

**S. SOCIAL SECURITY ADMINISTRATION
REPRESENTATIVE PAYEE ORGANIZATIONS (RPOs) UNDER
IRC 501(c)(3) and 501(c)(4)**

by
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1. Introduction

Headquarters has received numerous applications for recognition of exemption under IRC 501(c)(3) and 501(c)(4) from organizations that desire to participate in the Representative Payee Organization (RPO) program of the Social Security Administration (SSA). RPOs, the subject of this article, with the authorization and approval of the Social Security Administration, are permitted to collect disability insurance and supplemental security insurance benefit funds on behalf of those who are mentally or physically debilitated because of drug or alcohol abuse, mental or physical impairments, or old age. The funds are intended to pay for the basic living expenses of the beneficiaries. The RPOs are authorized SSA fees for the services performed for the SSA and the beneficiaries.

This article will identify the criteria that RPOs must satisfy in order to qualify for recognition of exemption. In addition, the article will discuss the foundation classification of RPOs.

2. The SSA RPO Program and its Connection to IRC 501(c)

A. The SSA RPO Program

(1) General

Section 5105 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) included a provision permitting qualified organizations to collect a fee from beneficiaries for expenses (including overhead) incurred by the organizations in providing services performed as the beneficiaries' representative payee. This provision was effective July 1, 1991 until July 1, 1994. Section 201 of the Social Security Independence and Program Improvements Act of 1994 (P.L. 103-296) extended the authority for qualified organizations to collect fees for representative payee services beyond July 1, 1994. It also changed the definition of "qualified organization."

Specifically, section 205(j)(4)(B) of the Social Security Act provides the definition of a qualified organization. This section reads:

... the term "qualified organization" means any state or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any state or local government agency with fiduciary responsibilities, or any community based non-profit agency [emphasis added] which is bonded or licensed in each state in which it serves as a representative payee, if such agency, in accordance with any applicable regulations of the Commissioner of Social Security--

- (i) regularly provides services as the representative payee, pursuant to this subsection or section 1631(a)(2), concurrently to 5 or more individuals; and*
- (ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.*

Before the 1994 SSA Act, only community-based non-profit social service agencies that were in existence on October 1, 1988, were included in the qualified organization category.

To further encourage these organizations to become representative payees, the 1994 Act authorized them to charge drug addicts and alcoholics an amount equal to the lesser of 10 percent of the monthly benefit or \$50 (in the case of a beneficiary determined by the SSA to be disabled based on such addiction), indexed to the Consumer Price Index.

(2) Qualified Organizations

In 20 CFR 404.2040a of the Code of Federal Regulations, the SSA further defined qualified organizations as follows:

- a. A community-based nonprofit social service agency which meets the requirements set out in paragraph (b) of this section may request our authorization to collect a monthly fee from a beneficiary for providing representative payee services.*
- b. We will authorize an organization to collect a fee if all the following requirements are met:*

- (i) It is community-based, i.e., serves or represents one or more neighborhoods, city or county locales and is located within its service area.**
- (ii) It is a nonprofit social service organization founded for religious, charitable or social welfare purposes and is tax exempt under section 501(c) of the Internal Revenue Code.**
- (iii) It is bonded or licensed in the state in which it serves as representative payee.**
- (iv) It regularly provides representative services concurrently to at least five beneficiaries.**
- (v) It is not a creditor of the beneficiary.**

The SSA requires that organizations have a IRC 501(c) exemption letter from the IRS, which SSA accepts as proof that they are both a nonprofit and social service organization. Upon submission of this proof, and a determination by SSA that the other requirements are met, SSA will authorize collection of any appropriate fees.

(3) Duties of RPOs: Extract from SSA Publication No. 05-100076, A Guide For Representatives, June 1994

a. A Representative Payee's Duties

As a representative payee, you need to keep informed of the individual's needs so that you can decide how benefits can best be used for his or her personal care and well-being... .

Any money left after meeting the beneficiary's current and reasonably foreseeable needs must be saved and maintained in the beneficiary's behalf. Periodically, Social Security will ask you to complete a form accounting for the funds you have received. A sample form is shown on page 13. There's a worksheet in the center of this booklet that you can use to help keep track of what you spend.*

As a representative payee, you will need to keep Social Security informed of changes that may affect the beneficiary's eligibility for benefits.

