

**PROTECTING FOSTER CHILDREN STARTS WITH THEIR
BENEFITS: A MODEL LEGISLATIVE APPROACH TO
PROTECTING THE SOCIAL SECURITY BENEFITS OF
CHILDREN IN FOSTER CARE**

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ABSTRACT

Children in foster care are a vulnerable population that states need to protect financially. Few states provide legislative protections for the Social Security benefits of children in foster care. Social Security benefits are important because when foster youth age out of foster care, they must navigate life on their own. Having conserved funds from their Social Security benefits will help foster youth in their young adult years pay for housing, transportation, and education. Without state legislative protections for foster children's Social Security benefits, foster children may not be aware that they are entitled to receive benefits or that their foster care agency is receiving benefits on their behalf. Additionally, without legislative protections, agencies can misuse foster children's Social Security benefits. As a result, many children leave foster care with no income or resources. State legislation that protects all aspects of foster children's Social Security benefits can help these children when they age out of foster care to lead more successful lives as young adults.

This Note argues that each state should enact comprehensive state legislation to protect all aspects of foster children's Social Security benefits by using the legislation of Maryland and Arizona as a model. When combined, Maryland's and Arizona's legislation protect a variety of aspects of foster children's Social Security benefits. If each state

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used the combined legislation enacted in Maryland and Arizona to implement comprehensive legislation protecting foster children's Social Security benefits in their own states, then the vulnerable population of foster children would have greater support and resources and have a better chance of achieving stability and more positive outcomes as young adults.

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INTRODUCTION

Tristen Hunter, a foster child from Juneau, Alaska, did not know until he was leaving foster care at age sixteen that the Alaska Office of Children's Services had been taking his monthly \$700 Old-Age, Survivors, and Disability Insurance ("OASDI") benefits since he was twelve years old.¹ Tristen was entitled to OASDI benefits after his mother's death, but he never received any payments, and at twenty-one years old he struggled to pay his rent, tuition, and make his car payments.² Tristen believed the purpose of OASDI benefits was to pay for exactly what he was struggling with and said "[i]t's really messed up to steal money from kids who grew up in foster care . . . [w]e get out and we don't have anybody or anything."³

Children in foster care, especially older youth, are a vulnerable population that does not have the same support and guidance as peers their age do.⁴ Youth who age out of foster care are more likely to experience homelessness, have worse health outcomes, have a higher rate of mental health issues, and have a higher rate of incarceration than the general population.⁵ The money that eligible foster children receive from their Social Security benefits is vital to their stability and achievement of

1. Eli Hager & Joseph Shapiro, *State Foster Care Agencies Take Millions of Dollars Owed to Children in Their Care*, NPR (Apr. 22, 2021, 7:00 AM), <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca> [<https://perma.cc/Y7WR-FUE8>].

2. *Id.*

3. *Id.*

4. See CHILD'S ADVOC. INST. & FIRST STAR, *THE FLEECING OF FOSTER CHILDREN: HOW WE CONFISCATE THEIR ASSETS AND UNDERMINE THEIR FINANCIAL SECURITY* iii (2011).

5. See *id.*; Alexis Lara, *Words from a Mentor*, THRU PROJECT (Nov. 10, 2021), https://www.thru-project.org/words-from-a-mentor/?gclid=CjwKCAiA3aeqBhBzEiwAxFi-OBgNhU8e74KhcGUzCQtcw6_hE1f4-yeKLGfV7Yid_5JLeGjsRww1S6BoCWZIQAvD_BwE [<https://perma.cc/4RBj-7Q59>]. At age eighteen, youth "age out" of foster care and lose their access to most services and support they received through foster care. Twenty-three thousand youth age out of foster care annually. Elizabeth Balistreri, *What Happens to Kids Who Age out of Foster Care?*, HOUSE OF PROVIDENCE (Mar. 3, 2023), <https://hopearmy.org/articles/what-happens-to-kids-who-age-out-of-foster-care> [<https://perma.cc/44BU-6E8D>].

positive outcomes when they age out of foster care.⁶ If Tristen had access to his OASDI benefits, his transition out of foster care would have been easier and he would not have struggled as much financially.⁷ It is especially important to conserve the benefits of older foster youth soon to age out of care because foster children over the age of eighteen lack robust support and guidance.⁸

Eligible children in foster care are entitled to knowledge about their benefits. However, state foster care agencies' current practices when handling foster children's Social Security benefits present many problems.⁹ The current practice of agencies taking children's Social Security benefits to reimburse themselves for the cost of care is referred to as "benefits mining" and is an immoral practice.¹⁰ Beyond that, other problems limit foster children's knowledge of and access to their benefits: the lack of agencies screening for benefits, failure to notify children and others about their benefits, and failure to conserve children's benefits while in foster care.¹¹ Specifically, agencies have failed to follow the Social Security Administration's ("SSA")

6. See CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at iii–iv. Foster children are eligible for two main forms of Social Security benefits, OASDI and Supplemental Security Income ("SSI"). Foster children are eligible for OASDI benefits if they were dependent on a now deceased or retired parent or a parent with a qualifying disability. Foster children are eligible for SSI benefits if they have a qualifying disability themselves and a limited income. Lenna Kennedy, *SSA Programs that Benefit Children*, 59 SOC. SEC. BULL. 64, 64 (1996); *Supplemental Security Income (SSI) for Children*, SOC. SEC. ADMIN., <https://www.ssa.gov/benefits/disability/apply-child.html> [<https://perma.cc/9A37-UHJ4>] (last visited Oct. 17, 2024).

7. See Hager & Shapiro, *supra* note 1.

8. See CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at iii.

9. See Hager & Shapiro, *supra* note 1.

10. *Id.* "Cost of care" typically includes the cost of room and board for the foster child. *Id.* Cost of care also refers to "foster care maintenance payments" which include coverage for the cost of "food, clothing, shelter, daily supervision, school supplies, [and] a child's personal incidentals," among other expenses. 42 U.S.C. § 675(4)(A); Jakob Thorington, *Arizona Becomes First State to Stop Agencies from Taking Foster Children's Federal Benefits*, ARIZ. CAP. TIMES (June 20, 2023), <https://azcapitoltimes.com/news/2023/06/20/arizona-becomes-first-state-to-stop-agencies-from-taking-foster-childrens-federal-benefits/> [<https://perma.cc/F25F-RYGZ>]; Kristina Rosinsky & Sarah Catherine Williams, *Special Savings Accounts Can Help Child Welfare Agencies Conserve Social Security Benefits*, CHILD TRENDS (Jan. 16, 2024), <https://www.childtrends.org/blog/savings-accounts-child-welfare-agencies-social-security> [<https://perma.cc/7RF9-2D9Y>].

11. See *infra* Parts I & III.

regulations and take appropriate action to protect children in foster care. To remedy this widespread issue, each state should create legislation—modeled after the legislation of Maryland and Arizona—to protect the Social Security benefits of children in foster care to ensure the benefits are used in the best interest of the child.

Part I of this Note explains the different types of Social Security benefits available to children and the various procedures and regulations, or lack thereof, that exist for managing Social Security benefits of children in foster care. This Part introduces the problem of agency mismanagement of foster children's Social Security benefits and how agencies fail to use the Social Security benefits in the child's best interest. This Part also explains the state and federal funding structures of foster care. Part II of this Note highlights the shortcomings of legislation from other states and why that legislation is insufficient to protect foster children's Social Security benefits. Part III of this Note discusses the necessary provisions that would be present in the ideal state legislation protecting foster children's Social Security benefits. This Part also introduces Maryland's and Arizona's legislation as some of the most comprehensive, legislation currently on benefits protection for children in foster care and how the legislation of these states together can serve as a model for other states to adopt. This Part also includes the areas that these bills fail to address. Ultimately, this Note concludes that each state should adopt legislation protecting foster children's Social Security benefits by using the legislation of Maryland and Arizona as a model.

I. BACKGROUND

The two main forms of Social Security benefits for children are OASDI and Supplemental Security Income ("SSI").¹² Children under the age of eighteen may be eligible for OASDI benefits if they were previously dependent on a parent who retired

12. Kennedy, *supra* note 6, at 64.

or died, or are currently dependent on a parent with a qualifying disability.¹³ OASDI benefits intend to make up for lost parental income because of a parent's death, disability, or retirement.¹⁴ Children under the age of eighteen are eligible for SSI benefits if they have a qualifying disability and limited household resources and income.¹⁵ The child's disability must "result in marked and severe functional limitations" and the disability must have already been present for at least a year, or if not, at least expected to last for a year, or alternatively, result in death.¹⁶ The purpose of SSI benefits is to pay for services, equipment, and resources needed because of a child's disability.¹⁷ Under SSI requirements, if a child "ha[s] more than \$2,000 in countable resources," they will be ineligible to receive SSI benefits.¹⁸ There are certain resources, such as the first \$100,000 in Achieving a Better Life Experience ("ABLE") Accounts, that are not included in the \$2,000 resource limit, but most other accounts and resources count toward the SSI resource limit.¹⁹

13. *Id.*

14. *Social Security Programs in the United States*, SOC. SEC. ADMIN., <https://www.ssa.gov/policy/docs/prodesc/sspus/social-insurance-programs.html#hLogo> [<https://perma.cc/NK4Z-ZQJB>] (last visited Nov. 5, 2024); Amy Harfeld, *Who Is Benefitting from Your Clients' Benefits?: Preserving the Social Security Disability and Survivor Benefits of Youth in Foster Care*, NAT'L ASS'N COUNS. FOR CHILD., Winter 2021, at 1, 2.

15. *Supplemental Security Income (SSI)*, SOC. SEC. ADMIN., [ssa.gov/ssi](https://www.ssa.gov/ssi) [<https://perma.cc/9A37-UHJ4>] (last visited Oct. 18, 2024); *Understanding Supplemental Security Income SSI for Children*, SOC. SEC. ADMIN., [ssa.gov/ssi/text-child-ussi.htm](https://www.ssa.gov/ssi/text-child-ussi.htm) [<https://perma.cc/9GFR-2J55>] (last visited Oct. 18, 2024).

16. *Understanding Supplemental Security Income SSI for Children*, *supra* note 15.

17. Harfeld, *supra* note 14, at 2.

18. Letter from Stephen Evangelista, Acting Deputy Comm'r, Off. of Ret. & Disability Pol'y, Soc. Sec. Admin. & Rebecca J. Gaston, Comm'r, Admin. on Child., Youth & Fam., U.S. Dep't of Health and Human Servs. to State and Tribal Title IV-E Agencies 2 (Aug. 17, 2023) [hereinafter SSA Letter], <https://www.acf.hhs.gov/sites/default/files/documents/cb/ssa-hhs-joint-letter.pdf>; *see also Understanding Supplemental Security Income SSI Resources*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssi/text-resources-ussi.htm> [<https://perma.cc/3VJK-TNJV>] (last visited Oct. 18, 2024) (defining "countable resources," examples of which include cash, bank accounts, personal property, vehicles, and land).

19. SSA Letter, *supra* note 18, at 2; *Payee and ABLE Accounts*, SOC. SEC. ADMIN., https://www.ssa.gov/payee/able_accounts.htm [<https://perma.cc/P7LE-CE85>] (last visited Oct. 18, 2024) ("The first \$100,000 in the ABLE Account is exempt from the \$2,000 individual resource limit for SSI."). ABLE accounts are savings accounts with tax advantages that are for individuals

Children who enter foster care are still entitled to their Social Security benefits just the same as children who are not in foster care.²⁰ Children in foster care more often qualify for SSI benefits than children who are not in foster care because foster children are usually more likely to have a qualifying disability and lower household income.²¹ As of 2021, approximately 10% of children in the United States in foster care were “entitled to Social Security benefits.”²² The SSA’s Program Operations Manual System (“POMS”) states that “[i]t is essential that SSA do all it can to protect the rights of children who may not be able to rely on their parents or guardians to do so.”²³

A. Foster Care Structure and Funding

Children in foster care receive temporary care from foster parents when they are “unable to remain in their own homes and are placed in the custody of the county . . . agency by the courts.”²⁴ Children are usually placed in foster care when they

with disabilities. *About ABLE Accounts*, ABLE NAT’L RES. CTR., <https://www.ablenrc.org/what-is-able/what-are-able-accounts/> [<https://perma.cc/B3PP-UT52>] (last visited Oct. 18, 2024).

20. See EMILIE STOLTZFUS, PAUL S. DAVIES & WILLIAM R. MORTON, CONG. RSCH. SERV., R46975, CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS: FREQUENTLY ASKED QUESTIONS 4 (2021) [hereinafter CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS].

