

SOCIAL SECURITY ADMINISTRATION**20 CFR Parts 404, 408 and 416**

[Regulation Nos. 4, 8, and 16]

RIN 0960-AF83

Representative Payment Under Titles II, VIII and XVI of the Social Security Act**AGENCY:** Social Security Administration (SSA).**ACTION:** Final rules.

SUMMARY: We are revising our regulations that explain the procedures we follow in determining the need for a representative payee, the procedures we follow in selecting a representative payee, the responsibilities of a representative payee, and restitution of misused benefits under titles II, VIII and XVI of the Social Security Act (the Act). This regulation codifies SSA's representative payee policy based on statutory changes made during 1990–1999 and includes one provision enacted in 2004. Part 408 sets forth our rules applicable to claims for special veteran's benefits (SVB) under title VIII of the Act. We began making payments under the SVB program in May 2000. We are adding a new subpart F (Representative Payment) to part 408.

The changes to the representative payee provisions of the regulations reflect several statutory changes that provide protection for beneficiaries who need representative payees. These changes include representative payment procedures for investigating payee applicants, identifying unsuitable applicants, making direct payment in some circumstances, providing advance notice of our determination to make representative payment, and providing affected beneficiaries with the opportunity to appeal our determinations. Also included are procedures for making restitution of benefits where a payee has misused a beneficiary's payments and representative payee policies and procedures for the title VIII program.

DATES: These rules are effective November 8, 2004.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

Subpart U of part 404 and subpart F of part 416 of our regulations explain the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee under the title II and title XVI programs. These subparts also describe the responsibilities of a representative payee regarding the use of benefits the payee receives on behalf of the beneficiary. Under the authority provided in sections 205(j) and 1631(a)(2) of the Act and these regulations, we select a representative payee for a person receiving Social Security benefits under title II or supplemental security income (SSI) benefits under title XVI of the Act if we believe that representative payment rather than direct payment of benefits is in the best interest of that person.

In selecting a representative payee, we choose the person, agency, or organization that we believe will best serve the interest of a beneficiary. Any person or organization chosen as a representative payee must use benefits and accept all payee responsibilities as required under the Act and our regulations.

A. Changes Required by Public Law 101–508

Sections 5105(a)(1) and (2), and (c) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) enacted November 5, 1990, amended sections 205(j) and 1631(a)(2) of the Act. These sections of OBRA 90 made numerous modifications and additions to the representative payee provisions of the Act and were intended to provide additional safeguards and protection for beneficiaries who need representative payees. These modifications and additions include:

- Investigating representative payee applicants;
- Identifying unsuitable representative payee applicants;
- Making direct payment to some beneficiaries while we try to find a representative payee;

- Allowing a delay or suspension of direct payment for one month (or longer under certain exceptions) when searching for a representative payee where direct payment would cause substantial harm to the beneficiary;

- Providing advance notice to the beneficiary of determinations to make representative payment and selections of representative payees;

- Providing beneficiaries with the opportunity to appeal our determination to make representative payment or to select a particular representative payee;

- Making restitution (in some instances) to beneficiaries of benefits misused by representative payees; and

- Making a good faith effort in those instances to obtain restitution from terminated representative payees who have misused benefits.

The restitution provision of section 5105(c) of OBRA 90, amending sections 205(j) and 1631(a)(2) of the Act, was effective November 5, 1990—the date OBRA 90 was enacted. These restitution provisions were later amended by Public Law 108–203, which was enacted March 2, 2004. That amendment is effective for determinations of misuse made on or after January 1, 1995. The provision in Public Law 108–203 regarding misuse is discussed below. The other OBRA 90 representative payee provisions addressed by these rules were effective with respect to determinations regarding payment of benefits to representative payees made on or after July 1, 1991.

As noted above, Public Law 108–203 was enacted March 2, 2004, several months after we published the proposed rules for representative payment under title II, VIII, and XVI of the Act. The misuse provision in Public Law 108–203 is effective immediately and requires SSA to provide restitution of misused benefits when the representative payee is an organization or an individual payee serving 15 or more beneficiaries. Prior to the enactment of Public Law 108–203, SSA would repay benefits only when we determined SSA was negligent in investigating or monitoring the payee and that negligence contributed to or failed to prevent the misuse. SSA does not have discretion in implementing the new restitution requirement, as the statutory obligation is very specific. Accordingly, we are including this restitution provision in these final rules, rather than including it in a NPRM with other Pub. L. 108–203 provisions that are subject to comment and a delayed effective date.

B. Changes Required by Public Law 103–296

Section 201 of Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994 (SSPIA 94), enacted August 15, 1994:

- Extends the authority for qualified organizations to collect fees for representative payee services beyond the July 1, 1994, sunset date;
- Included State or local government agencies as qualified organizations for purposes of collecting fees; and
- Required an annual adjustment (beginning with December 1996) to the limit on the fee collected by qualified organizations for providing payee services.

C. Changes Required by Public Law 104–121

Section 105 of Public Law 104–121, the Contract With America Advancement Act of 1996, enacted March 29, 1996, eliminated disability benefits based on drug addiction and/or alcoholism (DAA). However, individuals are considered to have a DAA condition when there is medical evidence of DAA, but the DAA is not material to the disability determination. Under Public Law 104–121, individuals with a DAA condition (as determined by the Commissioner), who are eligible for Social Security or SSI benefits based on a disability other than DAA and who are also found to be incapable of managing their own benefits, must have a representative payee if the Commissioner determines that representative payment would serve the interests of the individual. The statute also provided an exception to the one-month limit on suspension of benefit payment while we are looking for a representative payee for an individual with a DAA condition. Appointment of organizational representative payees for incapable individuals with a DAA condition is preferred; however, in certain cases we may select a family member.

