in foster care?").[86]

In general, representative payees may not use beneficiaries' SSI/Social Security benefits to compensate themselves for time, effort, or administrative expenses in connection with their payee duties. However, the Social Security Act permits a qualified organization (i.e., state or local governments and certain community nonprofit agencies) to collect a monthly fee from a beneficiary's SSI/Social Security benefits for expenses incurred in providing payee services, including for *overhead* (i.e., normal business operating expenses).[87] SSA must approve the

2, 2021, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200603020. A state or local government may use a general depository account (e.g., a state general fund) under the following conditions: (1) the state or local government requires the use of the general depository account; (2) the state or local government promptly routes the beneficiary's SSI/Social Security benefits from the general depository account to the payee's collective account for beneficiaries; (3) the subaccount protects the beneficiary's benefits from any state or local government use; and (4) the payee adheres to SSA's collective account guidance.

[84] Ibid. A state or local government may use a child care or foster care account under the following conditions: (1) the state or local government uses the account to receive the SSI/Social Security benefits; (2) the state or local government uses the account to pay for routine cost-of-care expenses; (3) the state or local government maintains subaccount ledgers detailing cost of care and the SSI/Social Security deposits for each beneficiary; (4) the subaccount protects the beneficiary's benefits from any state or local government use; and (5) the payee adheres to SSA's collective account guidance.

[85] SSA, POMS, "GN 00602.110 Reimbursement for Payee Services," April 25, 2016, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200602110. See also SSA, "Frequently Asked Questions (FAQs) for Representative Payees: Can I Use Beneficiary's Funds to Pay Myself for a Beneficiary Expense I Paid?," https://www.ssa.gov/payee/faqrep.htm?tl=12; SSA, "Guide for Organizational Representative Payees: Out-of-Pocket Expenses," https://www.ssa.gov/payee/NewGuide/toc.htm#Important_Info_Benefits; and SSA, "Training Organizational Representative Payees: What "out-of-pocket" expenses can an organization be reimbursed for?," https://www.ssa.gov/payee/LessonPlan-2005-2.htm#REIMBURSE.

[86] Responses to Questions for the Record from Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy, Social Security Administration, May 11, 2017, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Social Security's Representative Payee Program*, 115th Cong., 1st sess., March 22, 2017, Serial No. 115-OS02 (Washington, DC: GPO, 2017), p. 107, https://www.govinfo.gov/content/pkg/CHRG-115hhrg33365/pdf/CHRG-115hhrg33365.pdf#page=111.

[87] 42 U.S.C. §§405(j)(4) and 1383(a)(2)(D). See also 20 C.F.R. §§404.2040a and 416.640a, as well as SSA, POMS, "GN 00506.001 Fee for Service – Overview," April 25, 2016, https://secure.ssa.gov/poms.NSF/lnx/0200506001.

request to collect a fee, which is 10% of the total monthly benefit, up to a maximum of $45 per month in 2021.[88] If a payee collects a fee, then the payee may not seek separate recovery under SSA's out-of-pocket reimbursement policy for overhead.

Screening and Applying for SSI/Social Security Benefits on Behalf of Children in Foster Care

To what extent are children in foster care screened for SSI/Social Security eligibility?

The most recent information about states' practices for screening children in foster care for SSI/Social Security benefits comes from a 2011 survey of state child welfare agencies. All but two of 44 states that responded to the survey had specific methods in place to screen children, including written procedures, the SSA's benefit eligibility screening tool (BEST),[89] guidelines developed by the state, responses provided on the initial child welfare services intake form, and social worker discretion, among other methods.[90] A smaller subset of 23 states responded to questions about child welfare staff that help to determine whether children in care may be eligible for SSI/Social Security benefits. Four of these states reported that they provide guidance to local jurisdictions to identify children, three states reported that special contract agencies carry out possible eligibility determinations, and 16 states reported having special units or designated staff for this purpose.

Reporting by the Marshall Project in 2021 indicated that at least 12 state foster care agencies hire consulting companies to screen children in foster care to determine whether they might be eligible for SSI/Social Security benefits.[91] According to this reporting, the companies review children's health care records, casework notes, school performance, and other information to determine whether they might be eligible based on factors such as physical and emotional disabilities.[92] Further, this reporting found that one of the companies has examined whether the state child welfare agency could replace representative payees (e.g., parent, grandparent, or other guardian) who are already overseeing benefits for children in care.

[88] SSA, POMS, "GN 00506.200 Fee Amounts," November 25, 2020, https://secure.ssa.gov/poms.nsf/lnx/0200506200. The maximum dollar limit is $84 per month in 2021 if the beneficiary has a drug or alcohol addiction condition.

[89] The SSA's Benefit Eligibility Screening Tool (https://ssabest.benefits.gov/) offers information on the types of benefits an individual may be eligible to receive.

[90] APHSA and the National Association of Public Child Welfare Administrators, *Study on Title II and Title XVI Benefits for Children in Out-of-Home Placements*, 2012.

[91] See NPR and the Marshall Project, "Foster Care Agencies Take Thousands of Dollars Owed to Kids, Most Children Have No Idea," https://www.themarshallproject.org/2021/04/22/foster-care-agencies-take-thousands-of-dollars-owed-to-kids-most-children-have-no-idea, May 17, 2021. The Marshall Project is a nonprofit, nonpartisan news organization that focuses on the U.S. criminal justice system. According to this source, these 12 states—Alaska, California, Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, New York, South Carolina, Washington, and Wisconsin—use one of three companies (Maximus, Public Consulting Group [PCG], Inc., and Diversified Services Network) to screen children in foster care for benefits.

[92] NPR and the Marshall Project, "Foster Care Agencies Take Thousands of Dollars Owed to Kids, Most Children Have No Idea."

Which factors are considered when determining whether children in foster care should apply for SSI/Social Security benefits?

Determining whether taking the benefit is in the child's best interest depends on a sometimes complex interaction of program and child-specific factors. Children in foster care may gain from screenings because presumably, the child welfare agency would go on to help the child apply for benefits and appeal any decisions regarding the benefits. Children who receive SSI/Social Security benefits would continue to receive the benefits even after leaving care (assuming they are under the age of 18).[93]

When children receiving SSI reach the age of 18, SSA automatically reviews the cases to determine if they meet the program's disability standard for adults. Receipt of SSI can also be beneficial because most recipients are categorically eligible for certain other federal and state benefits, including Medicaid. Screening for benefits can also be useful for state child welfare agencies if, in fact, states seek to use those funds for reimbursing the cost of providing foster care.

In addition to these considerations, child welfare agencies may also assess how a Title IV-E foster care maintenance payment and SSI benefit would interact for children who are eligible for both. The *Child Welfare Policy Manual*, which discusses official guidance on the Title IV-E foster care program, specifies that federal Title IV-E support may be claimed on behalf of a Title IV-E eligible child who is also receiving an SSI benefit.[94] However, under the SSI program, a Title IV-E foster care maintenance payment is considered *income based on need*.[95] This kind of income reduces the amount of a child's monthly SSI benefit on a dollar-for-dollar basis and could effectively reduce a Title IV-E eligible child's SSI benefit to $0.[96]

For example, if a child's total monthly foster care maintenance payment is $500 in 2021—and that maintenance payment is paid under the Title IV-E program—then the child's monthly SSI benefit, assuming no other income, would be $294 (i.e., the maximum monthly SSI payment in 2021 of $794 *minus* the $500 Title IV-E payment). A child would not be eligible for SSI benefits if the Title IV-E maintenance payment (plus any other countable income) were equal to or greater than the SSI federal benefit rate ($794 in 2021), plus any federally administered state supplementary payment.

Because of this dollar-for-dollar reduction in the SSI benefit, a state might elect to forgo any federal support under Title IV-E for a child's foster care maintenance payment. The state could choose instead to provide the child's foster care maintenance payment solely with the SSI benefit

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[93] Under the Strengthening Protections for Social Security Beneficiaries Act of 2018 (SPSSBA, P.L. 115-165), SSA is required to enter into data exchange agreements with states to allow automated monthly updates when a child SSI/Social Security beneficiary with a representative payee enters or exits foster care or changes foster care placement. SSA is then required to use this information to redetermine the appropriate representative payee for the child beneficiary when a change in placement occurs. See the section on "Have any federal laws been enacted recently that address the use of Social Security and SSI benefits by child welfare agencies?" for more details about the SPSSBA.

[94] ACF, *Child Welfare Policy Manual*, Section 8.4D - Question 1, https://acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=76.

[95] *Income based on need* (IBON) is assistance provided under a program that uses income as a factor of eligibility, and is funded wholly or partially by the federal government. For children in foster care who do not qualify for Title IV-E foster care support, states must find other sources of funding to pay for that child, and support for these children in foster care may be provided solely with state or local dollars. Foster care payments funded wholly by a state or local government are considered *assistance based on need* (ABON) and are disregarded (i.e., not counted) in determining SSI eligibility and the benefit amount. See 42 U.S.C. §1382a(b)(6) and 20 C.F.R. §416.1124(c)(2).

[96] IBON is not subject to the $20 general income exclusion. See SSA, POMS, "SI 00830.410, Title IV-E Foster Care Payments," August 19, 2014, https://secure.ssa.gov/poms.nsf/lnx/0500830410.

or with a combination of the SSI benefit and some other nonfederal or non-countable (for SSI purposes) dollars. A state that chooses to forgo Title IV-E foster care maintenance payment funding in this manner, however, could continue to claim federal Title IV-E "administrative" funding for a Title IV-E eligible child. (Title IV-E administrative funding covers a wide range of activities from support for development and revision of a case plan and required caseworker visits for each child in foster care to conducting background checks or providing training for foster parents and many more items.)[97] Children receiving SSI/Social Security benefits are less likely than other children in foster care to be receiving Title IV-E foster care maintenance payments. An analysis of FY2019 AFCARS data found that among children in foster care who were receiving SSI/Social Security benefits, 20.1% were also receiving Title IV-E foster care maintenance payments. By contrast, among those in care who were not receiving SSI/Social Security benefits, 42.1% were receiving Title IV-E foster care maintenance payments.[98]

For children who do not qualify for Title IV-E foster care support, states must find other sources of funding, typically with state or local dollars. If a state uses federal TANF dollars to provide support (e.g., a child-only payment made to a kin caregiver), then this support would also be considered income based on need under the SSI program and any such payment would reduce a child's SSI benefit dollar for dollar.[99] However, if a state uses solely its own or local funds to make payments on behalf of a child in foster care who is not Title IV-E eligible and the payments use income as a factor of eligibility, then such payments are not counted as income and thus do not reduce a child's SSI benefit.[100] Typically, in such cases, the state serving as the child's representative payee is believed to use the child's SSI benefits to provide a foster care maintenance payment to the child (or to reimburse the state for all or some of that payment). If the child receives Social Security benefits, those benefits are not affected by the Title IV-E foster care maintenance payment or any other non-Social Security federal support.

Some child welfare agencies contract with private consulting companies to file applications for SSI/Social Security benefits on behalf of children in foster care, such as Maximus and Public Consulting Group.[101] A publication from one of these consulting companies notes that it has greater success in successfully applying for benefits relative to applications overall.[102]

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[97] Title IV-E administrative claims must be submitted by a state under an HHS-approved "cost allocation plan." Generally, a state applies the percentage of children in its care who are eligible for Title IV-E to its applicable administrative costs to determine the share of those administrative costs that are considered Title IV-E costs. HHS, ACF, *Child Welfare Policy Manual*, Section 8.4D - Question 3, https://acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=76.

[98] Based on CRS analysis of FY2019 data from AFCARS (FC2019v1), available from NDACAN. This analysis looked at all children who were in foster care at some point during FY2019 and who had been in care for at least six months (505,499, including 26,957 who were receiving SSI or other Social Security benefits). See **Appendix B** for more information about how children were counted as receiving, or not receiving, SSI/Social Security benefits.

[99] By contrast, if a state uses funds under the SSBG or CWS program, that funding is considered a service (rather than income) and does not reduce a child's SSI benefit. See POMS, "SI 00830.410, Title IV-E Foster Care Payments," August 19, 2014, https://secure.ssa.gov/poms.nsf/lnx/0500830410.

[100] Ibid. SSA considers wholly state or locally-funded payments that use income as a factor of eligibility to be ABON, which is excluded from income in determining SSI eligibility and the payment amount. See footnote 95.

[101] Maximus, "Disability Benefits and Services," https://maximus.com/solutions/disability-benefits-and-services. Public Consulting Group, "Finance Consulting," https://www.publicconsultinggroup.com/human-services/children-and-youth/finance-consulting/.

[102] Public Consulting Group, "SSAMS Program: Social Security Advocacy Management Services for Foster Care Population," no date, in Social Security Advisory Board, "Policy Forum on the SSI Program: July 12, 2016," https://web.archive.org/web/20160731140937/http:/www.ssab.gov/FORUM2016-SSI/FORUM2016-PRESENTATIONS.

Does SSA have special procedures for youth who age out of foster care?