21. See *id.* at 8; William P. O’Hare, *Data on Children in Foster Care from the Census Bureau* 18, 22 (Annie E. Casey Found., Working Paper, 2008).

22. Hager & Shapiro, *supra* note 1, at 3.

23. SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM: GN 00502.159 ADDITIONAL CONSIDERATIONS WHEN FOSTER CARE AGENCY IS INVOLVED (2024) [hereinafter POMS, GN 00502.159], <https://secure.ssa.gov/poms.nsf/lnx/0200502159> [<https://perma.cc/ZQ4U-KZ62>].

24. *Glossary – F*, PATTAN, <https://www.pattan.net/glossary/F/#Foster%20Care> [<https://perma.cc/X342-MEJ6>] (last visited Oct. 20, 2024). Accordingly,

[a]n individual is considered to be in foster care when: [a] public or private nonprofit agency places the individual under a specific placement program; and the placement is in a home or facility which is licensed or otherwise approved by the state to provide care; and the placing agency retains responsibility for continuing supervision of the need for such placement and the care provided.

SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM: SI 00830.410 FOSTER CARE PAYMENTS (2024), <https://secure.ssa.gov/poms.nsf/lnx/0500830410> [<https://perma.cc/73BK-MFVF>].

have experienced neglect or abuse.²⁵ During fiscal year 2021, about 207,000 children entered foster care and on the final day of fiscal year 2021, there were 391,000 children in foster care.²⁶ Eighteen percent of children in foster care during fiscal year 2021 had been in foster care for more than three years.²⁷ The average time a child spends in foster care waiting for adoption is approximately two years and ten months.²⁸ Through foster care, foster children are given “safe and stable out-of-home care.”²⁹ The goal of foster care is permanency for the child.³⁰ Permanency solutions include reunification of a child with their parent, “adoption, or placement with a relative.”³¹ Foster care allows both the foster child and their family to receive the services and help they need.³² Resources such as Social Security benefits “help provide financial support to promote stability.”³³

The funding structure of foster care causes states to carry the financial burden of foster care.³⁴ States must pay for foster care costs that are not covered by federal funding.³⁵ During fiscal year 2020, “[s]tate child welfare agencies spent about \$31.4

25. EMILIE STOLTZFUS, CONG. RSCH. SERV., IF10590, CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING (2024) [hereinafter CRS 2024: CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING].

26. *Id.*

27. U.S. DEP'T OF HEALTH & HUM. SERVS., NO. 29, THE AFCARS REPORT 2 (2022).

28. *Id.* at 5.

29. *Foster Care*, CHILD'S BUREAU, <https://www.acf.hhs.gov/cb/focus-areas/foster-care> [<https://perma.cc/T93D-BLZ6>] (June 30, 2024).

30. Eliza Hirst, *How Social Security Benefits Can Help Youth in Care Achieve Permanency and Stability*, A.B.A. (June 1, 2015), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/june-2015/how-social-security-benefits-can-help-youth-in-care-achieve-perm/ [<https://perma.cc/2HEY-CMTJ>]; JENNIFER POKEMPNER, JUV. L. CTR., CHAPTER 1: RIGHTS RELATED TO FAMILY & PERMANENCY 1–3 (2020).

31. Hirst, *supra* note 30.

32. *What Are the Benefits of Foster Care for Children?*, CONNECTIONS HOMES, <https://connections-homes.org/what-are-the-benefits-of-foster-care-for-children/> [<https://perma.cc/S22J-F4CR>] (last visited Oct. 21, 2024).

33. Hirst, *supra* note 30.

34. See CRS 2024: CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING, *supra* note 25.

35. See KRISTINA ROSINSKY, MEGAN FISCHER & MAGGIE HAAS, CHILD WELFARE FINANCING SFY 2020: A SURVEY OF FEDERAL, STATE, AND LOCAL EXPENDITURES 1 (2023) [hereinafter ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2020].

billion on child welfare purposes.”³⁶ Nearly half of that was used to fund children’s out-of-home foster care placements.³⁷ Of the total \$31.4 billion state child welfare agencies spent on child welfare purposes, 58% was from state and local funding and 30% was from “federal child welfare programs included in the Social Security Act.”³⁸ However, the amount of state and local funding used, as well as federal funding, varies drastically by state.³⁹ For example, 82% of New Hampshire’s child welfare agency expenditures were sourced from federal funding while only 13% of Delaware’s child welfare agency expenditures were sourced from federal funding.⁴⁰ Part of this disparity can be attributed to the fact that some federal funding sources require states to match the funds and some states do not have sufficient state funding to do so.⁴¹ Most states’ child welfare agency expenditures are sourced more from state and local funding rather than federal funding.⁴²

Federal law requires state foster care agencies to make “foster care maintenance payments” for each child in foster care.⁴³ Foster care maintenance payments are designed to pay for a child’s essential needs of “food, clothing, [and] shelter.”⁴⁴ A Government Accountability Office report found that in fiscal year 2020, forty-two states reported using children’s Social Security benefits to cover their cost of care instead of using state funds.⁴⁵ While it is legal to use a child’s benefits to reimburse

36. CRS 2024: CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING, *supra* note 25.

37. ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2020, *supra* note 35, at 56.

38. CRS 2024: CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING, *supra* note 25; ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2020, *supra* note 35, at 13.

39. *See* ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2020, *supra* note 35, at 14.

40. *Id.*

41. *Id.* at 54. For example, Title IV-E has a “50% match requirement for administrative costs.” *Id.*

42. *See id.* at 13–14.

43. 42 U.S.C. § 672(a)(1).

44. § 675(4)(A); CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 4.

45. U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-441R, SOCIAL SECURITY ADMINISTRATION: NEW DATA EXCHANGES WITH SOME STATES PROVIDE LIMITED INFORMATION ON FOSTER CARE

the agency for their cost of care when there is not state legislation prohibiting it, it is an immoral practice.⁴⁶ This information about states' use of children's Social Security benefits became available through a data-sharing agreement between the SSA and participating states.⁴⁷ The SSA established a data-sharing arrangement with states to compile data on when children exit or enter foster care and when children are in need of replacement or removal of their representative payee.⁴⁸ As of August 2023, only twenty-two states were enrolled in the data exchange program.⁴⁹

1. Title IV-E federal funding

Under Title IV-E of the Social Security Act, states are "entitled to seek federal reimbursement for a part of the cost of providing foster care."⁵⁰ For states participating in Title IV-E, the federal government will pay 50% to 83% of the aid to an eligible child and 50% of the cost of administering the

BENEFICIARIES 12 (2021) [hereinafter GAO Report: SSA: NEW DATA EXCHANGES]; CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS *supra* note 20, at 25.

46. Thorington, *supra* note 10; Rosinsky & Williams, *supra* note 10. As of March 2024, Arizona, New Mexico, and Oregon were the only states to have outlawed the practice of agencies using foster children's benefits to reimburse themselves for the cost of care. Thorington, *supra* note 10; Colleen Heild, 'Unprecedented': New Mexico Foster Children Will Now Be Allowed to Keep Federal Benefits Owed to Them, ALBUQUERQUE J., https://www.abqjournal.com/news/unprecedented-new-mexico-foster-children-will-now-be-allowed-to-keep-federal-benefits-owed-to/article_a8eba052-2fef-11ee-8edb-736b67563b4a.html [<https://perma.cc/SV56-BUZF>] (Nov. 8, 2023); S. B. 556, 82nd Leg. Assemb., Reg. Sess. (Or. 2023) (prohibiting use of any benefits "received by the department on behalf of a child for the purpose of maintenance costs."). In January 2023, a bill was introduced in Tennessee that would have prohibited the Department of Children's Services from collecting and using any Social Security benefits received on behalf of a child in foster care. *State Reform Efforts*, UNIV. OF SAN DIEGO CHILD.'S ADVOC. INST. [hereinafter *State Reform Efforts*], <https://www.sandiego.edu/cai/advocacy/youth-benefits/state.php> [<https://perma.cc/YFM2-JJA3>] (last visited Oct. 17, 2024). In January 2024, a bill was introduced in Kansas that would have prohibited the Children and Families Secretary from using a foster child's benefits to pay for the cost of their care. *Id.* Both Tennessee's and Kansas's bills are dead. *Id.*

47. GAO Report: SSA: NEW DATA EXCHANGES, *supra* note 45, at 1–2.

48. SSA Letter, *supra* note 18, at 3.

49. *Id.*

50. EMILIE STOLTZFUS, CONG. RSCH. SERV., R42792, CHILD WELFARE: A DETAILED OVERVIEW OF PROGRAM ELIGIBILITY AND FUNDING FOR FOSTER CARE, ADOPTION ASSISTANCE AND KINSHIP GUARDIANSHIP ASSISTANCE UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT 4 (2012).

program.⁵¹ A child's eligibility for Title IV-E funds is mainly determined by the income of the home from which they were removed.⁵² Since these income levels have remained unchanged since 1996 and do not account for inflation, fewer children are eligible each year.⁵³ Currently, only about 40% of children in foster care are eligible for Title IV-E funds.⁵⁴ Despite this, the largest source of federal funding to child welfare agencies in fiscal year 2020 was Title IV-E funds at 57%.⁵⁵

For children who qualify for Title IV-E funds, the Social Security Act prohibits using any other federal funds, such as Social Security benefits, for foster care maintenance costs.⁵⁶ However, in some cases, receiving Title IV-E funds will render a child ineligible for SSI benefits.⁵⁷ Title IV-E funds count as a child's income, which may cause a child to become ineligible for SSI benefits if the Title IV-E funds result in the child being over the countable resource limit for SSI benefits, which is \$2,000.⁵⁸ Additionally, receiving Title IV-E funds will reduce the amount of SSI benefits a child is eligible to receive on a dollar-for-dollar basis.⁵⁹ For example, in 2024, the maximum monthly SSI payment a child can receive is \$943.⁶⁰ If a child receives \$500 a

51. CRS 2024: CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING, *supra* note 25, at 2.

52. CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 3.

53. *See id.* at 6; ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2020, *supra* note 35, at 21.

54. CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 3.

55. ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2020, *supra* note 35, at 16.

56. *See* 42 U.S.C. §§ 672(a)(1), (k)(1); 45 C.F.R. § 75.306(b)(2); SSA Letter, *supra* note 18, at 1.

57. *See* SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM: 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 (2023), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0425201011> [<https://perma.cc/DR7C-XEDJ>].

58. *See id.*; SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM: SI 00830.410 FOSTER CARE PAYMENTS (2024); CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 6; SSA Letter, *supra* note 18, at 2.

59. CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 21.

60. *How Much You Could Get from SSI*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssi/amount> [<https://perma.cc/9G5R-VMHB>] (last visited Oct. 21, 2024).

month in Title IV-E funds, and has no other income, then the maximum monthly SSI benefits the child is eligible to receive is \$443. OASDI benefits are not affected by Title IV-E funds because OASDI benefits are sourced from a different federal fund.⁶¹

2. Duties and responsibilities of a representative payee

A representative payee's duty is to use the child's Social Security benefits to pay for the child's current needs and conserve any unused Social Security benefits.⁶² A representative payee is a person or entity appointed to manage and receive benefits on behalf of an individual beneficiary.⁶³ Most children receiving Social Security benefits must have a representative payee.⁶⁴ A representative payee is necessary for "anyone who can't manage or direct the management of his or her benefits," such as a child under age eighteen.⁶⁵ Other representative payee duties include recording expenses and accounting for how Social Security benefits are used and saved for the child.⁶⁶ A representative payee can be an individual or an organization, such as a Title IV-E agency.⁶⁷ Foster care agencies can, and often do, serve as representative payees for children in foster care.⁶⁸

The SSA established guidance for appointing a representative payee in the form of the preferred representative payee list,

61. See BARRY F. HUSTON, CONG. RSCH. SERV., RL33028, SOCIAL SECURITY: THE TRUST FUNDS 3 (2024).

62. *Frequently Asked Questions (FAQs) for Representative Payees*, SOC. SEC. ADMIN. [hereinafter *FAQs for Representative Payees*], <https://www.ssa.gov/payee/faqrep.htm?tl=5%2C7> [<https://perma.cc/187U-A83R>] (last visited Oct. 21, 2024).

63. *Id.*

64. *Id.*

65. *Id.*; see SSA Letter, *supra* note 18, at 1.

66. *FAQs for Representative Payees*, *supra* note 62.