D. Changes Required by Public Law 105–33 and Public Law 106–170

Section 5525(b) of Public Law 105–33, the Balanced Budget Act of 1997, enacted August 5, 1997, provided technical amendments to the title XVI portions of Public Law 104–121 relating to the effective date of provisions concerning representative payees. Effective July 1, 1996, or later, certain individuals with a DAA condition who were found to be incapable of managing their benefits would be paid through a representative payee. In addition, section 401 of Public Law 106–170, the

Ticket to Work and Work Incentives Improvement Act of 1999, provided technical amendments to Public Law 104–121 to change the effective date of the title II representative payee and referral provisions applicable to individuals with a DAA condition.

E. Changes Required by Public Law 106–169

Section 251 of Public Law 106–169, the Foster Care Independence Act of 1999, enacted on December 14, 1999, added a new title VIII program to the Act—Special Benefits for Certain World War II Veterans. Title VIII requires SSA to pay SVB to certain World War II Veterans. Section 807 of the Act authorizes SSA to pay SVB to a representative payee when we determine that would be in the beneficiary's interest. We are adding a new subpart F—Representative Payment to part 408 of our regulations to set forth the representative payment rules applicable to the SVB program.

F. Changes Required by Section 101 of Public Law 108–203

Section 101 of Public Law 108–203, the Social Security Protection Act of 2004, enacted March 2, 2004, eliminated the requirement in cases of certain representative payees that SSA must be negligent in fully following agency procedures before it is required to repay the amount of misused benefits to beneficiaries. Effective for determinations of misuse made on or after January 1, 1995, SSA must re-issue benefits under Titles II, VIII, or XVI whenever an individual representative payee serving 15 or more beneficiaries or an organizational representative payee is found to have misused a beneficiary's benefits. If an individual payee serving fewer than 15 beneficiaries misuses a beneficiary's benefits, we will be liable for repayment of the misused benefits only when our negligent failure to investigate or monitor the representative payee results in misuse by the payee.

As discussed above, we are including the restitution provision of Public Law 108–203 in these final rules because it is effective immediately, and the requirement is very specific and does not allow SSA discretion in how to implement it.

Public Law 108–203 makes a number of additional changes to provisions related to representative payees under Titles II, VIII, XI, and XVI of the Act. We will promulgate regulations to implement these changes at a later date.

Explanation of Regulatory Changes

We are making the following changes in our regulations to reflect the amendments to the Act made by sections 5105(a)(1) and (2), and (c) of Public Law 101–508; section 201 of Public Law 103–296; section 105 of Public Law 104–121; section 5525(b) of Public Law 105–33; section 251 of Public Law 106–169; section 401 of Public Law 106–170 and section 101 of Public Law 108–203.

A. Restitution

We are amending existing §§ 404.902 and 416.1402 to include a determination on restitution as an initial determination subject to the administrative review process. This change reflects our view that our determination regarding a person's right to restitution is a decision covered by sections 205(b)(1) and 1631(c)(1) of the Act and is an initial determination subject to the administrative review process.

B. Substantial Harm

We are adding new §§ 404.2011 and 416.611 to explain that when we have determined a beneficiary needs to be paid through a representative payee and a representative payee is not immediately available:

1. We will pay monthly benefits directly to a beneficiary who we determine should have a representative payee until a suitable representative payee is selected, unless we determine that direct payment of these benefits will result in substantial harm to the beneficiary.

2. Findings of substantial harm will be made on a case-by-case basis. We will find substantial harm in cases where direct payment of benefits is expected to result in serious physical or mental injury to the beneficiary. We also will find substantial harm to exist when the beneficiary is legally incompetent, under age 15, or is receiving disability payments and we have determined that he or she has a DAA condition. However, we will allow these individuals to provide evidence that direct payment would not cause substantial harm. If we find upon review of this evidence that direct payment will not result in substantial harm, then we will make direct payment to the individual.

3. Findings of substantial harm are not considered initial determinations subject to appeal rights. A finding of substantial harm will not materially affect the beneficiary because delay or suspension of direct payment is temporary. Beneficiaries who have their benefits temporarily suspended can

appeal the determination to make representative payment (§§ 404.902(o) and 416.1402(d)).

4. If we find that direct payment to an individual would cause substantial harm, we may delay or suspend benefits up to 1 month. If the beneficiary who needs a representative payee is legally incompetent, under age 15, or receiving disability payments and determined by us to have a DAA condition and is incapable, we may delay payments for more than 1 month.

5. Payment of any benefits that were deferred or suspended pending selection of a representative payee will be made to the beneficiary or the representative payee as a single sum, or in installments when we determine that installments are in the best interest of the beneficiary.

C. Unsuitable Representative Payees

We are adding new §§ 404.2022 and 416.622 to explain that:

1. A representative payee applicant convicted of a violation under section 208, 811 or 1632 of the Act may never serve as a representative payee. This prohibition was in sections 208 and 1632 of the Act prior to enactment of section 5105(a)(2) of OBRA 90 but was never included in our regulations. We added section 811 violations because of the enactment of the new SVB program (section 807 of the Act).

2. A representative payee applicant receiving Social Security, SVB or SSI benefits through a representative payee may not serve as a representative payee. These individuals have already been determined to be incapable of managing their own benefits.

3. A representative payee applicant whose prior certification or appointment as representative payee was revoked or terminated for misusing title II, VIII or XVI benefits generally may not be appointed as a representative payee. We may make an exception to this prohibition on a case-by-case basis if:

- Direct payment is not possible,
- No suitable alternative payee is available,
- Payment to the payee applicant would serve the best interest of the beneficiary,
- The information we have indicates the applicant is now suitable to serve as payee, and
- The applicant has repaid the misused benefits or has a plan to repay them.