Youth who age out of foster care—typically at age 18, or in some states, at age 21—face a number of challenges related to the transition, including income support. For youth in foster care who will soon age out and are already receiving SSI/Social Security, benefits continue until they no longer meet the applicable program requirements. Under SSI, benefits based on a qualifying disability are available at any age, although child SSI recipients who turn 18 must meet the adult definition of disability to remain eligible for the program.[103] Under Social Security, benefits for children generally stop at age 18 (or at age 19 if they are enrolled full-time in elementary or secondary school [grade 12 or below]).[104]

For youth in foster care who will soon age out but are not currently receiving SSI benefits, SSA has a special application procedure that allows such youth to apply for SSI before they leave foster care. This procedure is designed to minimize the chance of disruption in income support during the transition and was developed to assist transition-age foster youth who would be SSI-eligible if not for receipt of federal Title IV-E maintenance payments. Because these payments count as income under the SSI program, state child welfare agencies have less incentive to apply for SSI on behalf of youth who receive federal Title IV-E benefits.[105] For SSI-eligible youth who apply for SSI immediately *after* they age out of foster care, it may take several months before their applications are processed and their benefits start.[106]

In general, the earliest point at which SSA accepts an SSI application is the month before the month of eligibility.[107] However, under the special application procedure for transition-age foster youth, SSA accepts an SSI application up to 180 days before the child's 18th birthday.[108] The additional time provided by this special application procedure helps to ensure that SSI applications (including accompanying disability determinations) are processed before SSI-eligible youth age out of foster care. Without the opportunity to apply for SSI early, youth who are receiving federal Title IV-E benefits when they age out of foster care—and who were previously ineligible for SSI due to that Title IV-E *income*—could experience a gap in their support and

[103] SSA is required to review child SSI recipients who turn age 18 under the adult disability standard. This review is known as an *age-18 redetermination*. According to OCACT, more than half of age-18 redeterminations result in the continuation of SSI benefits. See SSA, OCACT, *2021 SSI Annual Report*, Table V.D4, p. 111, https://www.ssa.gov/oact/ssir/SSI21/index.html.

[104] Individuals aged 18 or older may qualify for Social Security benefits on the record of a parent if they are unmarried and have a qualifying disability that began before age 22. See "Social Security Benefits for Children."

[105] Because Social Security is not a means-tested program, state child welfare agencies would presumably apply for Social Security on behalf of eligible youth while they are already in foster care, as they could use the Social Security benefits as reimbursement for the cost of foster care.

[106] In FY2021, the average processing time for initial disability claims for SSI or Social Security was 165 days. SSA, "Combined Title II Disability & Title XVI Blind & Disabled Average Processing Time (excludes technical denials)," https://www.ssa.gov/open/data/Combined-Disability-Processing-Time.html.

[107] SSA, POMS, "SI 00601.010 Filing Applications," June 24, 2016, https://secure.ssa.gov/apps10/poms.nsf/lnx/0500601010.

[108] SSA, POMS, "DI 25201.011 Making a Determination for Youth in Foster Care When the Application Effective Date Is On or After the Attainment of Age 18," July 29, 2016, https://secure.ssa.gov/apps10/poms.nsf/lnx/0425201011. See also SSA, "Spotlight on SSI Benefits for Disabled or Blind Youth in Foster Care," https://www.ssa.gov/ssi/spotlights/spot-disabled-youth.htm. For more information on the history of this special procedure, see Laura King and Aneer Rukh-Kamaa, "Youth Transitioning Out of Foster Care: An Evaluation of a Supplemental Security Income Policy Change," *Social Security Bulletin*, vol. 73, no. 3 (August 2013), https://www.ssa.gov/policy/docs/ssb/v73n3/v73n3p53.html.

maintenance. According to SSA's analysis, allowing an extended/early application timeframe may have shortened the period between attaining age 18 and receiving SSI determinations.[109]

There is no comparable special application procedure for Social Security benefits, as these benefits typically end when the child turns age 18 (or age 19 if enrolled full-time in elementary or secondary school [grade 12 or below]).[110]

Use of Social Security and SSI Benefits by Child Welfare Agencies

To what extent do children in foster care receive SSI/Social Security benefits?

Children in foster care are not expected to be eligible for Social Security benefits at a rate greater than the general child population. However, because they more often have impairments (and low income) they might be expected to more often qualify for SSI. Researchers studying a nationally representative sample of children who were placed in out-of-home care (following a child abuse or neglect investigation) estimated that more than 20% had physical or mental health conditions that—given the severity of the condition and the length of the condition or risk of death—would likely make them eligible for SSI. Among children who had been in out-of-home care for at least one year, this percentage rose slightly to 21%. The researchers based these findings on direct assessments of children and standardized questionnaires administered to caregivers about the children's social skills, behavior, or health status.[111]

This estimated eligibility is considerably higher than the 5.3% of children in foster care during FY2019 who had been in care for at least six months and were reported by state child welfare agencies via the Adoption and Foster Care Analysis Reporting System as receiving SSI/Social Security benefits.[112] Notably, however, the share of children reported as receiving SSI/Social Security benefits varies considerably by state: five states reported that between 13% and 24% of children in their care were receiving SSI/Social Security benefits, while nine states (including the District of Columbia) reported that less than 2% did so.[113]

Among children in foster care who were not receiving SSI/Social Security benefits, roughly one-quarter (24.5%) were reported as having clinically diagnosed disabilities, including physical or intellectual disabilities, or emotional disturbances (see **Figure 7**).[114] This may indicate that some

[109] Laura King and Aneer Rukh-Kamaa, "Youth Transitioning Out of Foster Care: An Evaluation of a Supplemental Security Income Policy Change," *Social Security Bulletin*, vol. 73, no. 3 (August 2013).

[110] As noted previously, individuals aged 18 or older may qualify for Social Security benefits on the record of a parent if they are unmarried and have a qualifying disability that began before age 22. See "Social Security Benefits for Children." As part of the SSI application process, claimants are required to apply for Social Security if they are eligible for the program. Thus, transition-age foster youth who apply for SSI under the special application procedure would likely be required to apply for Social Security. However, it is unclear if such youth would receive any special treatment with respect to the processing of their Social Security applications.

[111] HHS, ACF, National Survey of Child and Adolescent Well-Being, *Estimates of Supplemental Security Income Eligibility for Children in Out of Home Placements*, Research Brief No. 12, https://www.acf.hhs.gov/sites/default/files/documents/opre/est_suppl.pdf.

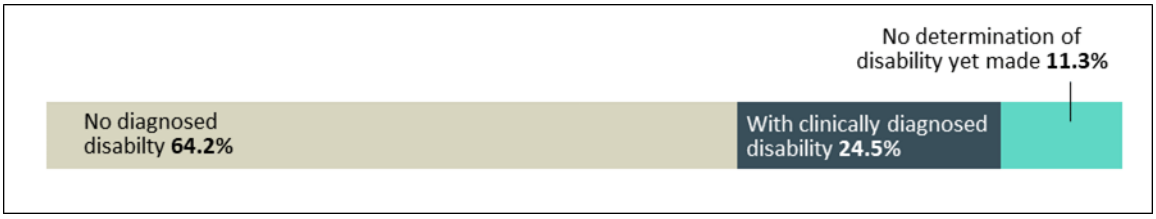
[112] AFCARS collects data on receiving SSI and Social Security benefits in a combined category. The category may also include a limited number of children who receive foster care maintenance payment support under CWS and SSBG. See table note c in **Table B-1** for more information.

[113] Based on CRS analysis of AFCARS FC2019 data reported by 50 states and the District of Columbia. Children were included in the analysis if they had been in care for at least six months and at least part of that time occurred during FY2019.

[114] These analyses were completed only on children who had been in care for at least six months, therefore increasing

children in foster care are eligible for but not receiving SSI benefits.[115] On the other hand, SSA does disability determination for purposes of the SSI program according to program-specific rules, and those rules do not necessarily match the clinical diagnosis parameters given in AFCARS reporting.[116] Additionally, children receiving SSI benefits must meet income and resource tests as described earlier in this report.[117]

Figure 7. Children in Foster Care who are Not Receiving an SSI/Social Security Benefit, by Clinical Diagnosis of Disability



Source: Figure prepared by CRS based on analysis of FY2019 AFCARS data from the 50 states and the District of Columbia. See also **Appendix B** for more information on data used in this analysis.

Notes: Percentages do not sum to 100 due to rounding. Children were included in the analysis if at any time during FY2019 they had been in care for at least six months, they did not receive SSI/Social Security benefits, and the state reported their disability diagnosis information (n= 472,800). The SSI program has a unique definition and determination of disability; a clinically diagnosed disability as reported via AFCARS does not necessarily mean a child would meet those SSI disability criteria.

To what extent do child welfare agencies use SSI/Social Security benefits to reimburse themselves for foster care expenses?

Most state child welfare agencies use SSI/Social Security benefits to cover foster care maintenance payment expenses. A GAO study found that 42 states reported using SSI and/or Social Security funds in lieu of state funds to cover foster care costs, including for items such as housing and food.[118] Over half of the states (29) reported using SSI/Social Security funds to cover other expenses that the state would not have covered through a foster care maintenance payment, such as for educational needs (e.g., technology for educational purposes), medical needs, and personal items (e.g., a high-school senior class ring). Most of the states (37) also reported that they conserved SSI/Social Security funds for children in care.[119]

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the time opportunity for a qualified professional to have made such clinical diagnoses.

[115] ACF, National Survey of Child and Adolescent Well-Being, *Estimates of Supplemental Security Income Eligibility for Children in Out of Home Placements*.

[116] Fewer than half of child SSI applicants who are medically evaluated by SSA are awarded benefits. See SSA, *SSI Annual Statistical Report, 2020*, October 2021, Table 69, https://www.ssa.gov/policy/docs/statcomps/ssi_asr/.

[117] As noted earlier, if a child in foster care is receiving a Title IV-E foster care maintenance payment, that payment would reduce any SSI payment dollar for dollar. Most children in foster care (circa 60%) are not eligible for Title IV-E foster care maintenance payment support. However, for those who are Title IV-E eligible, if a state decides to claim Title IV-E maintenance payment support for the child, then an otherwise SSI eligible child may not be eligible for an SSI payment.

[118] GAO, *Social Security Administration: New Data Exchanges for Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441-R, p. 12.

[119] GAO did not comment on why some states did not report conserving SSI/Social Security benefits on behalf of child beneficiaries. Individuals and organizations serving as representative payees (including state child welfare agencies) are required to conserve or invest benefits not needed for a child's current maintenance, generally in a financial account insured under federal or state law. In addition, the SSI program requires that certain large past-due benefits payable to a

GAO separately examined data from seven of the eleven states (including the District of Columbia) that exchange child welfare data with SSA.[120] Five of the seven states (the District of Columbia, Iowa, Maine, Nebraska, and Virginia) spent at least two-thirds of the SSI/Social Security benefits paid on behalf of the child beneficiaries to cover their food and housing expenses. The other two states, Delaware and Kentucky, spent most of the funds on medical, educational, or dental expenses. Five of the states (Delaware, the District of Columbia, Iowa, Nebraska, and Virginia) conserved between 2% and 15% of funds on behalf of the child beneficiaries, and two states (Kentucky, Maine) reported not conserving funds for future use.

Some states require conservation of benefits under state law. For example, Nebraska law requires its state child welfare agency to conserve a cumulative amount of $1,000 in personal assets and income for children in foster care receiving SSI/Social Security benefits. Further, Maryland law requires its state child welfare agency to conserve 40% of a child in foster care's SSI/Social Security benefits (for the child's future use) if the child is ages 14 or 15; 80% for a child ages 16 or 17; and 100% for a child 18 or older.[121]

The Child Trends survey of state child welfare agency spending for state FY2018 found that the agencies in 38 states and the District of Columbia had access to some $179 million in SSI/Social Security funds to cover child welfare agency costs for beneficiaries. The child welfare agency in three states and Puerto Rico reported receiving no such funds, eight states were unable to report the amount of SSI/Social Security funds they received, and one state did not participate in the survey.[122] Many states reported lump sums for all SSI and Social Security benefits, therefore the precise amount of funding by type of benefit is not known.

At the same time, child welfare agency in 29 states reported in the Child Trends survey that they sometimes maintained SSI/Social Security benefits (or other "third-party income," e.g., child support payments) "in an account specific to a child or child's caregiver, (which the child or caregiver could access), or otherwise saved the funds for the child." Child welfare agencies in sixteen states, the District of Columbia and Puerto Rico indicated they did not maintain such accounts. (Agencies in five remaining states did not provide information on this question, or did not participate in the survey.)[123]

represented minor child be deposited in a special dedicated account. The child's representative payee is permitted to use funds in the dedicated account only for certain expenses, such as medical treatment, education, job skills training, or expenses related to the child's impairment (e.g., personal assistance, therapy). Any conserved benefits remaining in a financial account (including a dedicated account) when the duties of the representative payee end must be returned to SSA for distribution to the next representative payee or, generally, if the child has reached age 18, to the child.

[120] GAO, *Social Security Administration: New Data Exchanges for Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441-R, p. 11.

[121] See Nebraska Revised Statute 43-907. See Maryland Family Law Article §5-527.1 and Maryland Department of Human Services, Policy Number SSA/CW #19-6, October 1, 2018, https://dhs.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2019-06%20CW%20Protecting%20Resources%20of%20Children%20in%20Custody.pdf.