67. *Id.*; A Title IV-E agency is a state agency that "administer[s] or supervise[s] the administration of the . . . title IV-E plans." 45 CFR § 1355.20 (2024). Under Title IV-E of the Social Security Act, states are eligible to receive partial reimbursement from the federal government for the cost of administering foster care to children. EMILIE STOLTZFUS, CONG. RSCH. SERV., R42794, CHILD WELFARE: STATE PLAN REQUIREMENTS UNDER THE TITLE IV-E FOSTER CARE, ADOPTION ASSISTANCE, AND KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM 1 (2014) [hereinafter CRS: CHILD WELFARE: STATE PLAN REQUIREMENTS].

68. GAO Report: SSA: NEW DATA EXCHANGES, *supra* note 45, at 9.

which includes seven categories of potential individuals or organizations that could serve as representative payee for a child.⁶⁹ The first group on the list includes the “[n]atural or adoptive parent who has custody of the beneficiary” and the “legal guardian.”⁷⁰ It is not until the seventh category on the list that an agency or institution is explicitly listed.⁷¹ Note that when a child is placed in the custody of a foster care agency by a court, the agency has legal custody of the child and would fall into the first category on the preferred representative payee list.⁷² Importantly, the preferred representative payee list serves as *guidance* for appointing a representative payee.⁷³ There may be scenarios when a lower category on the preferred representative payee list is a more desirable selection than appointing the foster care agency acting as the child’s legal guardian as the representative payee.⁷⁴ For example, a parent who voluntarily places their child in foster care, but demonstrates a strong level of concern for their child, might better serve the child’s interest as

69. 20 C.F.R. §§ 404.2021(c), 416.621(c) (2024). The SSA’s POMS provides an additional eighth category as a catch-all. See SOC. SEC., ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM: GN 00502.105 PREFERRED REPRESENTATIVE PAYEE ORDER OF SELECTION CHARTS (2023) [hereinafter POMS, GN 00502.105], <https://secure.ssa.gov/poms.nsf/lnx/0200502105> [<https://perma.cc/V3TW-XC6Q>].

70. 20 C.F.R. § 404.2021(c)(1) (2024); POMS, GN 00502.105, *supra* note 69.

71. POMS, GN 00502.105, *supra* note 69. The preferred representative payee order is as follows: first, a legal guardian or a natural or adoptive parent that has custody of the child beneficiary; second, a natural or adoptive parent that does not have custody of the child beneficiary, but is helping to support the child and is concerned for their well-being; third, a natural or adoptive parent that does not have custody of the child beneficiary, and is not helping to support the child, but is concerned for their well-being; fourth, a relative or stepparent that has custody of the child beneficiary; fifth, a relative that does not have custody of the child beneficiary, but is helping to support the child and is concerned for their well-being; sixth, a relative or close friend that does not have custody of the child beneficiary, but is concerned for their well-being; seventh, the custodial institution or a social services agency; and eighth, any other person or organization who is concerned for the child beneficiary’s well-being and would serve as an appropriate representative payee. *Id.*

72. POMS, GN 00502.159, *supra* note 23 (“If the foster care agency places the child into a foster care or group living household, the foster care agency retains legal custody of the child, even though the foster care agency does not have actual physical custody of the child.”); see POMS, GN 00502.105, *supra* note 69.

73. POMS, GN 00502.159, *supra* note 23.

74. *Id.*

representative payee than a foster care agency would.⁷⁵ Additionally, SSA guidance states, “[i]n the absence of a parent, be sure to consider whether other concerned relatives are a better payee candidate.”⁷⁶ SSA guidance also emphasizes that foster care agencies are not automatically appointed as representative payees, and each case must be considered and decided on an individual basis.⁷⁷ Even though a foster care agency acting as the child’s legal guardian would be the first category on the preferred representative payee list, a family member in a lower category who truly knows the child might better serve the child as representative payee.⁷⁸

The main consideration in selecting a representative payee is ensuring that the representative payee “will best serve the interest of the child.”⁷⁹ The SSA stresses the importance of foster care agencies abiding by all guidelines and requirements relating to the appointment and role of a representative payee.⁸⁰ Foster care agencies should “conduct[] a complete investigation of the . . . representative payee [] applicant” and ensure the applicant appropriately conforms to the preferred representative payee list.⁸¹ In at least thirty-six states, foster care agencies located children in their care entitled to Social Security benefits and applied to become their representative payee.⁸² National SSA data found foster care agencies served as representative payees for 81% of children in foster care who were receiving Social Security benefits.⁸³ Child beneficiaries younger than fifteen years old, or younger than eighteen years old and not emancipated, do not receive notice that the SSA has selected

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*; see 42 U.S.C. § 405(j); 20 C.F.R. § 404.2035(a) (2024).

80. POMS, GN 00502.159, *supra* note 23.

81. *Id.*

82. Hager & Shapiro, *supra* note 1.

83. GAO Report: SSA: NEW DATA EXCHANGES, *supra* note 45, at 9.

someone to serve as their representative payee.⁸⁴ Additionally, the SSA is not required to provide any direct notice to these children about their right to appeal who the SSA appointed as their representative payee.⁸⁵

Representative payees are given discretion to use the child's Social Security benefits in the child's best interest.⁸⁶ This includes using the child's Social Security benefits for their "current needs" and conserving any remaining money for the child.⁸⁷ Current needs can include "food, clothing, housing, medical care and personal comfort items."⁸⁸ Title IV-E agencies serving as representative payees must also use the child's Social Security benefits for the child's current needs and conserve any remaining money for the child.⁸⁹ Using the child's benefits in their best interest looks different for each individual child.⁹⁰ For example, in addition to using a child's benefits for their current needs, in a case of reunification, it would be appropriate to determine that it is in the child's best interest to use some of their benefits to preserve their parents' home in anticipation of reunification and the child returning home.⁹¹ Additionally, the SSA issued guidance that foster care agencies cannot "employ a blanket policy for spending benefits without individually assessing the beneficiary's needs."⁹² The SSA further provided

84. CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 18. In this case, the Social Security Act only requires notice to be given to the child's legal guardian or representative. The SSA has released guidance stating that if the legal guardian or representative is the same as the proposed payee, then no notice is required to be sent to the legal guardian or representative in that case. *Id.*

85. *Id.* at 17–18.

86. SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM: GN 00602.001 USE OF BENEFITS (2024) [hereinafter POMS, GN 00602.001], <https://secure.ssa.gov/poms.nsf/lnx/0200602001>.

87. *Id.*

88. *Id.*

89. SSA Letter, *supra* note 18, at 2.

90. POMS, GN 00502.159, *supra* note 23 (emphasizing the importance of assessing each child's unique individual needs).

91. *Id.*

92. *Id.* Additionally, the SSA guidance requires the foster care agency, when serving as representative payee, to fulfill all representative payee duties and responsibilities, even when the child is placed outside of agency care with a foster parent. *Id.*

that representative payees, including agencies serving as representative payees, need to meet with the child beneficiary regularly to determine what the child's current and future needs are.⁹³

There are two limited measures to account for how representative payees, including Title IV-E agencies, use the child's Social Security benefits and whether the benefits are being used in the best interest of the child.⁹⁴ The first measure is an annual accounting process where all representative payees, including Title IV-E agencies, must detail and submit to the SSA the amount and specifics of how the child's Social Security benefits were used or conserved.⁹⁵ The second measure is a site review which only occurs every three to four years.⁹⁶ A site review may result in a determination that the representative payee was misusing funds, and that the child needs a replacement representative payee.⁹⁷ If the representative payee is determined unsuitable by the SSA, they are removed from their position, and the SSA assigns a new representative payee for the beneficiary.⁹⁸

3. *Lack of notice problem when agencies are the representative payee*

One of the main problems with the current practice of agencies acting as the representative payee for children's Social Security benefits is that many children leave foster care without

93. *Guide for Organizational Representative Payees*, SOC. SEC. ADMIN., <https://www.ssa.gov/payee/NewGuide/toc.htm> [<https://perma.cc/L9UG-CU6D>] (May 9, 2024); SSA Letter, *supra* note 18, at 2.

94. SSA Letter, *supra* note 18, at 2.

95. *Id.* Representative payees must submit the Representative Payee Report yearly to the SSA detailing how they spent and conserved the beneficiary's money throughout the year. *FAQs for Representative Payees*, *supra* note 62.

96. SSA Letter, *supra* note 18, at 2. State Protection and Advocacy organizations ("P&As") conduct site reviews on behalf of the SSA and the SSA investigates any allegations of misuse of benefits. SOC. SEC. ADMIN., ANNUAL REPORT ON THE RESULTS OF PERIODIC REPRESENTATIVE PAYEE SITE REVIEWS AND OTHER REVIEWS 3 (2022) [hereinafter *SSA, ANNUAL REPORT ON REPRESENTATIVE PAYEE SITE REVIEWS*]. P&As can conduct site reviews through phone calls and video conferences. *Id.*

97. SSA Letter, *supra* note 18, at 2–3.

98. SSA, ANNUAL REPORT ON REPRESENTATIVE PAYEE SITE REVIEWS, *supra* note 96, at 3.

knowing they were ever eligible for or were recipients of monthly Social Security benefits.⁹⁹ From Pennsylvania to Alaska, children leave foster care without the money to which they are entitled.¹⁰⁰

Similar to Tristen's story, Malerie Shockley, now twenty-four years old, was entitled to between \$720 and \$790 per month in SSI benefits during her teenage years.¹⁰¹ However, Malerie never received any payments because the Alaska Office of Children's Services received her monthly benefits on her behalf.¹⁰² Malerie qualified for SSI benefits because of the abuse she experienced in her many foster homes, which resulted in panic attacks and PTSD.¹⁰³ Across the country, in Philadelphia, Pennsylvania, Vaughn Jackson became legal guardian to two teenage children, Zaveonte and Xavier Winn, and later was denied Supplemental Nutrition Assistance Program ("SNAP") benefits on the grounds that his income level was too high to qualify.¹⁰⁴ The reason for this was because the two Winn children were receiving Social Security benefits unbeknownst to either the children or Vaughn.¹⁰⁵ The foster care agency served as the representative payee of the children's OASDI benefits and had been receiving their OASDI benefits for at least three years, including several months after Vaughn became the legal guardian to the two children.¹⁰⁶ According to the SSA's preferred

99. See Steve Volk & Julie Christie, *Bill Would Bar Philly from Keeping Social Security Payments Meant for Foster Children*, THE PHILA. INQUIRER (Mar. 15, 2022, 5:00 AM), https://www.inquirer.com/news/foster-parenting-philadelphia-social-security-payments-20220315.html?fbclid=IwAR3ywQICg-qyNd4i4mKSO_N3j0BAB_jrVdaNa-E5NYH9w2YOIIP87TPsEEc [<https://perma.cc/WJK7-4P4B>]; Hager & Shapiro, *supra* note 1. If agencies followed the SSA's guidance and met with the child beneficiary regularly to determine what the child's current and future needs are, then this would substantially decrease the lack of notice issue. Children would be aware that the agency is receiving benefits on their behalf since the agency would regularly meet with them to ascertain their needs. See SSA Letter, *supra* note 18, at 2.

100. See Volk & Christie, *supra* note 99; Hager & Shapiro, *supra* note 1.

101. Hager & Shapiro, *supra* note 1.

102. *Id.*

103. *Id.*

104. Volk & Christie, *supra* note 99.

105. *Id.*

106. *Id.*

representative payee list, Vaughn was a preferred representative payee of the first category when he became legal guardian to the children, yet the agency, now seventh on the preferred representative payee list, was still receiving the children's Social Security benefits.¹⁰⁷

Children who age out of foster care are a vulnerable population because they lack the support and guidance that their peers receive, and for this reason, it is especially important to conserve the benefits of foster children.¹⁰⁸ While 90% of the general population graduates high school, only 73% of foster youth graduate high school.¹⁰⁹ Additionally, only about 3% of youth who have aged out of foster care earn a four-year college degree.¹¹⁰ Take Amber, who entered foster care at eleven years old and aged out of foster care at eighteen years old, as an example.¹¹¹ During her time in foster care, she was unaware that she was eligible for SSI benefits or that the state was receiving benefits on her behalf.¹¹² It was only when Amber aged out of foster care that she learned that the state did not conserve any of the benefits for her.¹¹³ After aging out of foster care, Amber experienced homelessness, stopped taking her medications, and stopped seeing her doctors.¹¹⁴ If Amber had been aware that she was entitled to SSI benefits and the benefits had been conserved for her, Amber might not have struggled as much or experienced homelessness, and she might have had an increased opportunity to pursue further education when she aged out of foster care.¹¹⁵

107. *Id.*; POMS, GN 00502.105, *supra* note 69; see 20 C.F.R. §§ 404.2021, 416.621 (2024).