If such an applicant is appointed, evaluation(s) of the applicant's performance as representative payee will be conducted periodically at intervals not to exceed 3 months until

we are satisfied that the payee poses no risk to the beneficiary and is likely to perform in the beneficiary's best interest.

4. Payment will not be certified to a representative payee applicant who is a creditor of the beneficiary (*i.e.*, provides goods or services for consideration), unless the creditor is:

- A relative of the beneficiary living in the same household as the beneficiary;
- A legal guardian or legal representative of the beneficiary;
- A facility that is licensed or certified as a care facility under State or local law, or an administrator, owner, or employee of such a facility and the selection of the facility or such person is made only after we have attempted to locate an alternative representative payee who would better serve the interests of the beneficiary;
- An individual we determine to be acceptable to serve as a representative payee because we have determined that the individual poses no risk to the beneficiary, the financial relationship of the applicant to the beneficiary poses no substantial conflict of interest, and a more suitable representative payee cannot be found; or
- A qualified organization authorized to collect a monthly fee from the beneficiary for expenses incurred by the organization in providing services performed as the individual's representative payee.

D. Investigation of Representative Payee Applicants

We are adding new §§ 404.2024 and 416.624 to explain that before certifying payment to a representative payee applicant, we will conduct an investigation of the payee applicant to determine the applicant's suitability. A face-to-face interview will be included as part of the investigation unless it is impracticable to do so. A face-to-face interview may be considered impracticable if it would cause the representative payee applicant undue hardship. Undue hardship exists when the applicant cannot reasonably make arrangements to visit the Social Security field office. During the investigation, we will:

- Require the payee applicant to submit documented proof of identity, unless such information has been submitted with an application for titles II, VIII or XVI benefits;
- Verify the payee applicant's Social Security account number or employer identification number;
- Determine whether the payee applicant has been convicted of a

violation under section 208, 811, or 1632 of the Act;

- Determine whether the payee applicant previously served as a representative payee and had his or her certification revoked or terminated because of misuse of title II, VIII or XVI benefits.

E. Notice of Appointment of Representative Payee

We are amending existing §§ 404.2030 and 416.630 to explain that whenever we intend to make representative payment or to appoint a particular representative payee, we will provide written notice to the beneficiary (or the legal guardian or the legal representative of the beneficiary) in advance of actually appointing the payee and certifying payment. This will allow the beneficiary the opportunity to appeal the proposed representative payee appointment. The advance notice will:

- Be clearly written in language that is easily understandable to the reader;
- Identify the person to be designated as representative payee;
- Explain the right of the beneficiary (or the legal guardian or legal representative of the beneficiary) to appeal our determination that a representative payee is necessary;
- Explain the right to appeal the designation of a particular person to serve as the representative payee of the beneficiary; and
- Explain the right to review the evidence upon which the payee designation is based, and to submit additional evidence.

If the beneficiary, or his or her legal guardian or legal representative, appeals and the appeal is received before the appointment of the representative payee is effective, the appointment will not be processed until the appeal has been resolved in accordance with subpart J of part 404 or subpart N of part 416. We will pay current monthly benefits directly to the beneficiary, where appropriate, in accordance with §§ 404.2011 and 416.611, until we select a payee.

F. Organizational Representative Payees

We are amending existing §§ 404.2040a and 416.640a to remove the requirement that the organization must have been in existence prior to October 1, 1988. We are including State or local government agencies as qualified organizations for purposes of collecting fees. We are also revising paragraph (g), Limitation on fees, to reflect that the limit on fees collected by such organizations increases annually by the same percentage as the cost of living adjustment. Our NPRM

inadvertently omitted the phrase “which is tax exempt under section 501(c) of the Internal Revenue Code” from §§ 404.2040a and 416.640a(a)(2); we have included it in this final rule. We also deleted the language at the end of proposed § 404.2040a(b)(1) because it was redundant.

G. Liability for Misused Benefits

We are amending existing §§ 404.2041 and 416.641 to explain that:

- The representative payee is liable for misuse of the beneficiary's benefits and is responsible for paying back misused benefits to us. We will always make every reasonable effort to obtain restitution of misused benefits and repay them to the beneficiary;
- In addition, we will be liable for repayment of misused benefits whenever an individual representative payee serving 15 or more beneficiaries or an organizational representative payee is found to have misused a beneficiary's benefits.
- In all other cases of misuse, we will be liable for repayment of the misused benefits when our negligent failure to investigate or monitor the representative payee results in misuse by the payee. The term “negligent failure” as used in the regulation means that we failed to investigate or monitor a representative payee or that we did investigate or monitor the payee but were negligent in that effort;
- For title XVI purposes, our repayment of misused funds will include any portion of misused SSI benefits which are State supplementary payments.
- If we determine that repayment of misused benefits is appropriate, we will certify for payment to the beneficiary or the beneficiary's new representative payee an amount equal to such misused benefits.

H. When a New Representative Payee Will Be Selected

We are amending existing §§ 404.2050 and 416.650 to reflect changes made by section 5105(a)(1) of OBRA 90 requiring that we will promptly stop payment to a representative payee and make payment directly to the beneficiary or to a new payee if we, or a court of competent jurisdiction, determine that the representative payee has misused the beneficiary's benefits. We may make exceptions to this rule on a case-by-case basis if the requirements discussed in C.3. above are met.

I. Annual Accounting of Benefits

We are amending existing §§ 404.2065 and 416.665 to show that an annual accounting of benefits is required from

all representative payees except for certain State institutions, and to clarify the types of questions included in the accounting report. We also clarify that payees must keep records and make them available to us upon request.

J. Other Changes

We are amending existing §§ 404.2025 and 416.625 to change the title of the sections to “What information must a representative payee report to us?”, move existing paragraph (a) of these sections with minor revisions to new §§ 404.2024 and 416.624 as new paragraph (a)(8) and keep existing paragraph (b) as an undesignated paragraph under §§ 404.2025 and 416.625.