[122] Specifically, the Child Trends Survey asked about the amount of certain third-party income "remitted to the state and made available to the child welfare agency to use as offsets to child welfare agency costs for child welfare services/activities." The $179 million figure generally represents SFY2018 access to SSI/Social Security funds only. Funding amounts included in that number from Louisiana and Pennsylvania more include some funds for other third-party income sources. For more information and data as reported by state, see **Appendix E**.

[123] Whether these accounts were specific to SSI/Social Security benefits (or one type of those benefits) is not known. For information on responses by state, see **Appendix E**.

How do child welfare agencies hold and track SSI/Social Security benefits?

In the 2011 survey of state child welfare agencies, 35 states provided information about how they hold and track SSI/Social Security funds for children in foster care.[124] Thirty of those states have individual accounts for the children, and five states reported holding funds in their general account and tracking each child's funds separately within the account.[125] The term "general account" is not defined in the survey report. However, as noted earlier, SSA allows state or local governments to deposit beneficiary funds into a general depository account (e.g., a state general fund) in order to route the funds to a subordinate agency's subaccount, or to an operating account established for paying certain child welfare expenses, such as a childcare or foster care account (see "Representative Payees").

Over the years, audits of child welfare agencies serving as representative payees by SSA's Office of the Inspector General (OIG) have found weaknesses in agencies' payee practices concerning the use and tracking of benefits for children in foster care (see **Appendix F**). SSA's OIG has also expressed concern with general depository accounts used by some states, because the subaccounts into which SSI/Social Security benefits are deposited may not provide sufficient evidence of the fiduciary relationship between the payees and the beneficiaries, which may affect the insured status of the beneficiaries' funds by the Federal Deposit Insurance Corporation (FDIC).[126]

Selected Court Decisions[127]

Few courts have addressed states' use of SSI/Social Security benefits to support children in foster care. Only one of these cases, *Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler*,[128] has reached the U.S. Supreme Court.

How has the Supreme Court ruled on the states' use of SSI/Social Security benefits to support children in foster care?

In *Keffeler*,[129] the Court considered whether a state may lawfully use the Social Security benefits of a child in foster care to reimburse itself for foster care costs. Advocates for the children in foster care argued that the State of Washington's use of Social Security benefits for reimbursement violated 42 U.S.C. §407(a),[130] otherwise known as the "anti-attachment clause,"

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[124] American Public Human Services Association and the National Association of Public Child Welfare Administrations, *Study on Title II and Title XVI Benefits for Children in Out-of-Home Placements*, p. 14. The survey questions are in Appendix C. States were asked, "When a state acts as representative payee for a child receiving SSI or Title II benefits, how are those benefits used? (Please select all answers that apply.)" States could respond to four options: (1) General revenue to state; (2) General revenue, but transferred directly to the child welfare agency; (3) Individual account is created for child; benefits are used to pay the child's foster care maintenance payment with any excess payment saved for the child; and (4) Other (please describe).

[125] Ibid.

[126] See, for example, SSA, OIG, *Cabinet for Families and Children, Department for Community Based Services, Division of Protection and Permanency - An Organizational Representative Payee for the Social Security Administration*, A-08-03-13084, March 10, 2004, https://oig-files.ssa.gov/audits/full/A-08-03-13084.pdf.

[127] This section was written by Alison M. Smith, Legislative Attorney in CRS's American Law Division. It uses that division's editorial and citation styles.

[128] 537 U.S. 371 (2003).

[129] Id.

[130] Title 42, Section 407(a), states the following:

> The right of any person to any future payment under this subchapter shall not be transferable or

or the anti-alienability clause of the Social Security Act.[131] This provision protects Social Security benefits from "execution, levy, attachment, garnishment, or other legal process."[132] The Court in *Keffeler* held that the state's use of Social Security funds for reimbursement did not violate federal law.[133] In rejecting the advocates' assertions, the Court stated that the issue was "whether the department's ... use of [the children's] Social Security benefits when it acts [as a representative payee] amounts to employing an 'execution, levy, attachment, garnishment, or other legal process' within the meaning of § 407(a)."[134] After determining that the other legal apparatuses outlined in §407(a) did not apply, the Court determined that the case "boil[ed] down to whether the department's manner of gaining control of the federal funds involve[d] 'other legal process,' as the statute uses that term."[135] The Court reasoned that "other legal process" involves some means of transfer similar to garnishment or attachment, and determined that the phrase, "at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism ... by which control over property passes from one person to another."[136] The Court concluded that the department's use of the Social Security benefits "in that capacity involve[d] nothing of the sort," as the State's use of benefits to reimburse itself involved "funds already in the department's possession and control, held on terms that allow the reimbursement."[137] The Court also held that Washington State's use of a child's Social Security benefits to reimburse costs of foster care for that child followed the regulatory requirement that such funds are spent for the "use and benefit of the beneficiary" and within the regulatory definition of *current maintenance* that includes "costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items."[138]

Have lower courts addressed how states may use children's SSI/Social Security benefits?

Since *Keffeler*, lower courts have addressed these issues with varying results. As the Court decided Keffeler on a narrow statutory basis, several questions remain, including what exactly constitutes "other legal process" or whether a state can be limited in the way it seeks reimbursement. At least one appellate state court addressed this issue in 2007 and concluded that a district court's order directing a North Carolina's county Department of Social Services (DSS), as a representative payee, to spend Social Security funds for a minor child in a specific manner did not violate the anti-alienability provision of the Social Security Act.[139]

> assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

[131] Courts sometimes use the term "anti-alienability" and anti-attachment clause interchangeably. See, for example, *Johnson v Wing*, 178 F.3d 611, 615 (2d Cir. 1999).

[132] *Keffeler*, 537 U.S. at 382.

[133] Id. at 375; see 42 U.S.C. §§407(a), 1383(d)(1).

[134] *Keffeler*, 537 U.S. at 382.

[135] Id. at 383. The Court explained that the terms "execution, levy, attachment [and] garnishment" were "legal terms of art refer[ring] to formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and generally involved some form of judicial authorization." Id.

[136] Id. at 385.

[137] Id. at 386.

[138] 20 C.F.R. §§404.2040(a), 416.640(a). Current maintenance includes "costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items."

[139] *In re J.G.*, 652 S.E.2d 266 (2007).

In re J.G. involved a minor child that received Social Security payments based on the child's adoptive father's work history.[140] Following the adoptive father's death, a trial court, finding the child had been neglected by the biological mother and other legal guardians, ultimately placed the child in DSS's legal and physical custody.[141] DSS therefore became the representative payee for the child's Social Security benefits and used them to cover the child's foster care costs.[142] DSS did not use the funds to pay the mortgage on a house the child had previously inherited from his adoptive father, which led to foreclosure proceedings by the mortgage holder.[143] The child's guardian ad litem (GAL) moved the court to protect the minor child's "reasonable foreseeable needs,"[144] and the trial court held that DSS's use of the child's Social Security benefits to pay for foster care instead of the mortgage payments was unreasonable and contrary to the child's best interests.[145] According to the court, if the mortgage holder foreclosed on the child's home, the child would receive little money from the sale and would be homeless when he aged out of foster care.[146] The court therefore ordered DSS to use some of the Social Security benefits to pay the mortgage payments and house repairs.[147]

DSS appealed the decision, claiming that the trial court's order violated the anti-alienability provision of the Social Security Act (42 U.S.C. §407(a)) by directing DSS to pay the mortgage.[148] According to DSS, this action subjected the Social Security benefits to a "legal process" in violation of the statute (i.e., it directed a certain portion of the child's Social Security benefits be used for a particular purpose).

The North Carolina court of appeals disagreed with DSS and affirmed the trial court's decision.[149] The court explained that Congress's intent in enacting the anti-alienability provision of the Social Security Act was to protect Social Security payments against "claimants to Social Security benefits, whether or not such claimants are creditors."[150] The court reasoned that the law protects beneficiaries' rights and limits creditors' rights by barring use of any legal process to gain control of Social Security benefits.[151] The court further determined that the Court in *Keffeler* stated that the phrase *other legal process* refers to a formal process by which a person gains control over property controlled by another though judicial involvement.[152] Therefore, the court held that the "anti-alienability provision functions as a bar against actions for Social Security benefits brought against Social Security beneficiaries and payees."[153] As applied in this case, the court noted that DSS, as representative payee, controlled the child's Social Security funds and that no one else had control over the child's funds; and that the trial court's order directing DSS to use some of the Social Security funds to pay the mortgage on the child's home was not initiated by a creditor

[140] Id. at 267-69.

[141] Id. at 267-68.

[142] Id. at 268-69.

[143] Id. at 269.

[144] Id.

[145] Id.

[146] Id. at 273.

[147] Id. at 269.

[148] Id. at 270.

[149] Id. at 273- 76.

[150] Id. at 275.

[151] Id.

[152] Id. at 278.

[153] Id. at 275.

but by the child's GAL to protect the child's future needs.[154] Thus, the court held that the anti-alienability provision did not apply.[155] As a result, a state, for example, may choose to not use all of a child's Social Security funds to reimburse itself in order to conserve funds for a child's future use in anticipation of a child "aging out" of care.[156]

Constitutional Issues

Constitutional issues concerning violations of due process and equal protection rights under the Fourteenth Amendment also remain after the *Keffeler* decision.[157] Due process rights under the Fourteenth Amendment of the U.S. Constitution[158] consists of two components: substantive and procedural.[159] Procedural due process concerns the procedures that the government must follow before depriving an individual of life, liberty, or property.[160] These procedural protections include notice and a meaningful opportunity to be heard.[161] Typically, claims of violations of the Due Process Clause in cases involving the use of benefits for children in foster care allege that the state failed to provide adequate notice to foster children when the state began to reimburse itself using the child's benefits.[162] In these cases, the children or their representative contend that they were denied their due process right to notice and a hearing before the state began to use their benefits to offset the cost of their foster care.[163]

The Equal Protection Clause of the Fourteenth Amendment provides that "No State shall ... deny to any person within its jurisdiction the equal protection of the law."[164] Under the Constitution's equal protection principles, government actions that distinguish between classes of people are subject to different degrees of scrutiny depending on the classification involved.[165] For example, certain classifications, such as race, are subject to strict scrutiny, under which government action must further a compelling government interest and be narrowly tailored to achieve that interest.[166] Government policies employing non-suspect classifications are reviewed more leniently, typically withstanding equal protection challenges if they are rationally related to a legitimate government

[154] Id.

[155] Id.

[156] *See Keffeler*, 537 U.S. at 378-79 (stating that "[t]he department occasionally departs from this practice, ... [a]nd there have ... been exceptional instances in which the department has foregone reimbursement for foster care to conserve a child's resources for expenses anticipated on impending emancipation.").

[157] *See Id*. at 380 n.4.

[158] U.S. Const. amend. XIV §1.

[159] U.S. v. Salerno, 481 U.S. 739, 746 (1987) (describing substantive and procedural due process).

[160] Mathews v. Eldridge, 424 U.S. 319 (1976).

[161] Grannis v. Ordean, 234 U.S. 385 (1914).

[162] See, for example, *In re* Ryan, 76 A.3d 1049, 1069-70 (Md. Ct. Spec. App. 2013) (finding that due process requires department to provide notice to a child's legal representative of its intention to retain benefits).

[163] Id.

[164] U.S. Const. amend. XIV §1.

[165] The Equal Protection Clause of the Fourteenth Amendment provides that "No State shall … deny to any person within its jurisdiction the equal protection of the laws."

[166] See, e.g., McLaughlin v. Florida, 379 U.S. 184 (1964) (holding a Florida criminal statute prohibiting an unmarried interracial couple from habitually living in and occupying the same room invalid under the equal protection of the laws guaranteed by the Fourteenth Amendment).

interest,[167] while other classifications are reviewed under an intermediate standard between rational basis and strict scrutiny.[168]

Have courts addressed the use of benefits for children in foster care and claims of equal protection clause violations?

In further litigation stemming from the earlier *Keffeler* case, in *Keffeler v. Washington* (*Keffeler III*),[169] plaintiffs' brought forth an equal protection challenge, arguing that the state misused funds and refused to exercise discretion in disbursing benefits, thus impermissibly creating two different classes of foster children (those with a private representative payee and those where the state acts as an appointed representative payee).[170] The Washington Supreme Court held that the state did not violate equal protection as children with state representative payees were not treated differently from children with private representative payees.[171] In rejecting the plaintiffs' equal protection challenge, the court determined that there was only one group of foster children, not two, as the plaintiff asserted.[172] According to the court, the identity of the representative payee did not create a differentiation because all representative payees must use the benefits according to state and federal laws and regulations,[173] as these funds may be used only for the beneficiary's use and benefit, and the use must be in the beneficiary's best interest as determined by the representative payee.[174]

Other lower courts have not issued decisions on this issue.[175]

Have courts addressed alleged due process rights violations with regard to notice of use of funds for foster care?