108. See *CHILD'S ADVOC. INST. & FIRST STAR*, *supra* note 4, at iii.

109. Lara, *supra* note 5.

110. *CHILD'S ADVOC. INST. & FIRST STAR*, *supra* note 4, at iii.

111. *Id.* at 13.

112. *Id.*

113. *Id.*

114. *Id.*

115. See *id.*

B. *Agency Reimbursement Through Children's Social Security Benefits*

The Supreme Court has narrowly held that agencies reimbursing themselves with children's Social Security benefits constitutes a legal practice that agencies can continue to engage in.¹¹⁶ In the landmark decision, *Washington State Department of Social & Health Services v. Guardianship Estate of Keffeler*, the Supreme Court held that the anti-attachment provision of the Social Security Act was not violated by agencies reimbursing themselves with children's Social Security benefits for the cost of their care.¹¹⁷ The anti-attachment provision protects Social Security benefits against "execution, levy, attachment, garnishment, or other legal process."¹¹⁸ While the decision in *Keffeler* was limited only to this provision, it still upheld the practice of an agency acting as the child's representative payee and using the child's Social Security benefits as reimbursement for the cost of their care.¹¹⁹ The decision, however, specifically declined to determine the merits of any other constitutional arguments against this practice, leaving these arguments open for a future decision.¹²⁰ Note that "the *Keffeler* decision did not excuse foster care agencies serving as representative payees from their affirmative fiduciary duties to ensure that such use best serves the unique interests of each child beneficiary."¹²¹

Moreover, aside from the SSA's guidelines about the selection and duties of a representative payee and the limited holding in *Keffeler*, there are very few regulations imposed on the application and management of the Social Security benefits of

116. *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Est. of Keffeler*, 537 U.S. 371, 375 (2003).

117. *Id.*; see 42 U.S.C. § 407(a).

118. § 407(a).

119. *Keffeler*, 537 U.S. at 375; Daniel L. Hatcher, *Foster Children Paying for Foster Care*, 27 CARDOZO L. REV. 1797, 1802-03 (2006).

120. *Keffeler*, 537 U.S. at 389 n.12; Hatcher, *supra* note 119, at 1803.

121. CHILD'S ADVOC. INST. & FIRST STAR, *supra* note 4, at iv.

children in foster care.¹²² Without state legislation in place, there is little accountability of representative payees managing the Social Security benefits of children in foster care.¹²³ As of July 2024, only twenty-four states and the District of Columbia were considering or had passed state legislation regulating or protecting some aspect of the Social Security benefits of children in foster care.¹²⁴ Of these twenty-four states, fifteen recently introduced legislation on this issue between December 2023 and June 2024.¹²⁵

Often there is no notification to the child, their family, or the child's attorney of an application or appointment of a representative payee for the child's Social Security benefits.¹²⁶ While it is legal for foster care agencies to be appointed as the child's representative payee, often, agencies do not consider other options better suited to act as the child's representative payee.¹²⁷ Absent state legislation, foster care agencies are not required to screen children for Social Security benefits when they enter

122. See Hatcher, *supra* note 119, at 1800.

123. See *id.*; *supra* Sections I.A.2–3.

124. *State Reform Efforts*, *supra* note 46. The twenty-four states that have considered or passed legislation about this issue are Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Tennessee, Texas, Virginia, and Washington. *Id.* Alaska and Florida have also made efforts to protect aspects of the Social Security benefits of foster children through non-legislative means. *Id.* Alaska's reform is through a class-action lawsuit brought by foster children, pending state Supreme Court appeal. Martín Macías, Jr., *Judge Curbs Alaska's Practice of Claiming Foster Youths' Federal Benefits*, THE IMPRINT (Dec. 28, 2021, 6:15 AM), <https://imprintnews.org/top-stories/judge-curbs-alaskas-practice-of-claiming-foster-youths-federal-benefits/61491> [<https://perma.cc/H68Q-9ZBT>]. Florida's reform attempt is through a "Master Trust Issues Checklist" that details "various issues that come up in master trust cases" for foster children receiving Social Security benefits. See *Master Trust Issues Checklist*, FLA. DEP'T CHILD. & FAM. (Feb. 27, 2009), <https://www.myflfamilies.com/sites/default/files/2023-05/checklist%20for%20issues%20%2027%2009.pdf>.

125. *State Reform Efforts*, *supra* note 46. The fifteen states that introduced legislation about this issue between December 2023 and June 2024 are California, Colorado, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, and Virginia. *Id.*

126. See Hager & Shapiro, *supra* note 1. In some states, such as Pennsylvania, a foster child is entitled to representation by an attorney, and one is appointed on their behalf. *Who Is Involved in Your Foster Child's Case?*, PHILA. DEP'T OF HUM. SERVS., <https://www.phila.gov/departments/department-of-human-services/foster-care/who-is-involved-in-your-foster-childs-case/> [<https://perma.cc/J227-TKL3>] (Mar. 12, 2024).

127. See Hager & Shapiro, *supra* note 1.

foster care or notify the child, family, or the child's attorney about a Social Security application or appointment of a representative payee.¹²⁸

II. LEGISLATION IN OTHER STATES: A MIXED BAG

As of July 2024, only eleven states and the District of Columbia had successfully passed legislation protecting one or multiple aspects of foster children's Social Security benefits.¹²⁹ Major cities such as Los Angeles, New York City, and Philadelphia have passed local legislation attempting to protect foster children's Social Security benefits.¹³⁰ As of July 2023, New Mexico was the only state to have stopped the practice of using foster children's Social Security benefits to pay for the cost of care by means other than state legislation.¹³¹ The acting head of the New Mexico Children, Youth and Families Department sent a letter to staff that stopped the practice of using children's benefits to pay for the cost of care, stating that children's benefits will now be kept in trusts.¹³² The legislation of the eleven states and the District of Columbia protecting foster children's Social Security benefits is effective "to varying degrees."¹³³ However, some states, such as Maryland and Arizona, have more effective legislation than states such as Nebraska and Connecticut.¹³⁴ The

128. *See id.*

129. *State Reform Efforts*, *supra* note 46. Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Minnesota, Nebraska, New Jersey, and Oregon have passed legislation on this matter as of July 2024. *Id.*

130. *Id.*

131. Heild, *supra* note 46.

132. *Id.* The letter stated that policies and procedures for implementation would be distributed by September 2023; however, no such information was made available. *State Reform Efforts*, *supra* note 46. The directive on the matter was set to expire in March 2024, and there has been no information on whether the directive was extended. *Id.* Additionally, a comprehensive bill was introduced in New Mexico in January 2024, but the measure is dead. *Id.* Therefore, it is unclear the state of New Mexico's regulations to stop the practice of using children's benefits to pay for the cost of their care. *Id.*

133. *State Reform Efforts*, *supra* note 46.

134. Compare MD. CODE ANN., FAM. LAW § 5-527.1 (LexisNexis 2024), and H.R. 2559, 56th Leg., 1st Reg. Sess. (Ariz. 2023), with Legis. B. 1173, 107th Leg., 2d Sess. (Neb. 2022), and S. Sub. B. No. 2, 2022 Gen. Assemb., Reg. Sess. (Conn. 2022).

legislation of Maryland and Arizona are more effective than the legislation of other states because Maryland and Arizona include provisions on screening and application, representative payees, notice, conservation of benefits, and financial literacy training.¹³⁵

Nebraska's legislation, enacted in April 2022, provides that the Nebraska Department of Health and Human Services, when serving as representative payee for the child, must provide notice to the child and the child's attorney within thirty days of the Department receiving the child's first Social Security benefit.¹³⁶ The Nebraska legislation also requires the Department to provide notice to the juvenile court at every review hearing of the conservation and total amount of the child's Social Security benefits.¹³⁷ While these are important notice provisions, the legislation does not provide any further protections to foster children's Social Security benefits.¹³⁸ Additionally, Nebraska's legislation provides that when the child has assets over \$1,000, the funds can be used by the state to reimburse itself for the cost of the child's care.¹³⁹ There are no provisions in the Nebraska legislation requiring screening and application on behalf of eligible foster children, conservation of Social Security benefits by percentage, or financial literacy training for the child or representative payee.¹⁴⁰ The Nebraska legislature should amend its legislation according to the model legislation of both Maryland and Arizona to provide more protections to the Social Security benefits of foster children, such as provisions about screening and application, conservation, and financial literacy training.¹⁴¹

135. See FAM. LAW § 5-527.1; Ariz. H.R. 2559.

136. Neb. Legis. B. 1173.

137. *Id.*

138. See *id.*

139. *Id.*

140. See *State Reform Efforts*, *supra* note 46. As of March 2024, only Maryland and Illinois have enacted legislation that includes provisions requiring financial literacy training for youth in foster care. FAM. LAW § 5-527.1(c)(6); S.B. 3470, 102nd Gen. Assemb. § 5.46(f) (Ill. 2022). In June 2023, a bill was introduced in Michigan that would include a financial literacy training requirement for youth in foster care. *State Reform Efforts*, *supra* note 46.

141. See *infra* Part III.

Connecticut enacted legislation in 2022 that provides some protections to foster children's Social Security benefits through a Substitute Senate bill.¹⁴² The provision in the bill provides that disability benefits of children in foster care cannot be used to offset the cost of their care.¹⁴³ The bill only attaches this protection to disability benefits and not to any other type of Social Security benefits, such as OASDI benefits.¹⁴⁴ Similarly to Nebraska, Connecticut's bill does not include any other provisions about screening and application on behalf of eligible foster children, conservation of Social Security benefits, providing notice to the child and necessary parties,¹⁴⁵ or requiring financial literacy training for the child or representative payee.¹⁴⁶ The Connecticut legislature should create separate independent legislation that provides more protections to the Social Security benefits of foster children.¹⁴⁷ States with weaker legislative protections, like Nebraska and Connecticut, should utilize the model legislation of Maryland and Arizona together to amend their legislation to provide more protections to foster children's Social Security benefits.¹⁴⁸

III. PROVISIONS NECESSARY TO PROTECT CHILDREN'S BENEFITS AND THE MODEL LEGISLATION OF MARYLAND AND ARIZONA

Other states should use Maryland's and Arizona's respective legislation as a model for their own legislation because they provide the most comprehensive legislative protection of foster children's Social Security benefits. The legislation of Maryland and Arizona both constitute substantial advancements in this

142. S. Sub. B. No. 2, § 16(c), 2022 Gen. Assemb., Reg. Sess. (Conn. 2022).

143. *Id.*

144. *See id.*

145. Legis. B. 1173 sec. 8, 107th Leg., 2nd Sess. (Neb. 2022). While Nebraska does have a notice provision, the legislation remains weak in all other aspects of the law. *See id.* sec. 8, § 43-907(2)(a).

146. *See* Conn. S. Sub. B. No. 2, § 16(c).

147. *See infra* Part III.

148. *See infra* Part III.

area.¹⁴⁹ In 2018, Maryland was the first state to enact legislation to begin protecting foster children's benefits by outlining use and conservation percentage requirements.¹⁵⁰ In 2023, Arizona was the first state to enact legislation that explicitly prohibits child welfare agencies from using any part of foster children's federal benefits to reimburse themselves for the cost of foster care.¹⁵¹ However, while these states provide the best model legislation currently available, there are still areas that these laws fail to address.¹⁵² Despite this, using the legislation of Maryland and Arizona together serves as a comprehensive model for other states to adopt because the two states' legislation include provisions on screening and application, representative payees, notice, conservation of benefits, and financial literacy training—provisions that weaker state legislation is lacking.¹⁵³

This Part will discuss, by provision, the ideal state legislation that protects the Social Security benefits of children in foster care by including provisions on screening and application, representative payees, notice, conservation of benefits, financial literacy training, and refunds.¹⁵⁴

A provision on screening and application on behalf of a child entering foster care is necessary because without screening procedures in place, eligible children would go without knowing they were ever eligible for benefits.¹⁵⁵ The money that foster children receive from Social Security benefits is important

149. See *State Reform Efforts*, *supra* note 46 (identifying Maryland as the first state to pass legislation in this area and describing Arizona's legislation as among the most comprehensive in the nation).

150. *Id.*; MD. CODE ANN., FAM. LAW § 5-527.1(c)(2) (LexisNexis 2024).

151. *State Reform Efforts*, *supra* note 46; Thorington, *supra* note 10.