We are also amending existing §§ 404.902(o) and 416.1402(d) to give any individual who is dissatisfied with the determination that he or she needs a payee the right to a hearing on the matter.

We added a new paragraph §§ 404.902(x) and 416.1402(o) to include the determination whether SSA was negligent in investigating or monitoring or failing to investigate or monitor the representative payee which resulted in misuse of benefits by a representative payee as an initial determination subject to judicial review.

K. Representative Payment of SVB

Section 807 of the Act authorizes SSA to pay SVB benefits to a representative payee when we determine that would be in the best interest of the beneficiary. The title VIII provisions on representative payment closely parallel the representative payment provisions in titles II and XVI of the Act (although not all title II/XVI provisions apply to the title VIII program). We are therefore adding a new subpart F to part 408 which includes an introductory section on representative payment in the title VIII program followed by sections (with the exception of § 408.630) that refer users to the sections in part 404 that deal with the appropriate topics. Subpart F consists of the following sections:

- Section 408.601 introduces subpart F.
- Section 408.610 provides a cross-reference to § 404.2010(a), which explains the circumstances under which we will make representative payment.
- Section 408.611 provides a cross-reference to § 404.2011, which explains what happens to your monthly benefits while we are finding a suitable representative payee.
- Section 408.615 provides a cross-reference to § 404.2015, which explains the kinds of information we consider in

determining whether to make representative payment.

- Section 408.620 provides a cross-reference to § 404.2020, which explains the information we consider in determining an appropriate representative payee for you.

- Section 408.621 provides a cross-reference to § 404.2021(a), which provides a list of the payees that we prefer to serve your interests.

- Section 408.622 provides a cross-reference to § 404.2022, which contains a list of individuals whom we generally will not select as your representative payee.

- Section 408.624 provides a cross-reference to § 404.2024, which explains how we investigate whether an individual is suitable to serve as a representative payee, including the requirement that we conduct a face-to-face interview with the payee applicant unless it is impracticable to do so.

- Section 408.625 provides a cross-reference to § 404.2025, which explains the information a representative payee or payee applicant must give us.

- Section 408.630 explains how we will notify you when we decide you need a representative payee.

- Section 408.635 provides a cross-reference to § 404.2035, which explains the responsibilities of a representative payee.

- Section 408.640 provides a cross-reference to § 404.2040, which explains how a representative payee must use the SVB payments he or she receives on your behalf.

- Section 408.641 provides a cross-reference to § 404.2041, which explains who is liable when a representative payee misuses the benefits he or she receives on your behalf.

- Section 408.645 provides a cross-reference to § 404.2045, which explains the rules your representative payee must follow to conserve or invest excess benefits, contains a list of preferred investments, and explains that any interest and dividends that result from an investment is your property, not the property of your payee.

- Section 408.650 provides a cross-reference to § 404.2050, which explains when we will select a new representative payee for you.

- Section 408.655 provides a cross-reference to § 404.2055, which explains when we will stop representative payment and begin making payment directly to you.

- Section 408.660 provides a cross-reference to § 404.2060, which explains what happens to accumulated funds when your representative payee changes.

- Section 408.665 provides a cross-reference to § 404.2065, which explains how we require your representative payee to verify that he or she used your benefits on your behalf.

- Section 408.655 provides a cross-reference to § 404.2055, which explains when we will stop representative payment and begin making payment directly to you.

Public Comments

On September 25, 2003, we published proposed rules in the **Federal Register** at 68 FR 55323 and provided a 60-day period for interested parties to comment. We received comments from 6 organizations and 20 individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the issues raised by the commenters that are within the scope of the proposed rules.

Comment: Three commenters felt that the explanation we provided in the NPRM on “substantial harm” was inconsistent with the proposed regulations language, which specified that substantial harm will be found where direct payment is expected to result in *serious* physical or mental injury. The commenters also felt the example in the preamble was vague and overly broad.

Response: We agree with the commenters and have revised the explanation accordingly.

Comment: One commenter suggests the regulations do not sufficiently explain what would constitute “substantial harm” which would justify an interruption in direct payment of benefits. The commenter noted for example, the “stress associated with handling his * * * own affairs” may arise even for many non-disabled individuals and certainly should not result in a capable beneficiary requiring a representative payee, unless of course they freely request such an arrangement. The commenter recognizes that there are certain categories of beneficiaries where a payee would be expected, but recommends that we always favor direct payment.

Response: The parenthetical language objected to by the commenter in the “Explanation of Regulatory Changes” section has been removed as stated in the response shown above. Our policy is that every beneficiary has the right to manage his or her own benefits unless he or she is unable to do so due to a mental or physical condition or due to youth. When we determine a payee is necessary, we will generally pay the beneficiary directly, while finding a suitable representative payee.

Substantial harm must be determined before we may delay a payment. Sections 404.2011 and 416.611 clearly describe how we determine substantial harm. We will not appoint a representative payee for a “capable” beneficiary. SSA selects a representative payee only when someone is not able to manage or direct the management of their finances because of their age, or a mental or physical impairment. SSA does not appoint a representative payee solely for a beneficiary’s convenience or personal preference.

Comment: Eighteen commenters suggested that SSA ensure that substantial harm in fact exists and that benefits are not routinely withheld for one month pending appointment of an appropriate payee.

Response: We believe that under the proposed regulations, benefits will not routinely be held for a month pending appointment of an appropriate payee. Direct payment will be made pending appointment of a payee unless substantial harm is found. Sections 404.2011 and 416.611 clearly specify that withholding payment for one month pending appointment of an appropriate payee is appropriate only in cases when we find that direct payment will cause substantial harm to the beneficiary. Those sections also clearly explain how we determine whether substantial harm exists.