Lower courts have disagreed as to whether due process requires states to provide notice to a child's legal representative of its intention to retain benefits for reimbursement for foster care.[176] In *Keffeler III*, the Washington Supreme Court held that the state did not violate due process by refusing to provide notice to children and their guardians before the state was chosen as a

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[167] See, for example, Schweiker v. Wilson, 450 U.S. 221, 237-39 (1981) (employing a rational basis review and upholding a federal law that denied certain Supplemental Security Income benefits to certain recipients); id. at 230 ("Unless a statute employs a classification that is inherently invidious or that impinges on fundamental rights, areas in which the judiciary then has a duty to intervene in the democratic process, this Court properly exercises only a limited review power over Congress, the appropriate representative body through which the public makes democratic choices among alternative solutions to social and economic problems.").

[168] See, for example, United States v. Virginia, 518 U.S. 515, 544-45 (1996) (holding that VMI's male-only admissions policy was unconstitutional because it failed to show "exceedingly persuasive justification" for the gender-biased admissions policy).

[169] 88 P.3d 949 (Wash. 2004) (en banc). The Washington Supreme Court granted a motion to resume jurisdiction over the constitutional issues.

[170] Id. at 940.

[171] Id. at 953-55.

[172] Id. at 953-54.

[173] Id. at 953-55.

[174] Id.

[175] See *In re J.G.*, 652 S.E.2d 266, 272 n.3(2007) (discussing courts that have declined to address non-asserted constitutional claims).

[176] See *In re Ryan*, 76 A.3d 1049, 1069-70 (Md. Ct. Spec. App. 2013) (finding that due process requires department to provide notice to a child's legal representative of its intention to retain benefits); cf Keffeler v. Washington, 88 P.3d 949, 956 (finding that federal notice provided to beneficiaries satisfies due process requirements).

representative payee.[177] The court held that the prior federal notice sent to the children's guardians, as required by statute,[178] sufficiently satisfied procedural due process.[179] The Maryland court of appeals disagreed with the court in Keffeler III, and held that the Fourteenth Amendment's procedural due process requirements dictate that the state's child welfare agency must, at a minimum, notify the child's legal representative whenever it applies to be appointed as a representative payee for the child's Social Security benefits and whenever it receives those funds.[180]

In addressing the due process concerns, the Maryland court in *In re Ryan* balanced the governmental interests and the private interests affected using the factors the Supreme Court explained in *Mathews v. Eldridge*.[181] In *Mathews*, the Court explained that, in identifying the "specific dictates of due process," the following factors must be considered: (1)"the private interest … affected by the official action; (2) "the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards;" and (3)"the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."[182]

In weighing these factors, the Maryland court determined that the minor child's private property interests and risks of an erroneous deprivation of these interests outweighed the government's interests of efficient administration.[183] The court held that, without direct notice, the minor child and his or her legal representative would be unaware and unable to use any review process added by the 2004 amendments to the Social Security Act.[184] The court also explained that requiring notice would not cause an administrative burden given that juvenile courts conduct regular hearings to review the permanency plan of every child committed to the department.[185] As noted by the court, before these hearings, the department has to submit recommendations about the child's permanency plan.[186] The court thus determined that adding one more notification would not be an undue burden.[187]

[177] Keffeler, 88 P.3d at 956.

[178] 42 U.S.C. §§ 405(j)(2)(E)(i)-(iii).

[179] Keffeler, 88 P.3d at 955-56.

[180] 76 A.3d at 1052; see cf. Keffeler, 88 P.3d 949,956 (2004) (finding that the commissioner's notice was sufficient because there was only a minimum risk that children's interest in their benefit payments would be erroneously deprived, and because the state's interests in administrative efficiency outweighed the interests of the foster children in their benefits).

[181] 76 A.3d at 1068.

[182] 424 U.S. 319, 335 (1976).

[183] 76 A.3d at 1069-70.

[184] Id. at 1069. The 2004 amendments to the Social Security Act expanded the remedy to a beneficiary when the representative payee is not an individual, unless that individual serves 15 or more beneficiaries. 42 U.S.C. §405(j)(5).

[185] 76 A.3d at 1069.

[186] Id.

[187] Id.

Pros and Cons for the Use of SSI/Social Security Benefits by Child Welfare Agencies

What are the arguments against the use of SSI/Social Security benefits by child welfare agencies?

Proponents of reserving SSI/Social Security benefits for children in care argue that applying the benefits solely for the beneficiaries' foster care costs amounts to asking children to pay for their own stay in foster care. They point out that other children in care—including those with assets or income other than Social Security or those who receive Social Security benefits but have representative payees other than child welfare agencies—are not required to repay the costs.[188]

Some child advocates assert that a child welfare agency prioritizes using additional funds to defray child welfare costs in the state rather than ensuring that SSI/Social Security payments benefit the children for whom they are intended. Further, advocates point out that states lack a deliberative process to assess the individual needs of children and notify the children of their eligibility.[189]

Additionally, some advocates are concerned that SSA may automatically assign child welfare agencies as the representative payees for children in foster care, even though (under SSA's regulations) the agencies should be the least preferred representative payees (see **Table C-1**). Related to this concern, some advocates suggest that SSA does not perform adequate investigations to determine whether more suitable payees are available, and agencies that have received poor reviews by SSA or fail to submit payee accounting reports to SSA continue to serve as payees (see **Appendix F**).[190] In addition, while SSA is required to notify the current guardian of a child that the child welfare agency has been appointed as the representative payee, the guardian may be the child welfare agency itself.[191]

Advocates have also noted that SSI/Social Security funds can help meet the future needs of children in foster care. As noted in the GAO review of seven states' practices related to using these benefits for children in care, five of the states reported conserving between 2% and 15% of the benefits for the children's later use, while two reported no funds were conserved.[192] Youth

[188] NPR and the Marshall Project, "Foster Care Agencies Take Thousands of Dollars Owed to Kids, Most Children Have No Idea;" and Daniel L. Hatcher, "Foster Care Children Paying for Foster Care," *Cardozo Law Review*, vol. 27, no. 4 (2006), p. 1835. Lawyers on behalf of Keffeler argued before the Washington State Supreme Court that differences in use of funds between children in foster care with private representative payees and those with agency representative payees amounted to a violation of the Constitution's equal protection clause. In its 2004 decision, the court disagreed, noting that the duties of the representative payees were the same in any case. See "Have courts addressed the use of benefits for children in foster care."

[189] NPR and the Marshall Project, "Foster Care Agencies Take Thousands of Dollars Owed to Kids, Most Children Have No Idea;" and First Star and Children's Advocacy Institute, University of San Diego School of Law, *The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security*, 2011, pp. 16-18, http://www.caichildlaw.org/Fleecing.htm.

[190] Jim Moye, "Get Your Hands Out of Their Pockets: The Case Against State Seizure of Foster Children's Social Security Benefits," *Georgetown Journal on Poverty Law & Policy*, Winter 2003, p. 5. See also Hatcher, "Foster Care Children Paying for Foster Care," p. 1814.

[191] NPR and the Marshall Project, "Foster Care Agencies Take Thousands of Dollars Owed to Kids, Most Children Have No Idea." As noted earlier, if the child's legal guardian or legal representative is also the proposed payee, then the advance notice is not sent to the legal guardian or legal representative.

[192] GAO, *Social Security Administration: New Data Exchanges for Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441-R. GAO also separately reported on national survey data of states using Social

who leave foster care without permanent homes, typically at age 18, often have difficulty securing housing and income sufficient to shelter and support themselves.[193] For example, among a sample of youth who had been in foster care at age 17, a quarter reported being homeless and one-third reported receiving public benefits (e.g., nutritional assistance or housing assistance) by age 19.[194] SSI-eligible foster care youth who exit foster care would arguably have an even more difficult time than youth in care more generally and thus may need additional resources that SSI provides (albeit some youth may continue to be eligible for SSI at age 18 and beyond).[195] Some stakeholders assert that providing benefits to eligible youth upon leaving care could ease the transition to adulthood for these youth at a time when they are expected to become financially independent. According to advocates, the resource limit for SSI eligibility of $2,000 may discourage youth leaving foster care from accumulating income and assets to assist in this transition.[196]

What are the arguments for the use of SSI/Social Security benefits by child welfare agencies?

State child welfare agencies assert that SSI/Social Security benefits are used to cover the daily needs of children in care and that this is consistent with expected and required uses of those benefits. Along with some child welfare advocates, they cite this funding as important due to limited financial resources available to states, and they point out that child welfare agencies play an important role in ensuring that children are screened for benefits.

Stakeholders that support using benefits by child welfare agencies note that the benefits cover housing and other foster care costs for individual children in care.[197] They point out that child welfare agencies function like parents and use the benefits to cover the cost of housing, food, and other maintenance costs of children in care—rather than making cash payments to children who are not yet ready to make financial decisions on their own. Further, these stakeholders argue that setting aside these benefits for children's later use could cost states up to hundreds of millions of dollars.[198]

Separately, some child welfare advocates express the concern that if states were not able to use SSI/Social Security benefits to pay for children's foster care room and board, then states would simply stop screening children to determine their eligibility for these programs. Screenings by child welfare staff can help to determine an individual child's needs and to secure extra benefits and services not normally available in foster care, such as housing modifications.[199] Eliminating these screenings would do a disservice to potentially qualified children, these advocates argue,

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Security and SSI benefits for children in foster care, and while most states reported conserving funds, GAO did not indicate how much funding states conserved and for which purposes.

[193] See CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*.

[194] HHS, ACF, Children's Bureau, *National Youth in Transition Database Report to Congress*, February 2020.

[195] Patrick Gardner, "Keffeler v DSHS: Picking the Pockets of America's Neediest Children," *Youth Law News*, July-September, 2002, p. 10.

[196] Daniel L. Hatcher, "Foster Care Children Paying for Foster Care," p. 1846; and First Star and Children's Advocacy Institute, *The Fleecing of Foster Children*, p. 12.

[197] NPR and the Marshall Project, "Foster Care Agencies Take Thousands of Dollars Owed to Kids, Most Children Have No Idea."

[198] Brief by the State of Florida et al. as Amici Curiae Supporting Petitioners (August 2, 2002), p. 7 in *Washington State Department of Social and Health Services v. Guardianship Estate of Danny Keffeler* 537 U.S. 371 (2003) (No. 01-1420).

[199] Brief by Children's Defense Fund, et al., pp. 20-24.

because a child's eligibility for SSI/Social Security benefits may extend beyond his or her stay in foster care, and the benefits could provide crucial support for the child outside the system. For instance, the benefits could offset the cost of therapeutic care to the families of children who leave care due to adoption or reunification.[200] The *Keffeler* Court relied on this argument in its decision, asserting that absent this state assistance, "many eligible children would either obtain no Social Security benefits, or need some very good luck to get them."[201]

In addition, those in support of using SSI/Social Security benefits for current maintenance have asserted that if child SSI beneficiaries were given all of their benefits while in foster care, they might accumulate assets in the form of savings and could soon find themselves above the maximum SSI resource level of $2,000.[202] This might also be the case if another type of representative payee preserved some of the child's benefits for non-maintenance expenses (not paid for out of a dedicated account), including the future costs associated with the transition to adulthood (e.g., rent deposit, vocational training, educational expenses).

Another consideration, raised in *amici curiae* briefs and cited by the Supreme Court in its *Keffeler* decision, is that without the ability to use Social Security and SSI benefits to reimburse the costs of foster care, states would be discouraged from serving as representative payees because of the administrative costs involved.[203]

Congressional Activity

Have any federal laws been enacted recently that address the use of Social Security and SSI benefits by child welfare agencies?

Legislation addressing this issue has been introduced (see discussion in the next section), and one bill has been enacted. The Strengthening Protections for Social Security Beneficiaries Act (SPSSBA, P.L. 115-165), containing numerous provisions intended to improve the SSA's representative payee program, was enacted on April 13, 2018. Introduced by Representative Sam Johnson with Representative John Larson in December 2017, the legislation received unanimous support in both the House and Senate.[204] Two sections directly address representative payees for children in foster care. These sections (1) called for increased data exchange between SSA and state child welfare agencies and (2) identified the state child welfare agency as the liable entity for any overpayment made on behalf of a child in foster care for whom the agency was serving as the child's representative payee.

More specifically, Section 103(a) of the SPSSBA directed SSA to enter into data exchange agreements with states within one year after enactment to obtain automated monthly updates when a child SSI/Social Security beneficiary with a representative payee enters or exits foster

[200] Ibid., p. 22.

[201] *Keffeler*, 537 U.S. 371 (2003), p. 19.

[202] Brief by the counties of California—Los Angeles, San Bernardino, Santa Clara, Contra Costa, Alameda, Modoc, Napa, Nevada, Riverside, San Diego, Tulare—and the California State Association of Counties, as Amici Curiae Supporting Petitioners, pp. 16-18 in Washington State Department of Social and Health Services v. Guardianship Estate of Danny Keffeler 537 U.S. 371 (2003) (No. 01-1420).

[203] *Keffeler*, 537 U.S. 371 (2003), p. 18.

[204] At the time of the bill's introduction in the 115th Congress, Rep. Johnson and Rep. Larson were the chair and ranking member, respectively, of the Social Security Subcommittee of the House Committee on Ways and Means. See the committee's "Legislative History and Technical Explanation of H.R. 4547, the Strengthening Protections for Social Security Beneficiaries Act of 2018," for a section-by-section summary of the bill as introduced, https://www.ssa.gov/legislation/Representative%20Payee%20Committee%20Document.pdf.

care or changes foster care placement setting. SSA is required to use this information to redetermine the appropriate representative payee for the child beneficiary when a change in placement occurs.