152. See FAM. LAW § 5-527.1; H.R. 2559, 56th Leg., 1st Reg. Sess. (Ariz. 2023). For example, neither legislation contains a provision for refunds of Social Security benefits when they have been misused by the agency.

153. See FAM. LAW § 5-527.1; Ariz. H.R. 2559; see also CHILD.'S ADVOC. INST., FOSTER CARE OR FOSTER CON? PRESERVING THE FEDERAL BENEFITS OF AMERICA'S MOST VULNERABLE CHILDREN 42–44 (2024) (discussing the shortcomings of other states' legislation).

154. See generally *State Reform Efforts*, *supra* note 46 (describing the elements of strong legislation to protect foster youth's federal benefits).

155. See CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at 13–14.

to their stability.¹⁵⁶ While Maryland's legislation does not have a screening provision, Arizona's legislation requires screening of children after they enter into foster care and requires an application on the child's behalf if they are deemed eligible for benefits.¹⁵⁷

Next, a provision requiring agencies to work with the child's attorney to identify a representative payee in the child's best interest, according to the preferred representative payee list, would make abiding by the preferred representative payee list a requirement.¹⁵⁸ The legislation of Maryland and Arizona both include this provision, and Arizona's legislation bolsters it even further to include that the child must also be consulted, in addition to the child's attorney, in the identification of a representative payee.¹⁵⁹

Notice to the necessary parties is vital, and a notice provision should require notice to be provided to the child's parent or legal guardian, the attorney of the parent or legal guardian, the child's attorney, the child, the child's caseworker, and the placement the child is currently in about an application for Social Security benefits, application for or appointment of a representative payee, receipt of Social Security benefits, and any other decision or communication from the SSA.¹⁶⁰ Maryland's legislation requires the child's attorney to be notified in all situations.¹⁶¹ Arizona's legislation expands this further to include providing notice to the child, their attorney, the child's parent or guardian, and the child's current placement.¹⁶²

While states should outright prohibit using children's benefits for the cost of their care, if they do not, a conservation provision should be incorporated into a state's comprehensive

156. *See id.* at iii (reviewing the instability that foster children face once they live independently).

157. *Compare* FAM. LAW § 5-527.1, *with* Ariz. H.R. 2559 § 8-468(A).

158. 20 C.F.R. § 404.2021 (2024).

159. *See* Ariz. H.R. 2559 § 8-468(B); FAM. LAW § 5-527.1(b).

160. *See State Reform Efforts*, *supra* note 46.

161. *See* FAM. LAW § 5-527.1(d)(1).

162. Ariz. H.R. 2559 § 8-468(C).

legislation.¹⁶³ Specifically, the conservation provision should require using and conserving an increasing percentage of a child's benefits as they age while ensuring the child's eligibility for benefits is not impacted and that they receive any remaining money when they exit foster care.¹⁶⁴ For a youth exiting foster care, having savings is essential to their success and stability as a young adult.¹⁶⁵ The legislation of Maryland and Arizona both have different requirements in their conservation provisions.¹⁶⁶ Maryland's legislation requires a percentage of Social Security benefits to be used or conserved for the child, not for the cost of the child's care, and the Department of Human Resources must also monitor the resource limits of benefits and establish accounts for foster children.¹⁶⁷ In addition to monitoring the resource limits of benefits and establishing appropriate accounts for foster children, Arizona's legislation also requires the Department of Child Safety to return any remaining money to the child when they leave foster care.¹⁶⁸ Furthermore, Arizona's legislation outright prohibits the Department's use of foster children's benefits to reimburse itself for the cost of care.¹⁶⁹

Also, a provision on financial literacy training for foster children, agencies, and representative payees is important to ensure that the benefits are handled appropriately and that foster children can become financially literate.¹⁷⁰ While Arizona's legislation does not have a financial literacy training provision,

163. Michael Corkery, *Foster Children Fight to Stop States from Taking Federal Benefits*, N.Y. TIMES (May 30, 2024), <https://www.nytimes.com/2024/05/26/business/foster-children-federal-benefits.html> [<https://perma.cc/EM3D-SX78>]. A conservation provision requires all or a portion of a child's benefits to be saved for them, rather than used. *Id.* A conservation provision can require money to be saved for the child for when they age out of care. *Id.* A conservation provision also can require that money be set aside to pay for additional expenses such as extracurricular activities. *Id.*

164. *See State Reform Efforts*, *supra* note 46.

165. *See CHILD'S ADVOC. INST. & FIRST STAR*, *supra* note 4, at v.

166. *Compare* FAM. LAW § 5-527.1(c), *with* Ariz. H.R. 2559.

167. FAM. LAW § 5-527.1(c).

168. Ariz. H.R. 2559 § 8-468(E).

169. *Id.* § 8-468(B)(1).

170. *State Reform Efforts*, *supra* note 46.

Maryland's legislation does require financial literacy training for a child in foster care at a certain age.¹⁷¹

The last provision necessary is a refund provision that requires that children receive a refund when their Social Security benefits have been misused by the agency.¹⁷² No state legislation, including the legislation of Maryland and Arizona, has a refund provision.¹⁷³ However, with the combination of provisions from the legislation of Maryland and Arizona, the two together serve as a comprehensive model for other states to use when creating their legislation.

A. The Importance of Screening and Application Provisions

Lack of screening procedures when children enter foster care is a current issue children face who would otherwise be eligible to receive Social Security benefits.¹⁷⁴ This issue can be remedied by state legislation requiring screening procedures.¹⁷⁵ During fiscal year 2019, approximately 5% of the children who had been in foster care for at least six months received Social Security benefits.¹⁷⁶ This percentage translates to about 27,000 foster children in the United States that received Social Security benefits in fiscal year 2019.¹⁷⁷ However, it is estimated that double that amount of foster children are eligible for Social Security benefits.¹⁷⁸ Prior to 2011, California estimated that approximately 15% to 20% of children aging out of foster care were eligible for SSI benefits.¹⁷⁹ Thus, it is of the utmost importance that

171. See FAM. LAW § 5-527.1(c)(6); Ariz. H.R. 2559. Maryland's legislation requires that when the Department serves as a foster child's representative payee, the Department must "provide the child with financial literacy training when the child has attained the age of fourteen years." FAM. LAW § 5-527.1(c)(6).

172. *State Reform Efforts*, *supra* note 46.

173. *See id.*

174. CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at 13.

175. *Id.* at 14.

176. CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 8.

177. *Id.*

178. Hager & Shapiro, *supra* note 1.

179. CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at 5.

agencies be required by state legislation to screen children for benefits eligibility when they enter into foster care.¹⁸⁰

While there may be concerns about the cost and time required to screen every child for benefits when they enter foster care, it is important to note that agencies are already required to schedule initial health screenings and could conduct a screening for benefits at the same time.¹⁸¹ The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires agencies to develop a plan and schedule for initial health screenings, however it does not provide a timeline for doing so.¹⁸² The American Academy of Pediatrics recommends a “health screening visit within 72 hours of placement” and a “comprehensive health admission visit within 30 days of placement.”¹⁸³ Some states or cities, such as Philadelphia, require foster children to have a physical examination within sixty days of their entry into foster care.¹⁸⁴ Since health screenings and physical examinations are already mandated for children when they enter foster care, screening for Social Security benefits can occur at the same time without the agency expending any extra money or time to determine if children entering foster care are eligible for benefits.¹⁸⁵ Without screening procedures in place, many eligible children who could utilize benefits for stability and success are overlooked and undetected.¹⁸⁶

180. *Id.* at 14.

181. See Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 205, 122 Stat. 3949, 3961.

182. See *id.*

183. *Health Care Standards*, AM. ACAD. OF PEDIATRICS, <https://www.aap.org/en/patient-care/foster-care/health-care-standards/> [<https://perma.cc/L994-XGBF>] (Aug. 24, 2021).

184. *Healthcare: The Guide to Insurance, Doctors Appointments, and Other Medical Care*, FOSTERING PHILLY, <https://www.fosteringphilly.com/healthcare/> [<https://perma.cc/9W7S-SC8L>] (last visited Oct. 15, 2024).

185. See Fostering Connections to Success and Increasing Adoptions Act of 2008 § 205.

186. See Hager & Shapiro, *supra* note 1; CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at 5.

1. *Model screening and application provisions in Arizona's legislation*

While Maryland's legislation does not have a screening provision, Arizona's legislation provides for screening requirements.¹⁸⁷ The legislation requires the Department to screen children to determine if they are already receiving benefits or if they are eligible for benefits within sixty days of the child's entry into the Department's care.¹⁸⁸ The legislation further provides that if the Department finds the child is or may be eligible for benefits, the Department is required to submit an application for benefits on behalf of the child.¹⁸⁹ Additionally, the legislation requires the Department to conduct an annual review of children in their care to "determine whether a child may have become eligible for benefits after the Department's initial assessment."¹⁹⁰ Modeled from Arizona's legislation, state legislation should include a provision requiring foster care agencies to screen a child for benefits eligibility within sixty to ninety days of the child entering into foster care.¹⁹¹ State legislation must also include the requirement for agencies to screen children annually to determine whether they have become eligible since the last screening.¹⁹² Further provisions should include that if it is determined a child is eligible for benefits at the initial screening or the annual review, the agency must apply on their behalf.¹⁹³

B. *Representative Payee Model Provisions in the Legislation of Maryland and Arizona*

State legislation that includes provisions governing the duties of representative payees will ensure that children and their

187. Compare MD. CODE ANN., FAM. LAW § 5-527.1 (LexisNexis 2024), with H.R. 2559, 56th Leg., 1st Reg. Sess. § 8-468(A) (Ariz. 2023).

188. Ariz. H.R. 2559 § 8-468(A).

189. *Id.*

190. *Id.* § 8-468(D).

191. *See id.* § 8-468(A).

192. *See id.* § 8-468(D).

193. *See id.* § 8-468(A).

benefits are protected from misuse by representative payees.¹⁹⁴ In choosing a representative payee, the SSA is to use the preferred representative payee list as a guide, but adding provisions about this to state legislation can bolster this practice.¹⁹⁵ For example, including a provision in state legislation that the agency must work with the child's attorney when identifying a representative payee holds the agency accountable for abiding by the preferred representative payee list.¹⁹⁶ State legislation should also include that the agency must assess the selected representative payee periodically and determine whether there is anyone else who is better suited to serve as the child's representative payee.¹⁹⁷ State legislation should also require agencies serving as representative payees to furnish the annual Representative Payee Report to the child and their attorney.¹⁹⁸ Additionally, state legislation should require agencies serving as representative payees to regularly meet with the children beneficiaries to determine their needs.¹⁹⁹ This regular meeting would ensure that the agencies individually assess each child's needs rather than employing a blanket benefits spending policy.²⁰⁰

The legislation of Maryland and Arizona both provide several different protections for children concerning representative payees.²⁰¹ Maryland's legislation requires that when the Department applies for benefits for a child in their care, the Department must work with the child's attorney to choose a

194. See MD. CODE ANN., FAM. LAW § 5-527.1 (LexisNexis 2024); Ariz. H.R. 2559.

195. See POMS, GN 00502.105, *supra* note 69; 20 C.F.R. §§ 404.2021, 416.621 (2024).

196. See FAM. LAW § 5-527.1(b).

197. See SSA Letter, *supra* note 18, at 3–4.

198. See FAM. LAW § 5-527.1(c)(5). Representative payees must submit the Representative Payee Report yearly to the SSA detailing how they spent and conserved the beneficiary's money throughout the year. *FAQs for Representative Payees*, *supra* note 62.

199. *Guide for Organizational Representative Payees*, *supra* note 93 (requiring all payees to meet regularly with beneficiaries to assess needs and allocate funds accordingly).

200. See generally POMS, GN 00502.159, *supra* note 23 (highlighting that agencies should “[i]nvestigate the individual situation” rather than operating under blanket policies and practices).