Comment: One commenter suggested that individuals whose benefits are deferred or suspended for more than one month based on a finding of substantial harm should have the ability to appeal the substantial harm finding. The commenter stated that SSA can make a mistake in its finding that “substantial harm” would result from direct payment to the individual and that the ability to appeal would ensure that cases do not get lost in the SSA workload and unnecessarily delayed for months.

Response: Benefits should not be suspended for more than 1 month. Benefits can only be suspended for a maximum of 1 month while a payee is being developed if direct payment to the incapable beneficiary would cause the beneficiary “substantial harm”. Beneficiaries who have their benefits temporarily suspended can appeal the determination to make representative payment (§§ 404.902(o) and 416.1402(d)). Further, sections 404.2011 and 416.611 clearly specify that, in cases when we withhold payment for one month, we will allow a beneficiary to rebut the substantial harm decision and present evidence that direct payment will not cause him or her substantial harm. Therefore, we believe

the proposed rules already provide sufficient safeguards.

Comment: A commenter said we did not explain in the NPRM that paragraph (b) in §§ 404.2021 and 416.621 is redesignated as paragraph (c).

Response: The redesignation of subsection (b) to subsection (c) in §§ 404.2021 and 416.621 was noted in number 5 of the proposed amendments to Part 404 and number 17 of the proposed amendments to Part 416.

Comment: Two commenters expressed concern that the investigation procedures for representative payee applicants set forth in proposed §§ 404.2024 and 416.624 were not stringent enough to protect the recipients who will lose all rights to control their benefits. Specifically, they expressed the view that difficulty finding child care is simply not severe enough to warrant exempting a prospective payee from a personal interview.

Response: We agree and have revised §§ 404.2024(b) and 416.624(b) by deleting the examples of not being able to find child care and not being able to arrange for time off from work.

Comment: Twenty-two commenters recommended that SSA make home visits to payee applicants unable to visit an SSA office for a face-to-face interview. They also suggested that this procedure could be included in a Program Operating Manual System (POMS) provision on payee applicant interviewing procedures.

Response: This is an operational issue and not appropriate to include in regulations. However, we will review current operating instructions and determine whether guidance on when to conduct home visits to payee applicants should be considered. We have made no changes to the regulations based on this comment.

Comment: A commenter suggested that SSA should be required to keep records that it has properly investigated payee applicants before their appointment.

Response: Representative payee applications are taken and stored in the Representative Payee System (RPS) which is a database that houses information about representative payees and beneficiaries who have payees. The RPS was designed to keep an electronic record of our appointment process and the information it contains documents that the payee applicant was properly investigated before being appointed.

Comment: Three commenters stated that the statute requires that prior to appointment of a “high risk” payee, the Commissioner establish that “such individual poses no risk to the

beneficiary.” The commenters recommended that statutory language be included at the outset of these regulations to clarify that the Commissioner’s duty to make this finding applies to all “high risk” payee applicants.

Response: The requirement that the Commissioner must establish that an individual poses no risk to the beneficiary applies only to the appointment of creditor payees and not to the other categories of payees in §§ 404.2022 and 416.622. The statute imposes different standards and restrictions for different situations. These rules set out steps that are required to ensure the payee is acting in the beneficiary’s best interest depending upon the specific situation. Therefore, we have made no changes based on this comment.

Comment: A commenter was concerned that direct providers of services have potential conflict of interest as payees. The commenter listed as an example residential boarding homes, which the commenter felt had a high potential for fraud or abuse. The commenter recommended that SSA develop some new classes of non-profit payees and ban payees where there is an inherent conflict of interest and a potential for abuse exists.

Response: Banning certain classes of potential payees would be inconsistent with sections 205(j)(2)(c)(iii) and 1631(a)(2)(B)(v) of the Act. We use guidelines setting out categories of potential representative payees for selecting the best payee for a beneficiary. These guidelines suggest a preferred order for considering those potential representative payees but they are flexible. Our regulations do generally prohibit the appointment of creditors as payees, and they are only appointed when specific conditions exist, including a determination that there is no substantial conflict of interest (§§ 404.2022(d), 416.622(d)). We do currently appoint non-profit payees, and we are always seeking to develop new or additional sources of representative payees. Our primary concern is to select a representative payee who will best serve the interest of the beneficiary. Banning a specific class of payee based on “potential abuse” would not take individual circumstances into account. We do not believe such an approach would be in the best interest of the beneficiary and therefore, have made no changes based on this comment.

Comment: Twenty-one commenters stated that §§ 404.2022(d)(3) and 416.622(d)(3) would permit an institution to act as payee with virtually

no safeguards. The commenters believe there is a strong need for closer oversight of governmental agencies and institutions that serve as payees and recommend that SSA take the following steps to ensure that a creditor institution, acting as payee, fulfills its fiduciary duties on the beneficiary’s behalf: (1) Notify the beneficiary in writing before the institution is appointed as payee that the institution will be appointed and make clear that the person’s benefits will be available to the person upon release from the institution; (2) include in the regulations a requirement that institutional payees develop procedures for conducting annual individualized assessments of the current and foreseeable needs of the beneficiary, considering more than just the financial needs of the institution as a creditor; and (3) ensure that, where there is a family member or friend available to be the payee, they be given preference over the institution as payee.

Response: We have made no changes based on this comment for the following reasons:

(1) The advance notice, sent before effectuation of any payee appointment, contains language regarding the identity of the proposed representative payee. However, we do not require institutions to set aside funds for the beneficiary’s use after release from the institution. As explained in §§ 404.2040(b) and 416.640(b), we consider funds to have been used for the use and benefit of the beneficiary if they are used for the beneficiary’s current care and maintenance. Any remaining funds should be conserved or invested for the beneficiary pursuant to § 404.2045.