Section 103(a) further directed GAO to report to Congress within three years of enactment with an evaluation of the number of child SSI/Social Security beneficiaries in foster care under the responsibility of states, their types of representative payees, and how their SSI/Social Security benefits were used (or conserved) by the states. Representative Danny K. Davis described the rationale for the Section 103(a) data exchanges as follows:

> We have very poor understanding of who serves as representative payees for foster youth and whether they conserve the funds for these youth. This bill requires long-overdue data coordination between the Social Security Administration and state foster care programs. ... The data required by this bill will help Social Security better focus on payee determination for foster youth to ensure that the payee will act in the best interest of the child.[205]

Representative Carlos Curbelo echoed this sentiment, noting that the enhanced information sharing would help to "ensure that children in foster care have the appropriate representative payee if there is a change in placement."[206] GAO released the required report in June 2021. Among other things, it found that SSA had developed the required data exchange but that most states were not yet participating. (For more information, see discussion of the GAO report findings in the last section below.)

Separately, Section 104 of the SPSSBA clarifies that states are liable to repay any overpayments of SSI/Social Security benefits made on behalf of a child beneficiary who is in foster care and for whom the state (e.g., the state child welfare agency) was serving as the child's representative payee when the overpayment was made. Under the SPSSBA, the state is not allowed to use the child's SSI/Social Security benefits, including any conserved funds, to repay such overpayments. These provisions were made applicable to overpayment determinations made on or after April 13, 2018 (the date of the bill's enactment) and to other overpaid benefits that had not been recovered as of the date of enactment.[207] Representative Adrian Smith described the rationale for the Section 104 overpayment protections as follows:

> In cases where a Social Security beneficiary or Supplemental Security Income recipient is overpaid while in foster care and the State foster care agency is the payee, the beneficiary or recipient would not be liable for the overpayment. Instead, the State foster care agency would be required to repay SSA for the overpayment it received…. Foster youth exiting the system have enough challenges, and paying back an overpayment they never received should not have to be one of them.[208]

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[205] Rep. Danny K. Davis, "Strengthening Protections for Social Security Beneficiaries Act of 2018," remarks in the House, *Congressional Record*, daily edition, February 7, 2018, p. E154, https://www.congress.gov/115/crec/2018/02/07/CREC-2018-02-07-pt1-PgE154-3.pdf.

[206] Rep. Carlos Curbelo, "Strengthening Protections for Social Security Beneficiaries Act of 2018," remarks in the House, *Congressional Record*, daily edition, February 5, 2018, p. H748, https://www.congress.gov/115/crec/2018/02/05/CREC-2018-02-05-pt1-PgH741-6.pdf#page=8.

[207] SSA, POMS, "EM-18012 REV 6: Clarifying State Overpayment Liability for Minors in Foster Care," September 9, 2021, https://secure.ssa.gov/apps10/reference.nsf/links/04092021023942PM.

[208] Rep. Adrian Smith, "Strengthening Protections for Social Security Beneficiaries Act of 2018," remarks in the House, *Congressional Record*, daily edition, February 5, 2018, p. H748, https://www.congress.gov/115/crec/2018/02/05/CREC-2018-02-05-pt1-PgH741-6.pdf#page=8.

Senator Ron Wyden explained that the overpayment liability protection ensures that "youth aging out of care, struggling to make it on their own, aren't held liable for the mistakes of or misinformation from foster care agencies."[209]

Have any federal bills been introduced recently that would address the use of SSI/Social Security benefits by child welfare agencies?

During the 115th Congress, Representative Danny K. Davis introduced the Protecting Foster Youth Resources to Promote Self-Sufficiency Act (H.R. 7296).[210] Other than the SPSSBA (discussed in the previous section), CRS did not identify any other legislation addressing this issue in more recent Congresses.

The Protecting Foster Youth Resources to Promote Self-Sufficiency Act would have prohibited a state or local government serving as the representative payee of any child who is in foster care from using the child's SSI/Social Security benefits to reimburse itself for the cost of the child's stay in care.[211] Further, for any child in foster care[212] or a legal guardianship, it would have required SSA to provide advance notice of the assignment of a representative payee to the attorney or GAL appointed to represent the child's best interests[213] and, if the child had attained 14 years of age, to the child directly.[214]

In addition, the bill would have required each state or tribal child welfare agency administering a Title IV-E program to develop and implement procedures to screen children in foster care for potential SSI/Social Security eligibility and to help potentially eligible children apply for benefits (including appealing any decisions about benefit eligibility, as necessary). The procedures would further have needed to ensure that if no other "suitable" individual is available, then the state

[209] Sen. Ron Wyden, "Strengthening Protections for Social Security Beneficiaries Act of 2018," *Congressional Record*, daily edition, April 9, 2018, p. S2010, https://www.congress.gov/115/crec/2018/04/09/CREC-2018-04-09-pt1-PgS2010.pdf.

[210] Rep. Danny K. Davis introduced an identical bill in the 114th Congress (H.R. 5737). Related, but not identical, legislation was first introduced by Rep. Pete Stark as the Foster Children Self Support Act in the 110th Congress (H.R. 1104) and in identically titled but revised form in the 111th Congress (H.R. 6192). Sen. John Kerry introduced S. 961 in the 112th Congress, which included virtually identical provisions to those in H.R. 6192 from the 111th Congress.

[211] Section 2 of H.R. 7296, 115th Congress. The prohibition would have applied to federal Title IV-E foster care maintenance payments, as well as to any other maintenance payments made by a state or local government. However, the prohibition would not have applied to the fee for service available to qualified organizations with SSA's authorization.

[212] H.R. 7296, 115th Congress, refers throughout to children in foster care as children "under the responsibility of the state." Typically, this language is used to designate children formally placed in foster care, whether by court order (most common) or through voluntary placement agreements entered into between state child welfare agencies and the parents or guardians of the children. The term is also used to indicate that the reference includes each child in such care, without regard to whether a given child is eligible or ineligible for Title IV-E foster care support.

[213] Section 4 of H.R. 7296, 115th Congress. The bill references a court-appointed guardian ad litem (GAL) described under the Child Abuse Prevention and Treatment Act (CAPTA). Specifically, CAPTA requires each state (as a condition of receiving certain CAPTA funding) to ensure that it has procedures in place for the appointment of a GAL for any child for whom a finding of abuse or neglect results in judicial proceedings. Under CAPTA, such a GAL may be an attorney or a court-appointed special advocate, is to have appropriate training, and is expected to gain firsthand information of the child's case in order to represent the child's "best interests" before the court (see 42 U.S.C. §5106a[b][2][B][xiii]).

[214] Under current law, this advance notice is provided only to the beneficiary's legal guardian or legal representative when the beneficiary is under the age of 15 or under the age of 18 and not emancipated. For additional and related SSA guidance on this notice requirement, see "Does SSA notify minor child beneficiaries of its decision to appoint representative payees?"

would apply to be the child's representative payee.[215] The bill would have required GAO to study state compliance with this requirement and to report to Congress on its findings.

Further, the Protecting Foster Youth Resources to Promote Self-Sufficiency Act would have amended the Title IV-E program to require each state participating in that program to develop a plan designed to meet the current and future needs and educational and employment interests of any child in foster care whose SSI/Social Security benefits are received by the state.[216] As proposed in the bill, the plan would need to have enabled each such child to achieve self-support after leaving foster care.[217] As such, this individualized plan would have established a strategy for conserving benefits not needed for current maintenance in an account that is generally exempt from SSI's resource test, such as an SSI dedicated account[218] or an ABLE account.[219] Any assets conserved for the child under such a plan would have been required to be made inaccessible to the child (except for certain expenses) until the child attains age 18 or is formally discharged from foster care, whichever is later.[220] States would have been required to make this plan in collaboration with the child and certain other interested parties to regularly review the plan, to provide of copy of the plan to the attorney or GAL appointed to represent the child's best interests. Finally, as the child's representative payee, the state would have been required to manage the child's benefits in accordance with the terms of that plan.

[215] Section 3 of H.R. 7296, 115th Congress. Under this bill, an initial screening would need to occur no later than eight months after a child enters foster care, and, while the child remains in care, after any material change in circumstance that might affect potential eligibility. Further, assistance with applying for SSI/Social Security benefits would need to occur no later than 120 days before a child formally leaves care, or, if the child has attained age 17, at least one year before the child formally leaves foster care.

[216] Section 5 of H.R. 7296, 115th Congress.

[217] Section 5 and 6 of H.R. 7296, 115th Congress. The proposed plan for achieving self-support, as prepared by the child welfare (Title IV-E) agency, would be distinct and separate from the SSI program's plan to achieve self-support (also known as PASS). A PASS is focused on achieving certain work goals. Income and resources set aside under an approved PASS are not counted as income or assets under the SSI program. See SSA, "Spotlight on Plan to Achieve Self–Support," https://www.ssa.gov/ssi/spotlights/spot-plans-self-support.htm.

[218] Both the Trump and Obama Administrations proposed eliminating dedicated accounts to simplify the administration of the SSI program. See SSA, *FY 2021 Budget Overview*, Legislative Proposal #13, p. 22, https://www.ssa.gov/budget/FY21Files/2021BO.pdf#page=22. See also SSA, *FY 2017 Budget Overview*, Legislative Proposal #15, p. 23, https://www.ssa.gov/budget/FY17Files/2017BO.pdf#page=24. For a recent examination of dedicated accounts, see Social Security Advisory Board, *Statement on the Supplemental Security Income Program, 2019*, https://www.ssab.gov/wp-content/uploads/2019/11/20190516_2019-Annual-Statement_Web.pdf.

[219] An Achieving a Better Life Experience (ABLE) account is a tax-advantaged savings account for individuals with qualifying disabilities that began before the age of 26. The first $100,000 in an ABLE account is exempt from SSI's resource test. See SSA, "Spotlight on Achieving a Better Life Experience (ABLE) Accounts," https://www.ssa.gov/ssi/spotlights/spot-able.html. See also SSA, "Payee and ABLE Accounts," https://www.ssa.gov/payee/able_accounts.htm.

[220] The bill would have allowed assets in the account to be used for the same types of permitted expenses from an SSI dedicated account (e.g., medical treatment, education, job skills training, and certain expenses related to the child's impairment), as well as for other types of expenses approved by the Secretary of HHS as being in the best interests of the child. See SSA, POMS, "GN 00602.140 Permitted Expenditures from Dedicated Accounts," October 22, 2020, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200602140.

Has Congress ever examined the intersection between foster care and Social Security/SSI?

CRS was unable to find evidence of recent congressional hearings or reports on the intersection between foster care and Social Security/SSI.[221] However, a variety of congressional inquiries, and generally related federal agency reports, have looked at this issue.

Congressional Inquiry. Following a March 22, 2017, hearing on SSA's representative payee program, Representative Danny K. Davis submitted a question for the record to SSA about the use of SSI/Social Security benefits for children in foster care by states serving as representative payees and SSA's process for monitoring benefits for children in foster care. SSA's response generally noted that foster care agencies may use benefits for the cost of providing care to the foster child and must conserve or invest any benefits not needed for that purpose. SSA also outlined the accounting and reporting requirements of state agencies that serve as representative payees, as well as SSA's review program.[222]

SSA OIG. SSA's OIG also responded to the question for the record as part of the March 22, 2017, hearing. The SSA OIG summarized findings from recent reviews of state foster care agencies serving as representative payees in several states, noting that the agencies generally met the needs of the beneficiaries in their care. The review also highlighted some areas for improvement, including timely notification to SSA of changes in placements, improper reimbursements to the state from children's benefits, and failure to return conserved funds for children no longer in the agencies' care.[223] For more information on the OIG's audits, see **Appendix F**.

Social Security Advisory Board. Though not a congressional examination per se, the Social Security Advisory Board (SSAB) released a statement on SSI and foster care programs in 2014, following a review of issues related to the overlap between SSI and the Title IV-E foster care program.[224] The SSAB, which advises Congress, recommended a broad-based review of the SSI program within the context of complementary federal welfare programs and the provision of clear

[221] In 2008, Rep. Pete Stark brought up the issue of state child welfare agencies reimbursing themselves with the SSI/Social Security benefits of children in foster care during a hearing on improving the child welfare system. However, the issue was not the focus of the hearing, and the discussion was very brief. See U.S. Congress, House Committee on Ways and Means, Subcommittee on Income Security and Family Support, *Improving the Child Welfare System*, 110th Cong., 2nd sess., February 27, 2008, H.Hrg. 110-71 (Washington, DC: GPO, 2009), pp. 75-76, https://babel.hathitrust.org/cgi/pt?id=pst.000066744214&view=1up&seq=80&skin=2021.

[222] Responses to Questions for the Record from Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy, SSA, May 11, 2017, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Social Security's Representative Payee Program*, 115th Cong., 1st sess., March 22, 2017, H.Hrg. 115-OS02 (Washington, DC: GPO, 2017), pp. 106-109, https://www.govinfo.gov/content/pkg/CHRG-115hhrg33365/pdf/CHRG-115hhrg33365.pdf#page=110.