201. See FAM. LAW § 5-527.1(b); H.R. 2559, 56th Leg., 1st Reg. Sess. § 8-468(B) (Ariz. 2023).

representative payee based on the preferred representative payee list.²⁰² In the case of the Department serving as representative payee, Maryland's legislation requires the Department to furnish an annual accounting report to the child and their attorney detailing how the benefits were used and conserved.²⁰³

Arizona's legislation expands on Maryland's representative payee provisions.²⁰⁴ Arizona's legislation adds that the child must also be consulted, in addition to the child's attorney, in the identification of a representative payee.²⁰⁵ In the case of the Department applying as the child's representative payee, Arizona's legislation specifically states that the Department should "apply to become the representative payee only if no other suitable candidate is available."²⁰⁶ Arizona's legislation also has a provision that requires the Department to periodically review if there is anyone else better suited than the Department to serve in the child's best interest as their representative payee.²⁰⁷ Arizona's legislation requires that the annual accounting report also be provided to the child's parents or guardians, in addition to the child and the child's attorney.²⁰⁸

Maryland's and Arizona's legislation do not include a requirement for agencies serving as representative payees to regularly meet with the children beneficiaries to determine their needs on an individual basis.²⁰⁹ Adding this language to the legislation would make the SSA's guidance about assessing each

202. FAM. LAW § 5-527.1(b); POMS, GN 00502.105, *supra* note 69; 20 C.F.R. §§ 404.2021(c), 416.621(c) (2024).

203. FAM. LAW § 5-527.1(c)(5). This annual accounting report can be the Representative Payee Report that representative payees are required to submit to the SSA yearly. *See FAQs for Representative Payees*, *supra* note 62. The only difference is that Maryland requires the report to be shared with the child and their attorney, not just the SSA. FAM. LAW § 5-527.1(c)(5).

204. *See* Ariz. H.R. 2559.

205. *Id.* § 8-468(B).

206. *Id.*

207. *Id.* § 8-468(B)(5).

208. *Id.* § 8-468(B)(4).

209. *See* MD. CODE ANN., FAM. LAW § 5-527.1 (LexisNexis 2024); Ariz. H.R. 2559; POMS, GN 00502.159, *supra* note 23.

child's needs individually and meeting with them regularly a requirement for agencies to follow.²¹⁰ This would help ensure that agencies adhere to their duties as representative payees and that children's benefits are used in their best interest.²¹¹ Combining the representative payee provisions of the legislation of Maryland and Arizona, and strengthening it further by adding a mandatory regular meeting provision, serves as a comprehensive model for other states to use in their representative payee provisions to ensure that foster children are afforded the most protection possible in appointing a representative payee.²¹²

C. Notice: Who Should Require It?

Since the current federal legislation regarding notice is very limited, state legislation must provide broader notice provisions.²¹³ Federal law requires the SSA to notify the beneficiary, prior to their representative payee receiving any benefits, of the "initial determination" that the beneficiary is eligible to receive Social Security benefits.²¹⁴ However, notice is not provided to children who are younger than fifteen years old or children who are younger than eighteen years old and are unemancipated.²¹⁵ For children who meet that criteria, federal law requires that notice only be provided to the child's legal guardian or representative.²¹⁶ Often the legal guardian of a child in foster care is the agency itself that is applying as representative payee.²¹⁷ Accordingly, no one else receives notice of the child's eligibility for and receipt of benefits.²¹⁸ Provisions in state legislation should

210. See POMS, GN 00502.159, *supra* note 23; *Guide for Organizational Representative Payees*, *supra* note 93.

211. See POMS, GN 00502.159, *supra* note 23.

212. See FAM. LAW § 5-527.1; Ariz. H.R. 2559.

213. See *State Reform Efforts*, *supra* note 46; 42 U.S.C. § 405(j)(2)(E)(ii).

214. 42 U.S.C. § 405(j)(2)(E)(ii).

215. *Id.* § 405(j)(2)(E)(ii)(I).

216. *Id.* § 405(j)(2)(E)(ii).

217. CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 13–14.

218. 42 U.S.C. § 405(j)(2)(E)(ii).

include that notice must be provided in the following scenarios: (1) when the agency screens the child for benefits eligibility; (2) the results of the benefits screening; (3) when the agency applies to serve as the child's representative payee; (4) whether the agency is appointed as the child's representative payee; (5) receipt of Social Security benefits on behalf of the child; and (6) when the SSA issues any other decision or communication relating to the child's application for benefits.²¹⁹ Provisions should also include a host of individuals who should receive notice, including, but not limited to, "the child, the child's attorney and/or [guardian ad litem],²²⁰ the child's caseworker, the child's parents if parental rights have not been terminated, the child's legal guardian or guardians, and the attorney for the parents or legal guardian," or the placement the child is currently in.²²¹

Like Tristen, Malerie, and others, Daniel, in California, did not know he was eligible to receive OASDI benefits because San Diego County used Daniel's benefits to reimburse itself for the cost of his care without providing notice to Daniel.²²² Between the ages of fifteen and seventeen, San Diego County collected Daniel's OASDI benefits, reimbursed itself, and did not conserve any benefits for Daniel's future use.²²³ Daniel's attorney, through her own personal efforts, learned Daniel was receiving OASDI benefits and was able to ensure some benefits were conserved for future use when Daniel aged out of foster care.²²⁴ However, if state legislation had existed requiring the agency to notify Daniel and his attorney when Daniel first became eligible for benefits and started to receive them, then two years' worth of benefits could have been conserved for Daniel's use when he

219. *State Reform Efforts*, *supra* note 46.

220. "A guardian ad litem (GAL) is an attorney appointed by a court to represent the interests of a child." *The Role of the Guardian ad Litem in Family Court*, LLF LAW FIRM <https://www.pafamilylawllc.com/the-role-of-the-guardian-ad-litem-in-family-court> [<https://perma.cc/B23Y-LXMV>] (last visited Oct. 14, 2024).

221. *State Reform Efforts*, *supra* note 46.

222. CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at 12; *see supra* Introduction, Section I.A.3.

223. CHILD.'S ADVOC. INST. & FIRST STAR, *supra* note 4, at 12.

224. *Id.*

aged out of foster care.²²⁵ Having access to conserved Social Security benefits when youth age out of foster care is vital to their stability and achievement of positive outcomes as young adults.²²⁶ Daniel's story exemplifies how simply giving notice can yield drastic changes in outcomes for youth in foster care.²²⁷

1. *Expansive notice provisions in the legislation of Maryland*

The extensive notice provisions in Maryland's legislation provide the child and the child's attorney with as much transparency as possible surrounding the child's benefits.²²⁸ Under Maryland's legislation, the Department is required to notify the child's attorney when the Department applies on behalf of the child for any Social Security benefits.²²⁹ The Department is also required to notify the child's attorney when the Department applies to serve as representative payee on behalf of the child.²³⁰ Additionally, the Department must notify the child's attorney of any communication from the SSA about the child's application and any action or appeal the Department requests regarding a child's benefits application.²³¹ When the Department serves as a child's representative payee, the Department must provide notice to the child's attorney before each court hearing about the amount of the child's benefits received since the last notification and information about the child's resources, "including the child's benefits, insurance, cash assets, trust accounts, earnings, and other resources."²³²

The notice provisions in Maryland's legislation come from *In re Ryan W.*²³³ In this Maryland Court of Appeals case, the Maryland Department of Social Services applied to serve as

225. *Id.*

226. *See id.* at iii.

227. *See id.* at 12.

228. *See* MD. CODE ANN., FAM. LAW § 5-527.1(d) (LexisNexis 2024).

229. *Id.* § 5-527.1(d)(1)(i).

230. *Id.*

231. *Id.* § 5-527.1(d)(1)(ii)–(iii).

232. *Id.* § 5-527.1(d)(2)(i)–(ii).

233. *See id.* § 5-527.1(d); *In re Ryan W.*, 76 A.3d 1049, 1069–70 (Md. Ct. App. 2013).

representative payee for Ryan's OASDI benefits.²³⁴ The Department was appointed representative payee and used the OASDI benefits to reimburse the Department for the cost of Ryan's care.²³⁵ Ryan challenged this, "alleging that the Department failed to make an individualized determination of what was in [his] best interests . . . and that the benefits should have been conserved instead."²³⁶ The Court of Appeals determined that the Department, acting as Ryan's representative payee, had the discretion to use his OASDI benefits to reimburse the Department for the cost of his care.²³⁷ However, the court also held that Ryan's due process rights were violated because he was never provided notice that the Department was receiving his OASDI benefits.²³⁸ The court concluded that notice must be given to the child, through the child's attorney, so that the child is able to "seek . . . review of SSA determinations and of the Department's use of his or her benefits."²³⁹ Not all states have ruled on the due process violation when children are not notified of an agency's application or receipt of their Social Security benefits.²⁴⁰ Accordingly, the decision in *In re Ryan W.* is reflected in Maryland's statutory notice provision.²⁴¹

2. *Expansive notice provisions in Arizona build on Maryland's legislation*

The notice provisions in Arizona's legislation expand on Maryland's by requiring more individuals than just the child's attorney to receive notice.²⁴² Arizona's legislation requires the

234. 76 A.3d at 1051.

235. *Id.*

236. *Id.* at 1051–52.

237. *Id.* at 1052.

238. *Id.* at 1059.

239. *Id.* at 1070.

240. See, e.g., Harfeld, *supra* note 14, at 4–6 (discussing the progress made by the rulings in Maryland, Alaska, and Washington).

241. See MD. CODE ANN., FAM. LAW § 5-527.1(d) (LexisNexis 2024).

242. Compare H.R. 2559, 56th Leg., 1st Reg. Sess. § 8-468(C) (Ariz. 2023) (requiring notice be sent to the child, their lawyer, any parents, if parental rights have not been terminated, any

Department to notify the child, the child's attorney, the child's parents (if parental rights have not been terminated), the child's guardian, and wherever the child is currently placed about "any application, decision, or appeal related to [the] child's federal benefits."²⁴³ Other states should model their notice provisions based on Maryland's expansive notice provisions in recognition of foster children's due process rights and include all the individuals who require notice from Arizona's notice provisions.²⁴⁴

D. Conservation Provision Requirements

As demonstrated by the stories of Daniel and Amber, the conservation of unused Social Security benefits is important for children to use when they age out of foster care.²⁴⁵ In a study done in fiscal year 2018, agencies in twenty-nine states reported "that they sometimes maintained SSI/Social Security benefits . . . 'in an account specific to a child or child's caregiver . . . or otherwise saved the funds for the child,'" while agencies in sixteen states, Puerto Rico, and the District of Columbia stated they did not have such an account.²⁴⁶ States should aim to outright prohibit the use of a child's benefits for reimbursing the cost of their care.²⁴⁷ If states do not outright prohibit that, then state legislation should include provisions explicitly requiring a specific percentage of benefits to be used and conserved exclusively for the child that increases with the child's age as they get closer to aging out of foster care.²⁴⁸ Representative payees must be careful that the manner in which they conserve the

guardians, and current placement home), *with* FAM. LAW § 5-527.1(d) (only requiring notice be sent to the child through their lawyer).

243. Ariz. H.R. 2559 § 8-468(C).

244. *See id.*; FAM. LAW § 5-527.1(d).

245. *See* CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 12–13, 23; *see* discussion *supra* Sections I.A, III.C.

246. CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 26.

247. *See* Ariz. H.R. 2559 § 8-468(B)(1) (Arizona has directly set forth such a prohibition in its legislation).

248. *See* FAM. LAW § 5-527.1(c)(2) (Maryland's legislation includes such a provision).

child's SSI benefits does not impact the child's income eligibility for SSI.²⁴⁹ State legislation should include a provision directing representative payees to ensure conservation of benefits is in line with maintaining the child's eligibility for benefits and that agencies should not claim a child for Title IV-E maintenance payments if that will make the child ineligible for SSI benefits.²⁵⁰ Additionally, it is important for state legislation to define "cost of care" to ensure agencies are not using any ambiguity in legislation as an excuse to misuse or not conserve benefits.²⁵¹ Both Maryland's and Arizona's legislation provide comprehensive protections and regulations for the conservation of foster children's benefits.²⁵²

1. *Conserving in Maryland's legislation*

Maryland's legislation requires that a child's benefits be used or conserved in their best interest; that includes "conserving the benefits for the child's reasonably foreseeable future needs."²⁵³ Importantly, Maryland's legislation provides that a minimum percentage of a child's benefits must be used or conserved in correlation with their age, and this percentage cannot be used to reimburse the Department for the cost of the child's care.²⁵⁴ For ages fourteen and fifteen, at least 40% of a child's benefits must be used or conserved for the child and cannot be used to reimburse the Department for the cost of their care.²⁵⁵ For ages sixteen and seventeen, that percentage increases to at least 80%.²⁵⁶ By the time the child is eighteen and through age twenty, 100% of their benefits must be used or conserved for the child and cannot be used to reimburse the Department for the

249. SSA Letter, *supra* note 18, at 2.

250. See *State Reform Efforts*, *supra* note 46.

251. See S. B. No. 862, 102nd Gen. Assemb., 2d Reg. Sess. §§ 210.560(1)(4)(a)–(d), 210.560(4) (Mo. 2024) (defining "unmet needs" and "foster care maintenance payments").