(2) SSA requires that all representative payees remain informed of beneficiaries’ needs (*i.e.*, make ongoing assessments of beneficiaries’ current and reasonably foreseeable needs) so they can decide how best to use benefits for beneficiaries’ personal care and well being. Institutional payees, as care facilities, generally assess current and future needs for the purpose of providing care as well as deciding how best to use benefits received on behalf of a beneficiary. We believe that ongoing assessments better serve the beneficiaries than would annual assessments.

(3) If we are aware of family interest in being a representative payee, we will solicit an application from family members. However, SSA’s responsibility is to appoint the person, agency, organization or institution who can best serve the interest of the beneficiary. Thus family members will

be evaluated under this standard along with any other applicants.

Comment: Twenty-two commenters suggested strengthening the language in §§ 404.2022(c)(5) and 416.622(c)(5) regarding when a misuser can be appointed. They note, for example, it is difficult to imagine any circumstances where SSA would approve a payee who not only has misused others’ benefits in the past but also has failed to repay completely those misused benefits. The commenters said that SSA needed to set a very high standard for re-appointing a person who has previously misused benefits.

Response: Representative payees with a history of misuse are generally banned from serving as representative payees. As noted in the proposed rules at §§ 404.2022 and 416.622, we will only consider appointing a person who has misused funds in the past when five specific requirements are met, including the requirement that no suitable alternative payee is available. We believe the standard for appointing a payee who has previously misused funds is sufficiently strong to protect the beneficiaries, while at the same time is flexible enough to address situations where no other payee is available.

Comment: A commenter suggested that §§ 404.902(x) and 416.1402(o) be revised to clarify that both the determination of negligence and the determination regarding restitution are initial determinations subject to appeal.

Response: In all cases where SSA determines that it was negligent in investigating or monitoring a representative payee and misuse of benefits resulted, SSA is liable for restitution of the misused funds. Where the Agency finds itself negligent, restitution is due and there is no need to appeal the restitution decision separately.

Comment: Twenty-two commenters suggested that the regulations should be amended to indicate that SSA’s determinations of misuse (or no misuse) are initial determinations subject to the appeals process.

Response: Findings of misuse or no misuse are administrative decisions, and are not initial determinations subject to the appeals process. Nothing actionable results from a misuse determination. However, in every case where SSA makes a finding of misuse, it also makes a decision on restitution. SSA’s findings of whether or not we will make restitution are initial determinations, and thus subject to appeal. Effectively, a beneficiary may appeal the misuse finding in these circumstances as part of any appeal on the decision to make restitution. Finally,

recently enacted statutory guidelines now require SSA to make restitution without a finding of negligence in misuse cases where the payee is an organization or an individual payee serving 15 or more beneficiaries. For these reasons, we have made no changes based on this comment.

Comment: One commenter suggested that we revise proposed §§ 404.2022(c) and 416.622(c) to provide that we will evaluate a payee's performance at least once every three months for at least the first two years when that payee has previously been found to have misused benefits.

Response: We believe the language in the proposed rules is preferable because it provides more flexibility to take into account the different facts of each case while still safeguarding the beneficiary's interest. It says we must evaluate the payee's performance *at least* every 3 months until we are satisfied that the payee poses no risk to the beneficiary's best interest. This period could be less than or greater than two years depending on the specific circumstances.

Comment: One commenter stated that misuse of funds by a representative payee should not negatively impact the payment of benefits to child beneficiaries, who should be presumed to be without fault under §§ 404.2041 and 416.641. The commenter stated that holding the child beneficiary liable for misuse of dedicated funds is unfair to the child and clearly violates the spirit and purpose of the Act. This should be made explicit in the regulations.

Response: Sections 404.2041 and 416.641 explain that the representative payee is liable for repaying misused funds. We do not hold the beneficiary liable, and these rules do not suggest otherwise. Therefore, we do not find it necessary to change the proposed regulations.

Comment: A commenter said § 404.2030(a) does not clearly indicate that *both* the decision as to the need for a payee *and* the decision as to whom to appoint are appealable issues.

Response: The proposed regulations at §§ 404.2030(a)(3) and 416.630(a)(3) indicate that the determination that you need a representative payee may be appealed, and §§ 404.2030(a)(4) and 416.630(a)(4) indicate that the designation of a particular person or organization as your representative payee may be appealed. We made no changes to the regulation based on this comment.

Comment: Twenty-one commenters suggested that we allow 15 days from time of receipt of our notice to protest our decision as to the need for a payee

and the decision as to who we appoint as payee instead of 10 days as provided in §§ 404.2030(a) and 416.630(a).

Response: We feel the protest and appeal time we allow adequately protects the beneficiary's rights. We have revised the language in the regulation to clarify that there are two ways to give advance notice—by mail or in the field office. Appropriate language is included in each notice outlining how claimants must proceed if they disagree with our decision and the timeframes they must meet.

Comment: One commenter recommended that we revise §§ 404.2065 and 416.665 to include an exception to the annual accounting requirements for parents of child beneficiaries. The commenter stated there should be a presumption that parents are allocating the benefits in a responsible manner.

Response: The statute requires that all representative payees report not less often than annually. The only exception granted by Congress in the statute is for certain State institutions which participate in a separate onsite review program. We cannot change a statutory requirement by regulation.

Comment: One commenter suggested that we periodically send a questionnaire to recipients (except minor children and some others who may have difficulty replying) to help identify situations where payees need further education about their responsibilities or need to be replaced. The commenter stated that SSA should have in place a mechanism for regular contact with the recipients as well as the payees.