[223] Responses to Questions for the Record from Gale Stallworth Stone, Acting Inspector General, Social Security Administration, June 2, 2017, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Social Security's Representative Payee Program*, 115th Cong., 1st sess., March 22, 2017, H.Hrg. 115-OS02 (Washington, DC: GPO, 2017), pp. 116-117, https://www.govinfo.gov/content/pkg/CHRG-115hhrg33365/pdf/CHRG-115hhrg33365.pdf#page=119.

[224] "The Social Security Advisory Board (SSAB) is a bipartisan, independent federal government agency established in 1994 to advise the President, Congress, and the Commissioner of Social Security on matters of policy and administration of the Old-Age, Survivors, and Disability Insurance and the Supplemental Security Income programs. The Board has seven members, appointed by the President, Senate, and House of Representatives." https://www.ssab.gov/about-ssab/.

policy guidance and oversight by SSA.[225] In addition, the SSAB held an SSI policy forum in 2016 and released an associated report in 2018, briefly touching on policies and practices regarding representative payees, child welfare agencies, and child beneficiaries in foster care.[226]

GAO. Reporting on the data exchanges required under Section 103(a) of the SPSSBA, GAO indicated that 31 states had entered into data exchange agreements with SSA, 14 of which were actively exchanging data with SSA as of April 2021.[227] Twenty-four states had not yet entered into a data exchange agreement with SSA. Although the SPSSBA requires SSA to enter into such agreements with states, it does not compel states to do so, nor does it give SSA any authority to compel states to do so.[228] According to GAO's survey of state child welfare agencies, relatively few states identified significant challenges related to entering into Section 103(a) data exchange agreements with SSA. However, about one-half of states with signed data exchange agreements identified staffing and technology issues with implementation of the agreement. A smaller number of states identified implementation issues associated with data collection, responding to the Coronavirus Disease 2019 (COVID-19) pandemic, and funding.[229]

One notable finding from the GAO report is the following:

> SSA staff stated that information submitted through the Section 103(a) data exchanges has helped the agency identify over 5,500 instances in which it determined it should appoint a new representative payee for a minor beneficiary in foster care.[230]

This finding prompted Representatives Danny K. Davis, Jackie Walorski, John B. Larson, and Tom Reed to release a bipartisan statement, which noted in part:

> Increasing the use of regular data exchanges between SSA and state foster care agencies is clearly necessary to ensure that benefits for youth in foster care are paid correctly, based on the large number of incorrect representative payees SSA identified in the small subset of states currently complying with SSA's request to share data.[231]

GAO also noted that SSA in 2021 has redoubled its outreach to states to encourage greater participation in the Section 103(a) data exchanges.[232]

As described earlier, GAO found that most states (42 out of 50) use Social Security and SSI funds in lieu of state funds to cover the state's share of foster care, including for items such as housing and food. Twenty-nine of these states used Social Security and SSI funds to cover additional expenses that state foster care maintenance payments would not cover—including educational needs, medical needs, and personal items—and another 37 states conserved a portion of the funds

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[225] SSAB's statement on the SSI program is included each year in SSA's *Annual Report of the Supplemental Security Income Program*, https://www.ssa.gov/oact/ssir/index.html. For the 2014 SSI statement by SSAB, see https://www.ssa.gov/oact/ssir/SSI14/ssi2014.pdf#page=173.

[226] SSAB, "FORUM ARCHIVE: Policy Forum on the SSI Program," July 12, 2016, https://www.ssab.gov/research/forum-policy-forum-on-the-ssi-program/. SSAB, *Improving Social Security's Representative Payee Program*, January 11, 2018, https://www.ssab.gov/research/improving-social-securitys-representative-payee-program/.

[227] GAO, *Social Security Administration: New Data Exchanges for Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441-R, Table 1.

[228] GAO, *Social Security Administration*, p. 5.

[229] GAO, *Social Security Administration*, Figures 1 and 2.

[230] GAO, *Social Security Administration*, p. 10.

[231] Rep. Danny K. Davis, "Davis, Walorski, Larson, Reed Issue Statement on GAO Report on Benefits Paid to Foster Youth by the Social Security Administration," press release, June 4, 2021. https://davis.house.gov/statements/davis-walorski-larson-reed-issue-statement-on-gao-report-on-benefits-paid-to-foster-youth.

[232] GAO, *Social Security Administration*, p. 7.

for future use.[233] (See the section above on "Use of Social Security and SSI Benefits by Child Welfare Agencies" for more details.)

[233] GAO, *Social Security Administration*, p. 12.

Appendix A. Foster Care Maintenance Payments, SSI, and Social Security: Comparison of Eligibility and Benefits/Assistance

Table A-1. Overview of Eligibility and Benefits /Assistance for Children in Foster Care and Those Receiving Social Security or Supplemental Security Income (SSI)

	Foster Care Maintenance Payment		**Social Security Benefit** *(Title II of the Social Security Act)*	**SSI Benefit** *(Title XVI of the Social Security Act)*
	Title IV-E of the Social Security Act	***State-only (or non-Title IV-E payment)***		
	Foster care is 24-hour care provided to a child removed from their own home, after a court determines the home unsafe ("contrary to the welfare" of a child), and gives care and placement responsibility for the child to the state/tribal child welfare agency.[a]			
Who may receive this benefit/ assistance?	Children in foster care who were removed from households meeting a very low-income test; who are placed in licensed foster family homes, or other eligible foster care settings; and for whom certain court determinations are made on a timely basis, including whether or not "reasonable efforts" were made to prevent the child's placement in foster care.[b]	Children in foster care who do not meet one or more of the Title IV-E foster care eligibility criteria (e.g., removed from household that does not meet income test, placed in an unlicensed or otherwise ineligible care setting, or without required or timely court determinations).[b]	Unmarried children of a retired, disabled, or deceased parent, provided that the parent has a qualifying work history.	Children from low-income households who have qualifying disabilities.
Age of eligibility	Under age 18 (or 19 if still completing high school), *or* in states that have chosen to extend foster care assistance to an older age, under age 19, 20, or 21, and meeting certain work or education requirements.	No federal policy. (States typically set this age at between ages 18-21).	Under age 18, aged 18-19 if enrolled full-time in elementary or secondary school (grade 12 or below), or aged 18 or older and has a qualifying disability that began before age 22.	Any age. SSI uses one set of disability eligibility criteria for children under age 18 and another set for adults aged 18 or older.
Income and asset test?	Yes. Applied to home from which child is removed. Used to determine Title IV-E foster care program eligibility only.	No federal policy.	No.	Yes. Applied to child's own income and resources. Both are used to determine program eligibility. Child's income is also used to determine the benefit amount.

	Foster Care Maintenance Payment		Social Security Benefit *(Title II of the Social Security Act)*	SSI Benefit *(Title XVI of the Social Security Act)*
	Title IV-E of the Social Security Act	***State-only (or non-Title IV-E payment)***		
What may benefits be used for?	Maintenance payments are typically provided to a caregiver on behalf of a child in foster care and may be used for the child as the caregiver sees fit. States may seek federal support for a part of these Title IV-E payments provided they are made to "cover the costs (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals." Additionally they may cover the cost of "liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement." Further, if the child in foster care is placed in an "institutional" setting, Title IV-E also covers "reasonable" administration and operation costs necessary for institution to provide all of these same items.[c]	No federal policy.	If a representative payee is appointed to receive and manage Social Security benefits on a beneficiary's behalf—which is the case with nearly all child Social Security beneficiaries under the age of 18—then the beneficiary's current maintenance (i.e., expenses for food, shelter, clothing, utilities, medical care, and personal comfort items) must be prioritized and any leftover funds must be conserved.	If a representative payee is appointed to receive and manage SSI payments on a recipient's behalf—which is the case with nearly all child SSI recipients under the age of 18—then the recipient's current maintenance (i.e., expenses for food, shelter, clothing, utilities, medical care, and personal comfort items) must be prioritized and any leftover funds must be conserved.
Payment amount	Payment amounts are determined by states and often vary based on a child's age and/or level of care need. Based on FY2019 Title IV-E foster care spending claims, the average Title IV-E monthly foster care maintenance payment (across all ages and levels of care) was $1,441 (including $801 in federal funds and $640 in state or nonfederal funds).[d]	Federal law does not require states to provide foster care maintenance payments for children who are not Title IV-E eligible. In order to place children with non-related or institutional caregivers, however, states must typically provide some assistance. States may pay little or no support to unlicensed relative foster caregivers or may provide them with TANF benefits.	50-75% of the parent's basic benefit amount. The average monthly benefit for a minor child beneficiary in June 2021 was $656.	$794 per month (maximum payment for an eligible individual in 2021). The average monthly payment for a minor child recipient in June 2021 was $685.

	Foster Care Maintenance Payment		Social Security Benefit *(Title II of the Social Security Act)*	SSI Benefit *(Title XVI of the Social Security Act)*
	Title IV-E of the Social Security Act	***State-only (or non-Title IV-E payment)***		
Federal-State share of program cost	50%-83% federal (from general revenues) based on a state's federal medical assistance percentage (FMAP).	100% state (or non-Title IV-E)	100% federal (from the Social Security trust funds, which are financed primarily from payroll taxes on earnings covered by Social Security)	100% federal (from general revenues) Some states provide supplementary payments that are made solely with state funds. States may self-administer their state supplementary programs or they may contract with the Social Security Administration for the agency to administer them on the states' behalf.
Federal agency that administers the program	U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau	Not applicable.	Social Security Administration	Social Security Administration

Source: Table prepared by the Congressional Research Service (CRS) based on federal law and guidance.

a. Although this is far less common, a child may also be placed in foster care if his or her parent/guardian enters into a "voluntary placement agreement" with the state child welfare agency and gives the state responsibility for the child's care and placement. For purposes of Title IV-E eligibility, a court does not need to be involved in this foster care placement. However, in this circumstance, eligibility for Title IV-E foster care maintenance payments may not extend more than 180 days unless a court determines that the placement in foster care continues to be in the child's best interest. See Section 472(a)(2)(i) and (d)-(f) of the Social Security Act.

b. Title IV-E eligibility requirements are given at Section 472(a) of the Social Security Act (42 U.S.C. §672(a)) and are multifaceted. To determine if the child's home of removal meets the income test, a state must apply the income test it used to determine if the family was eligible for cash assistance under a program known as Aid to Families with Dependent Children (AFDC). That program was repealed in 1996 and was replaced by the Temporary Assistance for Needy Families (TANF) block grant (Title IV-A of the Social Security Act). However, each state must apply its AFDC income test as it existed in July 1996 and without adjustment for inflation. The test looks at income in the month the child is removed from the home. On an annualized basis, the monthly income limits in most states are below 50% of federal poverty guidelines. The court finding that a home is "contrary to the welfare" of a child must be made at the time of child's initial removal from the home. For children placed in foster care on this basis, a judge must also determine (within 60 days of the child's removal from the home) that the state made reasonable efforts to prevent the child's removal from the home. Further, annually while the child is in care, the court must determine that reasonable efforts are being made to finalize the child's permanency plan. (For further information regarding court determination requirements, see 45 C.F.R. §1356.21(b) and (c).)

c. A "foster care maintenance payment" is defined at Section 475(4) of the Social Security Act (42 U.S.C. §675(4)).

d. Based on CRS analysis of Title IV-E foster care maintenance payment claims as submitted by states and compiled by the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Children's Bureau. Because the amount of a child's foster care maintenance payment is known to vary widely based on child's age, needs, and/or placement setting this number may under- or over-state payment amounts for many children. FY2019 Title IV-E

expenditures claims data are available on the HHS Children's Bureau website at https://www.acf.hhs.gov/cb/report/title-iv-e-programs-expenditure-and-caseload-data.

e. States' FMAP vary based primarily on per capita income. States with lower per capita income receive greater federal support and vice versa. FMAPs are re-determined annually. During the COVID-19 public health emergency each state's FMAP has been temporarily increased. For more information on that FMAP increase as it applies in the Title IV-E program, see CRS Insight IN11297, *Federal Medical Assistance Percentage (FMAP) Increase for Title IV-E Foster Care and Permanency Payments*. For more information about the FMAP generally, see CRS Report R43847, *Medicaid's Federal Medical Assistance Percentage (FMAP)*.

Appendix B. Benefit Receipt and Disability Status of Children in Foster Care, by State

The Congressional Research Service (CRS) analyzed data reported to HHS via the Adoption and Foster Care Analysis Reporting System (AFCARS) for FY2019 to estimate the number of children in foster care receiving SSI/Social Security benefits and to try to understand how those children were similar or different from other children in care.[234]

The CRS analysis looked at data reported from 50 states and the District of Columbia.[235] The number of all children who were in foster care at some point during FY2019 and who had been in care for at least six months was 505,499. Among this group, states reported that 26,957 children (5.3%) received some monthly support from SSI and/or Social Security (or, in limited circumstances, from certain other programs under the Social Security Act). For purposes of this report, these children are assumed to primarily be children receiving SSI and/or Social Security benefits and are described collectively as children receiving "SSI/Social Security benefits."[236]

Among the 26,957 children receiving SSI/Social Security benefits, 48% (12,958) were reported in AFCARS as having clinically diagnosed disabilities. For purposes of AFCARS reporting, this means that a "qualified professional" had diagnosed the child as intellectually or physically disabled, hearing or vision impaired, or emotionally disturbed (as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM)).[237] The 12,958 children reported as receiving SSI or Social Security benefits and who have a clinically diagnosed disability might be presumed to be children receiving SSI. However, determination of disability under the SSI program does not necessarily match AFCARS reporting of disability.