252. See FAM. LAW § 5-527.1(c); Ariz. H.R. 2559.

253. FAM. LAW § 5-527.1(c)(1).

254. *Id.* § 5-527.1(c)(2).

255. *Id.* § 5-527.1(c)(2)(i).

256. *Id.* § 5-527.1(c)(2)(ii).

cost of their care.²⁵⁷ Additionally, Maryland's legislation requires that when the Department serves as representative payee, it must monitor any asset or resource limits of a child's benefits to avoid violations that would make the child ineligible to receive Social Security benefits.²⁵⁸ Further, the legislation lists accounts and ways the Department can act in the best interest of the child in conserving their benefits.²⁵⁹

2. *Prohibiting reimbursements in Arizona's legislation*

Arizona's legislation has stronger conservation provisions than Maryland's legislation.²⁶⁰ Arizona was the first state to explicitly prohibit child welfare agencies from using any part of foster children's federal benefits to reimburse themselves for the cost of foster care.²⁶¹ Arizona's legislation does not have an increasing percentage system of a child's benefits that cannot be used to reimburse the Department for the cost of the child's care like Maryland's legislation does.²⁶² Instead, Arizona's legislation outright prohibits any amount of a child's benefits from being used to reimburse the Department for the cost of the child's care.²⁶³ This practice of using children's benefits to reimburse the agency for the cost of the child's care is referred to as "benefits mining."²⁶⁴ While it is legal to use a child's benefits to reimburse the agency for their cost of care if state legislation does not prohibit it, it is an immoral practice.²⁶⁵ Additionally, Arizona's legislation provides that the Department must establish an account for the use and conservation of the child's benefits

257. *Id.* § 5-527.1(c)(2)(iii).

258. *Id.* § 5-527.1(c)(4)(i).

259. *Id.* In Maryland's legislation, conservation of benefits methods for children includes applying to the SSA to establish a Plan for Achieving Self Support Account, a 529A account, an individual development account, and a special needs trust. *Id.*

260. Compare H.R. 2559, 56th Leg., 1st Reg. Sess. (Ariz. 2023) with MD. CODE ANN., FAM. LAW § 5-527.1(c) (LexisNexis 2024).

261. Thorington, *supra* note 10.

262. Compare Ariz. H.R. 2559, with FAM. LAW § 5-527.1(c)(2).

263. Ariz. H.R. 2559 § 8-468(B)(1).

264. Thorington, *supra* note 10.

265. *Id.*

that is in their best interest and takes into account any asset or resource limits of a child's benefits.²⁶⁶ Arizona's legislation also includes accounts the Department can establish for these purposes.²⁶⁷

As Arizona has stopped the Department from using foster children's benefits to reimburse themselves for the cost of care, the state has reached a budgetary reckoning.²⁶⁸ Stopping this practice in Arizona will create a four-million-dollar deficit in the Department's budget.²⁶⁹ The Department must pay a "daily foster home rate" on behalf of each foster child in a placement.²⁷⁰ This rate ranges between \$19.68 per day and \$27.15 per day, depending on the foster child's age.²⁷¹ Making up for this budget deficit will likely fall to the state legislature to reallocate money from their general fund.²⁷² For fiscal year 2023, the Department allocated over \$19 million from the state's general fund to support kinship foster parents by providing them with a \$300 stipend per month, per foster child.²⁷³ Therefore, state general funds could also be used to allocate funds to pay for the cost of

266. Ariz. H.R. 2559 § 8-468(B)(3).

267. *Id.* § 8-468(B)(3)(a)–(d). In Arizona's legislation, accounts may include a special needs trust, a pooled special needs trust, an ABLE account, or any other account that would not interfere with the child's asset or resource limits for their Social Security benefits. *Id.*

268. Bridget Dowd, *Arizona First State to Stop Seizing Social Security, Disability Benefits of Foster Children*, KJZZ (Nov. 10, 2023, 11:19 AM), <https://kjzz.org/content/1862607/arizona-first-state-stop-seizing-social-security-disability-benefits-foster-children> [https://perma.cc/K2GR-8FWQ].

269. *Id.*

270. See S. RSCH., 56TH LEG., 1ST REG. SESS., FACT SHEET FOR S.B. 1544 (Ariz. 2023).

271. *Id.*

272. Dowd, *supra* note 268. It is also worth noting that there may be financial costs in addition to the financial deficit that results from stopping the practice of using foster children's benefits to reimburse the Department for the cost of care. Additional financial costs may be required of the agency in implementing the provisions in the model legislation, such as the costs of implementing screening and application procedures or financial literacy training. See *Guardianship Est. of Keffeler v. Wash. Dep't of Social and Health Servs.*, 88 P.3d 949, 956 (Wash. 2004) (rejecting the claim that a lack of notice to children and their guardians in the traditional scheme is a deprivation of procedural due process because "[t]hese procedures would impose substantial costs on the State and result in a small benefit for the children."). *But see In re Ryan W.*, 76 A.3d 1049, 1069 (Md. Ct. App. 2013) (disagreeing with *Keffeler* and holding that it is a deprivation of due process with substantial impact on the children and comparatively minimal burden to the state).

273. S. RSCH., 56TH LEG., 1ST REG. SESS., FACT SHEET FOR S.B. 1544 (Ariz. 2023).

foster care on behalf of foster children.²⁷⁴ Alternatively, federal funds, such as Title IV-E funds, which are meant to reimburse the Department for the cost of a qualifying child's care, can be used.²⁷⁵ Additionally, Title IV-B programs are also a source of federal funding that can be used to pay for foster care.²⁷⁶ Similarly to Title IV-E funds, Title IV-B funds serve children living in foster care and are intended to protect children and support and preserve families.²⁷⁷ There are other more specific kinds of federal funding programs that support teenagers in foster care or provide funding based on the rate of foster children placed in permanent homes.²⁷⁸ Agencies should investigate these programs to maximize the federal funding they receive to pay for foster care.

Additionally, both Maryland's and Arizona's legislation include references to "cost(s) of care" but do not provide a definition for the term.²⁷⁹ To ensure the greatest specificity and protections for children's benefits, states should define "cost of care" in their legislation to ensure there is no ambiguity

274. *See id.* (discussing the kinship foster care stipend which is an example of another means for funding foster care).

275. Rosinsky & Williams, *supra* note 10; *Title IV-E Foster Care Eligibility Reviews Fact Sheet*, U.S. DEP'T OF HEALTH & HUM. SERV., <https://www.acf.hhs.gov/cb/fact-sheet/title-iv-e-foster-care-eligibility-reviews-fact-sheet> [<https://perma.cc/2QLF-GGFM>] (last visited Nov. 1, 2024).

276. Title IV-B funds are a much smaller source than Title IV-E funds and are meant to pay for "family-based services to prevent child maltreatment." Brenda Jones Harden & Richard P. Barth, *Title IV-B Plays an Important Role in Preventing Child Welfare System Involvement*, SOC'Y FOR RSCH. IN CHILD DEV. (Oct. 19, 2022, 10:00 AM), <https://www.srcd.org/research/title-iv-b-plays-important-role-preventing-child-welfare-system-involvement> [<https://perma.cc/89UC-LTHL>]. Title IV-B funds help families access financial supports and connect families to a variety of programs, such as parenting programs, early childhood education programs, and income support programs. *Id.*

277. To receive Title IV-B funding, states must provide \$1 for every \$3 received in federal funding. CRS: CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING, *supra* note 20.

278. *See id.* (discussing Chafee grants and other programs from which states received funding). States can apply for Chafee grants for youth in foster care who are aged fourteen and older to support their services. *Id.* States also can receive incentive payments when they increase the rate of foster children who are placed in permanent homes who otherwise would have stayed in the foster care system. *Id.*

279. *See* H.R. 2559, 56th Leg., 1st Reg. Sess. (Ariz. 2023); *see* MD. CODE ANN., FAM. LAW § 5-527.1(c)(2)–(5) (LexisNexis 2024).

agencies could use as an excuse to misuse or not conserve benefits.²⁸⁰ Moreover, other states should model their conservation provisions based on the requirements in both Maryland's and Arizona's provisions that require the Departments to establish accounts to use and conserve each child's benefits and ensure the accounts are monitored in the child's best interest so they remain eligible for Social Security benefits.²⁸¹ States should use Arizona's legislation as a model to prohibit the Department from reimbursing itself with the child's benefits for the cost of their care and instead rely on other state or federal options to fund foster care.²⁸² This is the level of protection states should strive to create for the Social Security benefit of foster children.²⁸³ However, if a state does not include a provision such as this, states should use Maryland's increasing percentage system as a model to ensure a child's benefits are used or conserved at an increasing rate as they age.²⁸⁴

E. Financial Literacy Training Provisions for Older Youth

State legislation must include provisions requiring financial literacy education for youth who are aging out of foster care, including specifics on how this training would be conducted.²⁸⁵ For youths aging out of foster care, learning financial literacy skills is crucial to their success as young adults.²⁸⁶ A 2014 study found that foster care youth between fourteen years old and twenty years old "sometimes lack supportive family members in their lives who show them how to use the tools that lead to

280. See, e.g., S. B. No. 862, 102nd Gen. Assemb., 2d Reg. Sess. (Mo. 2024) (defining "unmet needs" and using a federal statute's definition for "foster care maintenance payments").

281. See, e.g., Ariz. H.R. 2559 § 8-468(B)(3); see FAM. LAW § 5-527.1(c)(2)–(5).

282. See, e.g., Ariz. H.R. 2559 § 8-468(B)(1); S. RSCH., 56TH LEG., 1ST REG. SESS., FACT SHEET FOR S.B. 1544 (Ariz. 2023) (discussing the kinship foster care stipend which is an example of another means for funding foster care); Rosinsky & Williams, *supra* note 10.

283. See Ariz. H.R. 2559.

284. See MD. CODE ANN., FAM. LAW § 5-527.1(c)(2) (LexisNexis 2024).

285. See *State Reform Efforts*, *supra* note 46.

286. *Financial Literacy for Youth in Foster Care*, FOSTERVA, <https://www.fosterva.org/blog/financial-literacy-for-youth-in-foster-care> [<https://perma.cc/MJJ7-2V8X>] (last visited Nov 1, 2024); see *Financial Literacy for Youth*, ANNIE. E. CASEY FOUND. (Dec. 9, 2021), <https://www.aecf.org/blog/financial-literacy-for-youth> [<https://perma.cc/Y38C-9GFT>].

financial independence.”²⁸⁷ The study also found that foster care youth were more susceptible to identity theft and that specific training for youths could help alleviate this growing problem.²⁸⁸

Financial education about children’s benefits can start as young as fourteen years old.²⁸⁹ Financial education should include learning to read credit reports, creating and following a budget, creating a checking account, and establishing credit, among other lessons taught by the local foster care agencies.²⁹⁰ Guidance issued by the SSA indicates that representative payees, including agencies serving as representative payees, need to meet with the child beneficiary regularly to determine the child’s current and future needs.²⁹¹ Agencies could use these mandatory and regular meetings as an opportunity to conduct financial literacy training with youth. Additionally, agencies could implement an online training system, such as the online financial literacy training offered by the Federal Deposit Insurance Corporation (“FDIC”) that includes “interactive games, guides, tips, [and] programs” to teach foster children the financial skills of saving, borrowing, and more.²⁹²

State legislation should also include a provision mandating financial literacy training for representative payees and foster care agencies.²⁹³ Financial education to representative payees and agencies should include an explanation of the duties of their role as a fiduciary; the proper ways to use and conserve funds, including establishing the appropriate accounts for the child; and ensuring adequate record keeping for submitting the

287. Chuck Carroll, *Study: Foster Youth Lack Basic Financial Literacy*, THE IMPRINT (Mar. 30, 2021, 7:00 PM), <https://imprintnews.org/child-welfare-2/foster-youth-lack-basic-financial-literacy/53079> [<https://perma.cc/PSZ6-9VSQ>].

288. *Id.*

289. See FAM. LAW § 5-527.1(c)(6).

290. See Carroll, *supra* note 287.

291. *Guide for Organizational Representative Payees*, *supra* note 93; SSA Letter, *supra* note 18, at 2.