Response: We do not think mailing a questionnaire to beneficiaries would help identify situations where payees need further education about their responsibilities or need to be replaced. As part of the representative payee annual report process, SSA includes as a reminder a section on representative payee responsibilities. Questions on the accounting form are designed to solicit meaningful information about how payees use the benefits sent to them. We also have operating procedures in place to evaluate responses as indicators of how well the payee manages benefits. Our new publication no. 05-10097, "What you should know when a representative payee manages your money * * *" was designed to help explain representative payment to adult beneficiaries and is sent to the beneficiary with the advance notice that a representative payee has been appointed. Beneficiaries may contact SSA at any time to discuss their payee or payee situations. In addition, our new

monitoring program (described in our response to the following comment) provides for beneficiary interviews when feasible.

Comment: Twenty-one commenters suggested SSA should increase oversight of governmental agencies and institutions and include all payees in the annual reporting requirement and not exempt certain State institutions.

Response: Four years ago, we strengthened our oversight process by establishing a new expanded monitoring program. Recently enacted new statutory guidelines expand that program even further. The new program now requires site visits for fee-for-service payees, volume payees (those organizational payees serving 50 or more beneficiaries) and individual payees serving 15 or more beneficiaries. These site reviews monitor payee compliance through a face-to-face meeting and an examination of a sample of beneficiary records. All representative payees must account for use of benefits by completing a written report, but Congress specifically exempted certain State institutions. These State institutions participate in an alternate periodic monitoring program as allowed by statute. See section 205(j)(3)(B) of the Act. We have made no changes to the regulatory language based on this comment.

Comment: Four commenters suggested that in their experiences dealing with SSA on claims of misuse, there are often no records showing what SSA did to determine whether the payee was properly investigated, or whether SSA monitored the payee's performance, or responded to the beneficiaries' complaints of misuse. The commenters feel there is a need for explicit standards, procedures, and a paper trail on these issues.

Response: We do maintain records to document our efforts in these areas. Procedures require that all payees are monitored and that we retain the annual representative payee reports for two years. The RPS contains information regarding beneficiaries' complaints and the actual findings of misuse. Current procedures require all allegations of misuse to be investigated and documented in the RPS.

Comment: Three commenters made suggestions regarding fee-for-service payees. They suggested that charges for such services should be limited to \$25 a month. In addition, the commenters suggested that the current proposal to allow certain State agencies to charge a fee and that the fee be "indexed" should not be finalized without extensive study into the workings of these agencies and their current histories as representative

payees. The commenters stated if "indexing" of fees is allowed, it should not occur automatically. Any increase in fees for organizational representative payees should be the result of a request for an increase by the payee and a complete investigation of that payee's activities and performance as payee before any increased fee is allowed.

Response: Fee-for-service organizations may collect from the individual a monthly fee for providing payee services. The fee amount and the yearly adjustments are set by statute. See section 205(j)(4)(A)(i) of the Act.

Comment: Five commenters recommended that SSA incorporate a requirement in the regulations that beneficiary complaints are treated seriously and investigated promptly by the local District Office staff. The commenters recommended SSA offer a specific procedure for filing complaints about payees and to tell beneficiaries how they can file a complaint if needed.

Response: We take all beneficiary complaints seriously, regardless of how the complaint is reported. It is unnecessary to establish a formal process to receive such complaints. Sections 404.2050 and 416.650 explain when we will make a representative payee change and provide the criteria for looking into such complaints. We have made no changes based on this comment.

Comment: One commenter suggests SSA should be required to review a significant sampling of individual and institutional payees each year. Such reviews should include a requirement for the payee to visit the local SSA office for an interview and a close inspection of accounts and bookkeeping methods used by the payee.

Response: Our current procedures require an annual accounting from all payees and we also have a monitoring program that requires site visits for all fee-for-service payees, volume payees (organizations serving 50 or more beneficiaries) and individual payees serving 15 or more beneficiaries. These site reviews ensure payee compliance through a face-to-face meeting and an examination of a sample of beneficiary records. The reviews include an assessment of the payee's record keeping and a certification that institutional payees continue to meet requirements for a fee-for-service payee. Whenever feasible, we include beneficiary interviews.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and

determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. However, the estimated amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Administrative Procedure Act

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. As indicated above, we are including in these final rules a provision on restitution of misused benefits that was enacted March 2, 2004, as part of Public Law 108–203 and, therefore, was not included in the NPRM we published on September 25, 2003. Since this provision was effective on enactment and the statutory requirement is very specific and does not allow SSA discretion in how to implement, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures for the restitution provision of Public Law 108–203 included in these rules.

Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995

We have reviewed these final rules for compliance with Executive Order 13132 and the Unfunded Mandates Reform Act of 1995 (UMRA of 1995). We have determined that the final rules are not significant within the meaning of the UMRA of 1995 nor will they have any substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government within the meaning of Executive Order 13132.

The provision regarding restitution of misused benefit payments will not significantly impact the States. Even though the States will be responsible for

the supplementary payments portion of the restitution, there should only be a small number of cases involved. There are a very small number of representative payees who are found to misuse benefit payments and of that number, misuse involving SSI payments is even smaller. In addition, SSA will seek restitution of misused funds from the terminated representative payee and, if the restitution is obtained, the State will be reimbursed for any State supplementary payment involved.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in part 404—subpart U, part 408—subpart F, and part 416—subpart F. The OMB Control Number for these collections is 0960–0679, expiring November 30, 2006.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social-Security Survivors Insurance; 96.006, Supplemental Security Income; 96–020, Special Benefits for Certain World War II Veterans.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social Security, Special Veterans benefits, Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, supplemental security income (SSI).

Dated: July 12, 2004.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts J and U of part 404, adding subpart F to part 408, and amending subparts F and N of part 416 of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 1. The authority citation for subpart J continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 2. Amend § 404.902 by revising paragraph (o), removing the word “and” at the end of paragraph (v), removing the period at the end of paragraph (w) and adding “; and” in its place, and adding paragraph (x) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(o) Whether the payment of your benefits will be made, on your behalf, to a representative payee;

* * * * *

(x) Whether we were negligent in investigating or monitoring or failing to investigate or monitor your representative payee, which resulted in the misuse of benefits by your representative payee.