Table B-1 shows, by state, all children who spent time in care during FY2019 and who had been in care for at least six months, the number of those children who were not receiving SSI/Social Security benefits, and the number of those children who were receiving SSI/Social Security benefits—including whether those children receiving such benefits were reported as having

[234] The National Data Archive on Child Abuse and Neglect (NDACAN) at Cornell University makes AFCARS data available for public analysis. AFCARS data used for this analysis were included in dataset #239, FC2019v1.

[235] Data originally reported for FY2019 by Puerto Rico, which were expected to be resubmitted to HHS, were excluded.

[236] As part of AFCARS (through FY2022 only), states are instructed to report separately on the number of children receiving support under various titles or parts of the Social Security Act: foster care (Title IV-E), adoption assistance (Title IV-E), Temporary Assistance for Needy Families, or TANF, block grant program (Title IV-A); child support (Title IV-D); and Medicaid (Title XIX). Additionally, states are to report on children receiving payments under SSI (Title XVI) or from any other program authorized under the Social Security Act not otherwise specifically reported on in AFCARS. For this report and analysis, children reported in this last group are presumed to be children receiving SSI and/or Title II (Social Security) benefits. However, in certain generally limited circumstances, funds provided under the Stephanie Tubbs Jones Child Welfare Services (CWS) program (Title IV-B, Subpart 1) or under the Social Services Block Grant, (SSBG) (Title XX, Subtitle A) may be used to support children in foster care. Accordingly, while this report assumes that roughly 27,000 children who were in care for at least six months received SSI/Social Security benefits during FY2019, it is possible that some of those children were instead receiving CWS or SSBG benefits. For information on this reporting, see NDACAN, AFCARS Foster Care Guidebook, revised July 21, 2021, pp. 93-99, https://www.ndacan.acf.hhs.gov/datasets/pdfs_user_guides/afcars-foster-care-file-codebook.pdf. Beginning with FY2023 states are required to collect AFCARS data under a revised rule. That rule will change how states report data on financial assistance received by children in foster care (data elements 47-54). See AFCARS, *AFCARS 2020 Technical Bulletin # 20, Data Elements for Out-of-Home Care and Adoption & Guardianship Assistance Data Files* June 29, 2021, p. 49. https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-technical-bulletin-20.pdf.

[237] AFCARS, *AFCARS 2020 Technical Bulletin # 20*, pp. 29-33.

diagnosed disabilities. The final column gives the share of all children in care, by state, who were receiving SSI/Social Security benefits.[238]

Table B-1. Children in Foster Care by Receipt of SSI/Social Security Benefits and Disability Status, by State

Includes children served during FY2019 and who had been in care for at least six months

			Children Receiving SSI/Social Security Benefits[c]			
State	***TOTAL* Children Served for Six Months or More[a]**	**Children Not Receiving SSI/Social Security Benefits[b]**	***with reported disability[d]***	***without reported disability[d]***	***Subtotal with SSI/Social Security Benefits***	***% of Total Children***
Alabama	6,806	6,603	66	137	203	3.0%
Alaska	3,235	2,917	118	200	318	9.8%
Arizona	16,206	15,736	191	279	470	2.9%
Arkansas	5,040	4,461	426	53	479	9.5%
California	59,370	58,296	774	300	1074	1.8%
Colorado	6,307	6,055	0	252	252	4.0%
Connecticut	4,784	4,285	194	305	499	10.4%
Delaware	702	534	115	53	168	23.9%
District of Columbia	859	859	0	0	0	0.0%
Florida	29,515	27,221	1015	1279	2294	7.8%
Georgia	15,813	14,533	426	834	1260	8.0%
Hawaii	1,997	1,979	10	8	18	0.9%
Idaho	2,155	1,959	51	145	196	9.1%
Illinois	18,992	17,725	454	813	1267	6.7%
Indiana[e]	20,859	19,932	453	382	835	4.0%
Iowa	7,603	7,325	149	129	278	3.7%
Kansas	9,316	8,056	881	379	1260	13.5%
Kentucky	10,540	10,416	45	79	124	1.2%
Louisiana	5,074	4,780	123	171	294	5.8%
Maine	2,180	1,852	105	223	328	15.0%
Maryland	4,469	4,083	298	88	386	8.6%
Massachusetts	12,215	11,308	411	496	907	7.4%
Michigan	14,518	13,884	183	451	634	4.4%
Minnesota[e]	10,740	9,887	544	242	786	7.3%
Mississippi	5,416	5,233	80	103	183	3.4%
Missouri	15,040	13,406	616	1018	1634	10.9%
Montana	4,508	4,399	66	43	109	2.4%
Nebraska	4,235	3,753	365	117	482	11.4%
Nevada	5,367	5,172	162	33	195	3.6%
New Hampshire	1,510	1,224	117	169	286	18.9%
New Jersey	6,279	5,831	334	114	448	7.1%

[238] Among children receiving SSI/Social Security benefits (472,800), almost one-quarter (115,663) were reported as having clinically diagnosed disabilities. These children are not separately shown in **Table B-1**.

State	*TOTAL* Children Served for Six Months or More[a]	Children Not Receiving SSI/Social Security Benefits[b]	Children Receiving SSI/Social Security Benefits[c]			
			with reported disability[d]	*without reported disability*[d]	*Subtotal with SSI/Social Security Benefits*	*% of Total Children*
New Mexico	2,835	2,510	245	80	325	11.5%
New York	18,349	18,308	34	7	41	0.2%
North Carolina[e]	12,260	11,086	193	978	1171	9.6%
North Dakota	1,782	1,727	41	14	55	3.1%
Ohio	18,527	17,923	294	310	604	3.3%
Oklahoma	10,414	9,304	710	400	1110	10.7%
Oregon	8,346	7,633	112	601	713	8.5%
Pennsylvania	18,985	18,457	214	314	528	2.8%
Rhode Island	2,374	2,310	28	36	64	2.7%
South Carolina	5,115	4,767	39	309	348	6.8%
South Dakota	1,877	1,750	65	62	127	6.8%
Tennessee	9,653	8,364	908	381	1289	13.4%
Texas	40,564	40,418	82	64	146	0.4%
Utah	3,260	3,241	19	0	19	0.6%
Vermont	1,486	1,336	11	139	150	10.1%
Virginia	5,789	5,426	188	175	363	6.3%
Washington	12,968	11,768	619	581	1200	9.3%
West Virginia	8,917	8064	314	539	853	9.6%
Wisconsin	9,088	8,923	60	105	165	1.8%
Wyoming	1,260	1,241	10	9	19	1.5%
Total	**505,499**	**478,380**	**12,957**	**13,999**	**26,957**	**5.3%**

Source: CRS analysis of data reported for FY2019 by the 50 states and the District of Columbia, via AFCARS and included in NDACAN dataset #239 (AFCARS FC2019v1).

a. Children counted as "served for six months or more" include all those who spent at least one day in care during FY2019 and who as of that date had spent no less than six months (183 days) in care since their latest removal (i.e., entry to foster care).

b. Children were counted as "not receiving SSI/Social Security benefits" if they were among the "served for six months or more" population and they were reported in AFCARS as not having received "SSI or Other Social Security Act benefit." These children may or may not have been clinically diagnosed with disabilities.

c. Children counted as receiving SSI/Social Security benefits are those among the "served for six months or more" population who were reported in AFCARS as receiving monthly assistance via an "SSI or Other Social Security Act benefit." They are expected to be receiving benefits primarily under SSI (Title XVI of the Social Security Act) or the Social Security program (Title II). However, based on AFCARS reporting categories, there is a possibility that some children counted in this group were receiving monthly assistance via SSBG (Title XX, Subtitle A) or CWS (Title IV-B, Subpart I). Use of SSBG and CWS funds for monthly assistance to children in foster care is limited by statute. Therefore these children are not expected to comprise a large share of the overall total. See NDACAN, *AFCARS Foster Care Codebook*, element #83, p. 98.

d. Children receiving SSI/Social Security benefits were counted as having reported disabilities if they were flagged in AFCARS as having been clinically diagnosed with disabilities, including intellectual disabilities, hearing or vision impairments, physical disabilities, or emotional disturbances (as defined by the current edition of the Diagnostic and Statistical Manual of Disorders). See NDACAN, AFCARS Foster Care Codebook, pp. 29-34, including discussion of "Child Has been Clinically Diagnosed with a Disability" (data element #18) and the incorporated diagnoses described in data elements #19-#22.

e. Children for whom a state did not report data on receipt or non-receipt of SSI/Social Security benefits (i.e., 92 children in Indiana, 67 in Minnesota, and 3 in North Carolina) are included in the total number of children served for at least six months but are not counted in any other table column.

Appendix C. Preferred Representative Payee List for Minor Child Beneficiaries

Table C-1. Representative Payee Order of Preference List for Minor Child Beneficiaries

Preferred Order of Selection	Preferred Payee
First	• Natural or adoptive parent who has custody of the beneficiary. • Legal Guardian
Second	Natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being.
Third	Natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward the beneficiary's support but is demonstrating strong concern for the beneficiary's well-being.
Fourth	• Relative who has custody of the beneficiary. • Stepparent who has custody of the beneficiary.
Fifth	Relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being.
Sixth	• Relative who does not have custody of the beneficiary but is demonstrating strong concern for the beneficiary's well-being. • Close friend who does not have custody of the beneficiary but is demonstrating strong concern for the beneficiary's well-being.
Seventh	• Social service agency (e.g., child welfare agency). • Custodial institution.
Eighth	Any person or organization not listed in this table who shows concern for the beneficiary and is suitable, able, and willing to act as payee.

Source: CRS, adapted from Social Security Administration (SSA), Program Operations Manual System, "GN 00502.105 Preferred Representative Payee Order of Selection Charts," May 21, 2019, https://secure.ssa.gov/poms.nsf/lnx/0200502105.

Notes: SSA uses different preferred payee lists for adults (see the link above for more information).

Appendix D. Additional Data on Minor Child SSI/Social Security Beneficiaries in Foster Care

Table D-1. Minor Child SSI/Social Security Beneficiaries in Foster Care, by Type of Representative Payee and Type of Benefit, November 30, 2020

	Type of Representative Payee					
Type of Benefit	**Child Welfare Agency**	**Other Organizational Payee**	**Foster Parent**	**Another Individual**	**Other**	**Total**
Social Security	8,374	50	328	2,011	1	10,764
Supplemental Security Income	10,838	109	369	1,618	20	12,954
Concurrent (receives benefits from both programs)	1,464	23	55	162	2	1,706
Total	**20,676**	**182**	**752**	**3,791**	**23**	**25,424**

Source: CRS reproduction of Table 14 in U.S. Government Accountability Office (GAO), *Social Security Administration: New Data Exchanges with Some States Provide Limited Information on Foster Care Beneficiaries*, GAO-21-441R, June 3, 2021, https://www.gao.gov/products/gao-21-441r.

Notes: Data reflect the number of minor children who received SSI and/or Social Security benefits as of November 30, 2020, and were in foster care, as reported by GAO from SSA's electronic Representative Payee System (eRPS). GAO noted that, according to SSA, the data reflect questions about foster care that were added to eRPS in June 2019 and may undercount the total number of minor child beneficiaries in foster care. "Child welfare agency" includes state, county, or local government agencies, as well as social agencies, which can include government agencies and nongovernmental organizations. "Other organizational payee" includes financial organizations, public officials, mental institutions, and nonmental institutions, among others. "Another individual" includes relatives, room and board providers, and friends, among others, who are not the foster parents.

Appendix E. SSI/Social Security Benefits Made Available for Use by State Child Welfare Agencies

For state fiscal year (SFY) 2018, child welfare agencies in 38 states and the District of Columbia reported that $179 million in SSI/Social Security payments were "remitted to the state and made available to the child welfare agency to use as offsets to child welfare agency costs for child welfare services/activities." Additionally, child welfare agencies in three states and Puerto Rico reported $0 in SSI/Social Security funds sent to them to offset their costs during that year, eight state child welfare agencies were unable to provide a dollar amount, and one state child welfare agency did not participate in the survey. (**Table E-1** provides information by state.)

This information was reported as part of a survey of state child welfare agency expenditures conducted by the research organization Child Trends. That survey also asked about additional forms of "third-party" income made available to the child welfare agency, including child support payments, veterans-related payments, and "other sources." While most state child welfare agencies reported receipt of child support payments and SSI/Social Security benefits, only a small number reported receiving veterans-related or other third-party funding.