Representative payees are required by law to use benefits properly. If a payee misuses benefits, he or she must repay the misused funds to the beneficiary. A Payee convicted of misuse may be fined and/or imprisoned.

b. How To Use The Benefits

First, make sure the beneficiary's day-to-day needs for food and shelter are met. Then, benefits may be used for the beneficiary's personal needs, such as clothing, recreation, and other expenses. Benefits also can be used to pay for medical needs (for example, eyeglasses and hearing aids) and dental care not provided by Medicare, Medicaid, or a residential institution.

If a beneficiary is in a nursing home or other institution, you should use benefits to pay the usual charges for care, as well as to buy personal items not normally provided by the facility.

Also, if the beneficiary lives in an institution and is eligible for Medicaid or is a member of a family that receives Aid to Families with Dependent Children (AFDC) payments, you should contact the local Social Security office about using benefits to support family members.

*Copies of the SSA worksheet and form are attached as Exhibits A & B.

B. The RPO Program and IRC 501(c) Exemption

As may be gleaned from the SSA discussion above, RPOs must have religious, charitable, or social welfare purposes. Organizations qualifying to participate in the SSA RPO program must first be recognized by the IRS as exempt under IRC 501(c)(3) or 501(c)(4) since these are the only IRC 501(c) categories that would include social service organizations founded for religious, charitable, or social welfare purposes. The discussion that follows will focus on those organizations whose exclusive or primary activities are the performance of RPO functions. IRC 501(c)(3) or 501(c)(4) organizations engaging in RPO activities as secondary activities could have unrelated trade or business issues if the organizations did not operate within the parameters of the criteria discussed in 3 below. Also, private benefit issues could be raised. Private benefit is presumably a more significant concern with IRC 501(c)(4) organizations now because of the recent enactment of the Taxpayers' Bill of Rights 2

(TBOR 2) legislation that includes an inurement prohibition applicable to IRC 501(4)s similar to the prohibition applicable to organizations exempt under IRC 501(c)(3). See the Current Developments section of this EO CPE Text for a description of the TBOR 2 legislation.

3. Exemption Recognition under IRC 501(c)(3) or IRC 501(c)(4)

A. RPOs May Further IRC 501(c)(3) and IRC 501(c)(4) Purposes

RPOs may qualify for IRC 501(c)(3) exemption following two long-established IRC 501(c)(3) rationales. RPOs may further exempt purposes by lessening the burdens of government, specifically, in this case, lessening the burdens of the SSA. See Rev. Rul. 81-276, 1981-2 C.B. 128, describing a professional standards review organization (PSRO) that assumed the task of reviewing the professional activities of health care practitioners and institutions that were appropriate recipients of Medicare and Medicaid reimbursements. See generally EO CPE Texts of the following years: 1995 (p.53); 1993 (p.17); 1992 (p.156); 1987 (p. 139); and 1984 (p. 217).

RPOs may also further exempt purposes by relief of the poor and distressed. RPOs assist a class of individuals who are mentally or physically debilitated, or both. By providing, managing, and monitoring funds that pay for their basic necessities of living, an organization may be furthering section 501(c)(3) and 501(c)(4) purposes. See, in general, EOHB IRM 7751, sec. 343.

IRC 501(c)(3) and (c)(4) RPOs are RPOs servicing all eligible beneficiaries of the SSA RPO program. They are distinguishable from commercial trade or business organizations such as the one described in Rev. Rul. 72-369, 1972-2 C.B. 245. In the latter, the Service held that an organization providing managerial and consulting services at cost to unrelated charities as a primary activity did not qualify for exemption. RPOs that provide services directly to all eligible beneficiaries regardless of the potential fees, and otherwise meet the requirements under IRC 501(c)(3) or 501(c)(4), would not be viewed as commercial trade or business organizations.

B. RPOs Serving Private Interests

In addition to carrying out exempt purposes, RPOs must satisfy the IRC 501(c)(3) and Reg.1.501(c)(3)-1(d)(1)(ii) requirement that organizations must be operated for the benefit of public rather than private interests. In the case of IRC 501(c)(4) applicants, RPOs must satisfy the Reg.1.501(c)(4)-1(a)(2)(i) requirement that they are primarily engaged in promoting in some way the

common good and general welfare of the people of the community. As noted in 2B above, IRC 501(c)(4)s are now also subject to an inurement prohibition.