292. See *Financial Literacy for Youth in Foster Care*, *supra* note 286.

293. See *State Reform Efforts*, *supra* note 46.

annual accounting forms to the SSA.²⁹⁴ Conserving funds for the child must be done in a way that maintains the child's eligibility for SSI benefits.²⁹⁵ Representative payees and agencies should specifically be educated on whether establishing an ABLE Account is an appropriate means for conserving the child's benefits.²⁹⁶ Funds in an ABLE Account are not included in the \$2,000 SSI resource limit; in fact, "[t]he first \$100,000 in the ABLE Account is exempt from the \$2,000 individual resource limit for SSI."²⁹⁷ Therefore, state legislation mandating financial education training to representative payees and agencies, especially about ABLE accounts, would allow for the conservation of more foster children's benefits as they near the age to exit foster care.²⁹⁸

While Arizona's legislation does not have a financial literacy provision, Maryland's legislation requires the Department to provide financial literacy training when the child reaches fourteen years old.²⁹⁹ However, Maryland's financial literacy training requirement for children does not include any specifics about how the training would be conducted.³⁰⁰ Adding more specific provisions about how the training would be conducted and the topics that must be covered would bolster the requirements and ensure that the Department provides adequate training to all foster children when they reach a certain age.³⁰¹ Additionally, Maryland's legislation does not require any financial

294. *See id.*

295. *See SSA Letter, supra* note 18, at 2.

296. *See id.*

297. *Payee and ABLE Accounts, supra* note 19; *SSA Letter, supra* note 18, at 2; *supra* Part I.

298. *See SSA Letter, supra* note 18, at 2.

299. *Compare MD. CODE ANN., FAM. LAW § 5-527.1(c)(6)* (LexisNexis 2024) (requiring financial literacy training), *with H.R. 2559, 56th Leg., 1st Reg. Sess. (Ariz. 2023)* (failing to include a financial literacy training requirement and choosing instead to require, under § 8-468(B)(3), the establishment of trust funds or other accounts for managing the child beneficiary's funds).

300. *See FAM. LAW § 5-527.1(c)(6)*.

301. *See, e.g., Carroll, supra* note 287 (noting the suggestion that foster youth should specifically receive training to protect against identity theft because of their uniquely heightened risk).

literacy training for the representative payee or agency.³⁰² This training is important and necessary to educate representative payees and agencies about their fiduciary duty; to teach them how to use and conserve funds, including establishing the appropriate accounts for the child; and to ensure adequate record keeping occurs.³⁰³ Other states should use Maryland's provision about financial literacy training for children as a starting point when creating their own financial literacy training provisions.³⁰⁴ Additionally, other states should make the requirements of financial literacy training for children more specific and include requirements of financial literacy training for representative payees and agencies as well.³⁰⁵

F. *Refund Provisions Needed After Agency Misuse of Benefits*

State legislation must include a provision to refund children for benefits "improperly seized, with interest."³⁰⁶ There are several scenarios in which an agency can misuse a child's benefits that should result in a refund to the child when there is a refund provision in the state's legislation.³⁰⁷ Even though it is legal for agencies to use children's benefits to reimburse themselves for the cost of their care, this practice is immoral.³⁰⁸ If states outright prohibit this practice and include a provision in their state legislation providing for a refund when benefits are misused, then children would be entitled to a refund of those benefits.³⁰⁹ Arizona was the first state, by legislation, to outright prohibit using

302. Compare FAM. LAW § 5-527.1(c)(6) (requiring financial literacy training for foster children after turning fourteen years old), with Carroll, *supra* note 287 (claiming that in addition to teaching foster children financial literacy skills, there is a need to also train the people that informally teach foster children about finances).

303. See *State Reform Efforts*, *supra* note 46.

304. See FAM. LAW § 5-527.1(c)(6).

305. See *State Reform Efforts*, *supra* note 46.

306. See *Policy Advocacy Tools*, UNIV. OF SAN DIEGO CHILD'S ADVOC. INST., <https://www.sandiego.edu/cai/advocacy/youth-benefits/policy-advocacy.php> [<https://perma.cc/H5XP-32KC>] (last visited Nov. 1, 2024).

307. See *id.*

308. See Rosinsky & Williams, *supra* note 10; Thorington, *supra* note 10 (noting advocate's statement that "there's a consensus that it is immoral").

309. See *State Reform Efforts*, *supra* note 46.

a child's benefits for the cost of their care.³¹⁰ Under Arizona's legislation, it would be a misuse of benefits for the Department to reimburse itself for the cost of the child's care.³¹¹ Therefore, this Note suggests that if the Department does reimburse itself for the cost of the child's care, then the child should be entitled to a refund of the benefits, provided the state legislation includes a refund provision when benefits are misused.³¹²

Under Maryland's legislation, using the child's benefits for the cost of their care is not outright prohibited, but as the child ages, a minimum percentage of their benefits must not be used for the cost of their care.³¹³ Misuse of benefits would occur if the Department used part of that minimum percentage to reimburse itself for the cost of the child's care.³¹⁴ Provided the legislation includes a refund provision when benefits are misused, then the child would be entitled to the percentage of benefits the Department used that the Department was not entitled to use.³¹⁵

Additionally, misuse of benefits can occur if the representative payee uses the child's benefits for something outside of their current or future needs or if the representative payee uses the benefits for themselves.³¹⁶ Social Security benefits can be used for the child's current needs including "food, clothing, housing, medical care and personal comfort items."³¹⁷ If the benefits are not used for a child's needs, the child would be entitled to a refund for the misuse of these benefits, provided the state legislation includes a refund provision when benefits are misused.³¹⁸

310. Heild, *supra* note 46; see H.R. 2559, 56th Leg., 1st Reg. Sess. § 8-468(B)(1) (Ariz. 2023).

311. See Ariz. H.R. 2559 § 8-468(B)(1).

312. See *State Reform Efforts*, *supra* note 46. While this would be the most straightforward remedy in terms of making the child beneficiary financially whole again, states are technically able to craft whatever remedy they see fit within certain confines.

313. See MD. CODE ANN., FAM. LAW § 5-527.1(c)(2) (LexisNexis 2024).

314. See *id.*

315. See *State Reform Efforts*, *supra* note 46.

316. See *supra* Section I.A.2.

317. POMS, GN 00602.001, *supra* note 86.

318. See *State Reform Efforts*, *supra* note 46.

Another way an agency can misuse a child's benefits is by receiving Title IV-E benefits on behalf of a child and using their Social Security benefits to reimburse itself for the cost of the child's care.³¹⁹ For children who are eligible for Title IV-E funds, the use of any other federal funds, such as Social Security benefits, for foster care maintenance costs is prohibited.³²⁰ A child would be entitled to a refund of the Social Security benefits that were used as foster care maintenance payments while the agency was receiving Title IV-E funds on behalf of the child.³²¹ Including a refund provision in state legislation when an agency misuses a child's benefits would ensure that children receive all the benefits to which they are entitled and that an agency is not able to misuse the benefits of children without any consequences.³²²

1. *Why refunds matter*

Many children age out of foster care without receiving the proceeds of any of their benefits and without an account of conserved benefits for their future needs due to agency misuse.³²³ Those children are entitled to a refund of this money.³²⁴ If Alaska's legislation had a provision entitling foster youth to a refund of their benefits when an agency misuses benefits, then Tristen would have had access to benefits when he aged out of foster care to pay for his car, rent, and tuition without struggling so much.³²⁵ Ian Marx entered foster care at eleven years old in Washington and said he never saw even a cent of his SSI

319. 42 U.S.C. § 672(k)(1).

320. *Id.*

321. *See id.*; SSA Letter, *supra* note 18, at 3; *State Reform Efforts*, *supra* note 46; 45 C.F.R. § 75.306 (2024).

322. *See State Reform Efforts*, *supra* note 46.

323. *See supra* Section I.A.3.

324. *See Volk & Christie*, *supra* note 99 ("[I]f a parent or guardian has paid enough into the Social Security system before retiring, becoming disabled, or dying[,] [t]his 'survivor's money' . . . is owed as an insurance payment to children and belongs to them."); Hager & Shapiro, *supra* note 1 (stating that these benefits "[are] considered [the] property [of foster youths] under federal law").

325. *See Hager & Shapiro*, *supra* note 1; *supra* Section I.B.

benefits or the Veteran's Benefits to which he was entitled from his mother's service.³²⁶ He would have used this money to help pay for college and law school, and "[i]t could have helped [him] secure safe housing, stable transportation and do normal things like go on debate trips and participate in extracurricular sports."³²⁷ If there was a provision in Washington's legislation entitling foster youth to a refund of their benefits when an agency misuses them, then Ian would have had benefits when he aged out of foster care to use toward his education. Ian states, "[i]f foster care was a service I was being charged for, I want a refund," and he is entitled to that money, but there must be a provision in state legislation guaranteeing refunded benefits with interest to foster youth who had their benefits misused by an agency.³²⁸

Neither Maryland's legislation nor Arizona's legislation include a provision entitling a child to a refund when benefits are misused.³²⁹ Currently, no state legislation includes a provision of this sort.³³⁰ However, as illustrated, there are many ways an agency can misuse a child's benefits.³³¹ States must take action in their legislation to ensure a child is entitled to a refund of their benefits, with interest, if an agency has misused them.³³²

326. Ian Marx, *Washington Must Step Up to Protect Foster Youths' Benefits*, THE IMPRINT (Aug. 17, 2022, 6:21 AM), <https://imprintnews.org/opinion/washington-protect-foster-youth-benefits/67187> [<https://perma.cc/QNX9-WXZC>].

327. *Id.*

328. *Preserving Federal Benefits of Foster Youth*, UNIV. OF SAN DIEGO CHILD.'S ADVOC. INST., <https://www.sandiego.edu/cai/advocacy/youth-benefits/> [<https://perma.cc/FKH3-KFPQ>] (last visited Nov. 1, 2024).

329. See generally MD. CODE ANN., FAM. LAW § 5-527.1 (LexisNexis 2024) (prohibiting the practice but not establishing a remedy); H.R. 2559, 56th Leg., 1st Reg. Sess. (Ariz. 2023) (also prohibiting without establishing a remedy).

330. See *State Reform Efforts*, *supra* note 46. The Oregon Senate introduced a bill that has not passed, but that would "[d]irect[] [the] Department of Human Services to establish and administer Youth Support and Repayment Grant Program[] to provide financial support to specified persons from whom, while in care or custody of [DHS], resources to which persons were entitled were seized and used to pay for certain services provided." 2023 Regular Session SB 557, OR. STATE LEGIS., <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB557> [<https://perma.cc/R6CW-3VEK>] (last visited Nov. 6, 2024).

331. See *supra* Section III.F.

332. See *State Reform Efforts*, *supra* note 46.

CONCLUSION

Children in foster care are a vulnerable population who are entitled to their Social Security benefits just the same as children who are not in foster care.³³³ Children in foster care need these benefits for stability and to have the opportunity to achieve positive outcomes when they age out of foster care.³³⁴ For youth aging out of foster care, having access to funds and resources in the form of Social Security benefits is vital to their well-being.³³⁵ These benefits can make the difference between whether youth aging out of foster care have somewhere to live or whether they are able to attend college.³³⁶ However, foster youth do not have these options if they do not know they are entitled to receive benefits or do not know that an agency is receiving their benefits on their behalf.³³⁷ Without state legislation in place, no foster child's benefits are protected, and agencies can use foster children's benefits to reimburse themselves without conserving any funds for the child.³³⁸ Therefore, state legislation is necessary to protect foster children's benefits.³³⁹

The legislation enacted in Maryland and Arizona provide a comprehensive model for other states to adopt. Together, the legislation of Maryland and Arizona provide provisions that protect many aspects of foster children's Social Security benefits.³⁴⁰ Provisions on screening and application, representative payees, notice, conservation of benefits, financial literacy training, and refunds are all necessary to ensure that foster children's benefits are afforded the utmost protection.³⁴¹ By using

333. See CRS: CHILDREN IN FOSTER CARE AND SOCIAL SECURITY ADMINISTRATION BENEFITS, *supra* note 20, at 4.

334. See CHILD'S ADVOC. INST. & FIRST STAR, *supra* note 4, at iii.

335. See *id.*

336. See Hager & Shapiro, *supra* note 1.

337. See *id.*

338. See Thorington, *supra* note 10.

339. See *State Reform Efforts*, *supra* note 46.

340. See MD. CODE ANN., FAM. LAW § 5-527.1 (LexisNexis 2024); H.R. 2559, 56th Leg., 1st Reg. Sess. (Ariz. 2023).

341. FAM. LAW § 5-527.1; Ariz. H.R. 2559.

the combined legislation of Maryland and Arizona as a model, other states can put an end to agency misuse of benefits and ensure foster children's benefits are protected in a multitude of ways.