As part of the Child Trends survey, the state child welfare agencies were also asked whether any of the third-party funding they received was "maintained by the child welfare agency in an account specific to a child or child's caregiver (which the child or caregiver could access), or otherwise saved for the child." Child welfare agencies in 29 states responded *yes* to this question, those in 16 states, the District of Columbia, and Puerto Rico responded *no*, four were unable to provide a response, and one did not participate in the survey. (See **Table E-1**.) CRS does not have any additional information regarding whether any of the accounts maintained by the 29 states were specific to SSI/Social Security funds (or to other types of third-party income). Neither does it know how frequently such accounts were created nor whether the accounts were made available solely to child's caregiver (e.g., a foster parent) or to the child.

Table E-1. State Child Welfare Agency Receipt of SSI/Social Security Funds and Use of Certain Accounts, SFY2018

Blank cell indicates state could not provide information or did not participate in the survey.

State	SSI/Social Security Funds Available for Offsetting Child Welfare Agency Costs *($ in millions)*	Are Any Third-Party Funds (i.e., SSI/Social Security or other) Maintained in an Account Accessible to Child or Child's Caregiver?
Alabama		Yes
Alaska	$1.3	Yes
Arizona	$5.7	Yes
Arkansas	$1.2	Yes
California		No
Colorado	$2.6	Yes
Connecticut	$2.8	No
Delaware	$1.0	No
District of Columbia	$1.4	No
Florida	$9.4	No
Georgia		Yes
Hawai'i	$0.4	Yes
Idaho		

State	SSI/Social Security Funds Available for Offsetting Child Welfare Agency Costs *($ in millions)*	Are Any Third-Party Funds (i.e., SSI/Social Security or other) Maintained in an Account Accessible to Child or Child's Caregiver?
Illinois	$18.7	Yes
Indiana	$8.5	No
Iowa	$3.0	No
Kansas	$6.8	Yes
Kentucky	$10.6	No
Louisiana[a]	$1.6	Yes
Maine	$1.6	Yes
Maryland	$1.9	Yes
Massachusetts	$6.3	Yes
Michigan	$2.0	No
Minnesota		No
Mississippi	$0.0	
Missouri	$8.2	Yes
Montana		Yes
Nebraska		No
Nevada	$0.1	Yes
New Hampshire	$1.9	Yes
New Jersey	$3.3	Yes
New Mexico	$7.9	No
New York		No
North Carolina	$0.0	No
North Dakota		
Ohio	$3.0	Yes
Oklahoma	$3.1	
Oregon	$4.4	Yes
Pennsylvania[a]	$12.0	Yes
Puerto Rico	$0.0	No
Rhode Island	$2.2	Yes
South Carolina	$2.7	Yes
South Dakota	$0.8	Yes
Tennessee	$5.5	Yes
Texas	$20.9	No
Utah	$2.6	Yes
Vermont	$1.0	
Virginia	$0.0	No
Washington	$6.9	No
West Virginia	$1.9	Yes
Wisconsin	$4.1	Yes
Wyoming	$0.2	Yes
TOTAL	**$179.2**	

Source: Based on unpublished data received from Child Trends. The data were gathered as part of its survey of state child welfare agency expenditures during state FY2018. See survey questions 26 and 27 in Appendix R, Kristina Rosinsky, Sarah Catherine Williams, Megan Fischer, and Maggie Haas, *Child Welfare Financing SFY2018: A*

survey of state and local expenditures (March 2021) https://www.childtrends.org/publications/child-welfare-financing-survey-sfy2018.

Notes: Blank cell indicates the state was unable to provide this information, or in the case of Idaho that the state did not participate in the survey. States were asked to report on multiple sources of "third-party" income but the dollar amounts shown in this table refer to SSI/Social Security benefit amounts only; (see *table note a* for possible exception in two states). However, information in the final column (concerning maintenance of account accessible to child's caregiver/child) *is not specific to* SSI/Social Security benefits only. Instead, states were instructed to respond *yes* or *no* to this question based on any type of third-party income received (i.e., child support payments, SSI/Social Security/veterans-related payments, or other sources). CRS does not have additional information on what types of funds are maintained in such accounts, or how routine such accounts may be in states that responded *yes*.

a. Louisiana and Pennsylvania were unable to separate SSI/Social Security funds from third-party income that might have been received as veterans-related payments or from "other sources." Therefore, amounts for those states might include some non-SSI/Social Security funds. However, based on reports from other states—the large majority of which showed little or no income from either of these sources—these non-SSI/Social Security amounts would be expected to be small or non-existent.

Appendix F. SSA OIG Reports on Representative Payees and Children in Foster Care

The Social Security Administration's (SSA) Office of the Inspector General (OIG) occasionally issues audit reports that examine the representative payees of children in foster care or state child welfare agencies serving as representative payees. CRS's review of the OIG's website identified at least 18 such reports issued since 1998 (see below). According to the OIG, many of its more recent reports focus on one of two main issues: (1) the extent to which SSA appoints child welfare agencies as the representative payees of children in foster care who are entitled to SSI/Social Security benefits; and (2) the extent to which child welfare agencies serving as representative payees use and account for SSI/Social Security benefits according to SSA's policies and procedures.[239]

Concerning SSA's appointment practices, the OIG found a number of examples where a child in foster care who was entitled to SSI/Social Security benefits was assigned a representative payee who was not the child welfare agency or the custodial foster parent.[240] The OIG expressed concern that these appointments may not be appropriate, noting, "We believed these children's benefits were at a higher risk of misuse because they may not have had a suitable payee since these payees may not have had contact with the children."[241] Based on its finding, the OIG referred a number of cases to SSA for payee suitability determinations. SSA's review of these cases found a number of instances where the payee misused or potentially misused the beneficiary's benefits. However, in response to one report, SSA noted that there are sometimes valid reasons for appointing a parent or other relative to be the payee of a child in foster care, such as when the placement is short term or the child returns to the family home on weekends.[242]

With respect to SSA's monitoring of child welfare agencies serving as payees, the OIG found several examples of cases where child welfare agencies did not properly use or account for the benefits of children in foster care.[243] In one instance, the OIG found that the child welfare agency

[239] Responses to Questions for the Record from Gale Stallworth Stone, Acting Inspector General, Social Security Administration, June 2, 2017, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Social Security's Representative Payee Program*, 115th Cong., 1st sess., March 22, 2017, H.Hrg. 115-OS02 (Washington, DC: GPO, 2017), pp. 116-117, https://www.govinfo.gov/content/pkg/CHRG-115hhrg33365/pdf/CHRG-115hhrg33365.pdf#page=119.

[240] See, for example, SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Foster Care*, A-13-07-17137, June 17, 2010, https://oig-files.ssa.gov/audits/full/A-13-07-17137.pdf; and SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in the Florida State Foster Care Program*, A-13-11-11173, March 19, 2012, https://oig-files.ssa.gov/audits/full/A-13-11-11173.pdf; SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Foster Care in the Social Security Administration's Chicago Region*, A-13-11-21105, June 18, 2012, https://oig-files.ssa.gov/audits/full/A-13-11-21105.pdf; SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Pennsylvania's State Foster Care Programs*, A-13-12-11245, December 4, 2012, https://oig-files.ssa.gov/audits/full/A-13-12-11245.pdf; and SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in California's Foster Care Program*, A-13-13-23029, August 14, 2014, https://oig-files.ssa.gov/audits/full/A-13-13-23029.pdf.

[241] SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Foster Care in the Social Security Administration's Chicago Region*, p. 3.

[242] SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Pennsylvania's State Foster Care Programs*, Appendix C.

[243] See, for example, SSA, OIG, *San Francisco Department of Human Services – An Organizational Representative Payee for the Social Security Administration*, A-09-03-13011, November 19, 2003, https://oig-files.ssa.gov/audits/full/A-09-03-13011.pdf; SSA, OIG, *Hawaii Department of Human Services – An Organizational Representative Payee for*

- failed to notify SSA when beneficiaries were no longer in the agency's care;
- failed to report that the agency received federal Title IV-E funding for SSI recipients;
- did not properly use, conserve, or account for the benefits of beneficiaries; and
- did not return unused or conserved benefits to SSA when the beneficiaries were no longer in the agency's care.[244]

In another instance, the OIG found that the child welfare agency failed to notify SSA that it did not receive beneficiaries' SSI/Social Security benefits.[245]

For more information on the OIG's review of the representative payees of children in foster care or child welfare agencies serving as representative payees, see the following reports:

- SSA, OIG, *Review of the Illinois Department of Children and Family Services' Effectiveness as a Representative Payee*, A-05-96-82000, August 31, 1998, https://oig-files.ssa.gov/audits/full/82000.pdf.
- SSA, OIG, *Accounting for Social Security Benefits by Contra Costa County, California*, A-09-98-52009, November 2, 1998, https://oig-files.ssa.gov/audits/full/9952009.pdf.
- SSA, OIG, *Financial-Related Audit of the Baltimore City Department of Social Services -An Organizational Representative Payee for the Social Security Administration*, A-13-00-10066, September 25, 2001, https://oig-files.ssa.gov/audits/full/A-13-00-10066.pdf.
- SSA, OIG, *Financial-Related Audit of Denver Department of Human Services – An Organizational Representative Payee for the Social Security Administration*, A-05-02-12024, September 23, 2002, https://oig-files.ssa.gov/audits/full/A-05-02-12024.pdf.
- SSA, OIG, *Financial-Related Audit of the Washington State Department of Social and Health Services – An Organizational Representative Payee for the Social Security Administration*, A-13-02-12010, October 8, 2002, https://oig-files.ssa.gov/audits/full/A-13-02-12010.pdf.
- SSA, OIG, *San Francisco Department of Human Services – An Organizational Representative Payee for the Social Security Administration*, A-09-03-13011, November 19, 2003, https://oig-files.ssa.gov/audits/full/A-09-03-13011.pdf.
- SSA, OIG, *Cabinet for Families and Children, Department for Community Based Services, Division of Protection and Permanency - An Organizational Representative Payee for the Social Security Administration*, A-08-03-13084, March 10, 2004, https://oig-files.ssa.gov/audits/full/A-08-03-13084.pdf.

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the Social Security Administration, A-09-08-28045, September 2, 2008, https://oig-files.ssa.gov/audits/full/A-09-08-28045_0.pdf; and SSA, OIG, *The District of Columbia's Child and Family Services Agency, an Organizational Representative Payee for the Social Security Administration*, A-13-11-11149, March 2, 2012, https://oig-files.ssa.gov/audits/full/A-13-11-11149.pdf.

[244] SSA, OIG, *Hawaii Department of Human Services – An Organizational Representative Payee for the Social Security Administration*. When unused or conserved funds are returned to SSA, the agency reissues them to the successor payee or to the beneficiary directly if appropriate. See SSA, POMS, "GN 00603.055 Transfer of Conserved Funds," April 25, 2016, https://secure.ssa.gov/poms.nsf/lnx/0200603055.

[245] SSA, OIG, *The District of Columbia's Child and Family Services Agency, an Organizational Representative Payee for the Social Security Administration*.

- SSA, OIG, *Representative Payees Receiving Benefits for Children in Foster Care*, A-13-05-15047, January 20, 2006, https://oig-files.ssa.gov/audits/full/A-13-05-15047_0.pdf.
- SSA, OIG, *Kansas Department of Social and Rehabilitation Services, an Organizational Representative Payee for the Social Security Administration*, A-07-07-17045, March 23, 2007, https://oig-files.ssa.gov/audits/full/A-07-07-17045_0.pdf.
- SSA, OIG, *Partnership for Strong Families, an Organizational Representative Payee for the Social Security Administration*, A-04-07-17084, March 14, 2008, https://oig-files.ssa.gov/audits/full/A-04-07-17084_0.pdf.
- SSA, OIG, *Hawaii Department of Human Services – An Organizational Representative Payee for the Social Security Administration*, A-09-08-28045, September 2, 2008, https://oig-files.ssa.gov/audits/full/A-09-08-28045_0.pdf.
- SSA, OIG, *Quick Response Evaluation: Florida's Title IV-E Waiver May Impact Supplemental Security Income Benefits*, A-04-09-19091, May 26, 2009, https://oig-files.ssa.gov/audits/full/A-04-09-19091.pdf.
- SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Foster Care*, A-13-07-17137, June 17, 2010, https://oig-files.ssa.gov/audits/full/A-13-07-17137.pdf.
- SSA, OIG, *The District of Columbia's Child and Family Services Agency, an Organizational Representative Payee for the Social Security Administration*, A-13-11-11149, March 2, 2012, https://oig-files.ssa.gov/audits/full/A-13-11-11149.pdf.
- SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in the Florida State Foster Care Program*, A-13-11-11173, March 19, 2012, https://oig-files.ssa.gov/audits/full/A-13-11-11173.pdf.
- SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Foster Care in the Social Security Administration's Chicago Region*, A-13-11-21105, June 18, 2012, https://oig-files.ssa.gov/audits/full/A-13-11-21105.pdf.
- SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in Pennsylvania's State Foster Care Programs*, A-13-12-11245, December 4, 2012, https://oig-files.ssa.gov/audits/full/A-13-12-11245.pdf.
- SSA, OIG, *Benefit Payments Managed by Representative Payees of Children in California's Foster Care Program*, A-13-13-23029, August 14, 2014, https://oig-files.ssa.gov/audits/full/A-13-13-23029.pdf.

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