Some RPOs that have applied for recognition of exemption are, in essence, one or two person operations. Typically, such organizations are created and controlled by one or two people who are also the sole or controlling employees. If there are other employees, they may be related to the controlling individual(s). The boards of directors consist of the individual(s) and related persons. The controlling individual(s)' compensation may be the RPO's primary expenses. RPOs may also be paying rent for use of the controlling persons' residences.

When an RPO is controlled by one or two individuals or a small, related group, there is an indication that the RPO operates primarily for the benefit of the principals, and not for exempt purposes.

C. Criteria for Determining If a RPO is Serving IRC 501(c)(3) or 501(c)(4) Purposes

In determining whether RPOs qualify for exempt status, the EO Division in Headquarters is applying the following criteria:

- (1) The payee services should be provided to all eligible SSA RPO beneficiaries without regard to the benefit amount (and corresponding RPO service fee) that an eligible beneficiary may receive.
- (2) The RPO's governing body should be composed primarily of members of the community who are not financially interested in the RPO's activities (i.e., persons other than compensated individuals of the organization or related parties).
- (3) The governing body should have exclusive authority to determine compensation of employees and other parties that perform major services for the RPO. Those persons who are members of the governing body and who are also compensated for services provided to the RPO must not be eligible to vote on board decisions involving their personal compensation packages.
- (4) The RPO governing body and key employees should demonstrate evidence of experience or background in the social services area.

- (5) Officials of the RPO should represent that the organization will follow the operational requirements of the SSA including fulfilling the duties described in SSA Publication No. 05-10076, A Guide For Representative Payees, as revised or superseded. See 2A(3) above.

These criteria are not unique to determinations involving RPO-type organizations. Rather, they have long been applied to a variety of organizations seeking recognition of exemption. For example, requiring that such an organization be governed by a board of directors representative of the community served, rather than by "insiders" with a financial interest in the organization's activities, is consistent with published precedents requiring that health care providers and similar organizations have a "community board" rather than a governing body dominated by financially interested individuals. See, e.g., Rev. Rul. 69-545, 1969-2 C.B. 117; compare Rev. Rul. 55-656, 1955-2 C.B. 262 (community nursing bureau qualified for exemption under IRC 501(c)(3)), with Rev. Rul. 61-170, 1961-2 C.B. 112 (private duty nurses' registry distinguished from community nursing bureau on basis that public control and support of latter demonstrated operation for public vs. private benefit.) See also this EO CPE Text Topic C, Tax Exempt Health Care Organizations Community Board And Conflicts of Interest.

4. Non-Private Foundation Status under IRC 509(a)(2)

As discussed above, RPOs receive payments for services rendered on behalf of SSA recipients. RPO participants in the program are authorized by the SSA to collect fees for expenses incurred on the beneficiaries' behalf. All SSA payments (including the fee portion of the payments) to the RPOs are payments for the performance of the organization's exempt functions, and counted as "support" within the meaning of IRC 509(d).

In determining an RPO's public charity status, payments received in the manner described above are considered to be payments for the performance of the organization's exempt function. They are counted as "public support" under section 509(a)(2) in a manner similar to medicare and medicaid payments to health care organizations. See Rev. Rul. 83-153, 1983-2 C.B. 48. Thus, payments allocated for each beneficiary would be includible as RPO gross receipts to the extent of the greater of \$5,000 or one percent of an organization's total support for a taxable year. In this way, the RPO will likely qualify as an IRC 509(a)(2) organization.

5. Conclusion

Headquarters is preparing Exempt Organization Handbook and other IRM instructions on the issues discussed in this article. We hope that application of the criteria outlined in the article will promote uniformity in processing applications from organizations seeking exemption as RPOs.

Exhibit A

INCOME AND EXPENSES WORKSHEET

Month and Year	Amount of Social Security or SSI Benefits Received	Expenses for Food and Shelter	Expenses for Clothing, Medical/Dental, Personal Items, Recreation, Miscellaneous	Amount of Money Remaining
Totals For Report Period	\$ _____	\$ _____ Put this figure on line 3B of the Representative Payee Report	\$ _____ Put this figure on line 3C of the Representative Payee Report	\$ _____(1)
Show the amount remaining, if any, from earlier report periods.				\$ _____(2)
Add lines (1) and (2). Put this figure on line 3D of the Representative Payee Report.				\$ _____

For additional worksheets, you may photocopy this page before you use it, or contact Social Security.