Subpart U—Representative Payment

■ 3. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 4. Add § 404.2011 to read as follows:

§ 404.2011 What happens to your monthly benefits while we are finding a suitable representative payee for you?

(a) *We may pay you directly.* We will pay current monthly benefits directly to you while finding a suitable representative payee unless we determine that paying you directly would cause substantial harm to you. We determine substantial harm as follows:

(1) If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will presume that substantial harm exists. However, we will allow you to rebut this presumption by presenting evidence that direct payment would not cause you substantial harm.

(2) If you do not fit any of these categories, we make findings of substantial harm on a case-by-case basis. We consider all matters that may affect your ability to manage your benefits in your own best interest. We decide that substantial harm exists if both of the following conditions exist:

(i) Directly receiving benefits can be expected to cause you serious physical or mental injury.

(ii) The possible effect of the injury would outweigh the effect of having no income to meet your basic needs.

(b) *We may delay or suspend your payments.* If we find that direct payment will cause substantial harm to you, we may delay (in the case of initial entitlement to benefits) or suspend (in the case of existing entitlement to benefits) payments for as long as one month while we try to find a suitable representative payee for you. If we do not find a payee within one month, we will pay you directly. If you are receiving disability payments and we have determined that you have a drug addiction and alcoholism condition, or you are legally incompetent, or you are under age 15, we will withhold payment until a representative payee is appointed even if it takes longer than one month. We will, however, as noted in paragraph (a)(1) of this section, allow you to present evidence to rebut the presumption that direct payment would cause you substantial harm. See § 404.2001(b)(3) for our policy on suspending benefits if you are currently receiving benefits directly.

Example 1: Substantial Harm Exists. We are unable to find a representative payee for Mr. X, a 67 year old retirement beneficiary who is an alcoholic. Based on contacts with the doctor and beneficiary, we determine that Mr. X was hospitalized recently for his drinking. Paying him directly will cause serious injury, so we may delay payment for as long as one month based on substantial harm while we locate a suitable representative payee.

Example 2: Substantial Harm Does Not Exist. We approve a claim for Mr. Y, a title II claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that Mr. Y needs assistance in managing his benefits, but we have not

found a representative payee. Although we believe that Mr. Y may not use the money wisely, there is no indication that receiving funds directly would cause him substantial harm (*i.e.*, serious physical or mental injury). We must pay current benefits directly to Mr. Y while we locate a suitable representative payee.

(c) *How we pay delayed or suspended benefits.* Payment of benefits, which were delayed or suspended pending appointment of a representative payee, can be made to you or your representative payee as a single sum or in installments when we determine that installments are in your best interest.

■ 5. Amend § 404.2021 by revising the section heading and paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) to read as follows:

§ 404.2021 What is our order of preference in selecting a representative payee for you?

* * * * *

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

* * * * *

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency which is licensed by the State, or bonded;

(2) A Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

* * * * *

■ 6. Add § 404.2022 to read as follows:

§ 404.2022 Who may not serve as a representative payee?

A representative payee applicant may not serve if he/she:

(a) Has been convicted of a violation under section 208, 811 or 1632 of the Social Security Act.

(b) Receives title II, VIII, or XVI benefits through a representative payee.

(c) Previously served as a representative payee and was found by us, or a court of competent jurisdiction, to have misused title II, VIII or XVI benefits. However, if we decide to make an exception to this prohibition, we must evaluate the payee's performance

at least every 3 months until we are satisfied that the payee poses no risk to the beneficiary's best interest.

Exceptions are made on a case-by-case basis if all of the following are true:

(1) Direct payment of benefits to the beneficiary is not in the beneficiary's best interest.

(2) No suitable alternative payee is available.

(3) Selecting the payee applicant as representative payee would be in the best interest of the beneficiary.

(4) The information we have indicates the applicant is now suitable to serve as a representative payee.

(5) The payee applicant has repaid the misused benefits or has a plan to repay them.

(d) Is a creditor. A creditor is someone who provides you with goods or services for consideration. This restriction does not apply to the creditor who poses no risk to you and whose financial relationship with you presents no substantial conflict of interest, and who is any of the following:

(1) A relative living in the same household as you do.

(2) Your legal guardian or legal representative.

(3) A facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State.

(4) A qualified organization authorized to collect a monthly fee from you for expenses incurred in providing representative payee services for you, under § 404.2040a.

(5) An administrator, owner, or employee of the facility in which you live, and we are unable to locate an alternative representative payee.

(6) Any other individual we deem appropriate based on a written determination.

Example 1: Sharon applies to be representative payee for Ron who we have determined cannot manage his benefits. Sharon has been renting a room to Ron for several years and assists Ron in handling his other financial obligations, as needed. She charges Ron a reasonable amount of rent. Ron has no other family or friends willing to help manage his benefits or to act as representative payee. Sharon has demonstrated that her interest in and concern for Ron goes beyond her desire to collect the rent each month. In this instance, we may select Sharon as Ron's representative payee because a more suitable payee is not available, she appears to pose no risk to Ron and there is minimal conflict of interest. We will document this decision.

Example 2: In a situation similar to the one above, Ron's landlord indicates

that she is applying to be payee only to ensure receipt of her rent. If there is money left after payment of the rent, she will give it directly to Ron to manage on his own. In this situation, we would not select the landlord as Ron's representative payee because of the substantial conflict of interest and lack of interest in his well being.

■ 7. Add § 404.2024 to read as follows:

§ 404.2024 How do we investigate a representative payee applicant?

Before selecting an individual or organization to act as your representative payee, we will perform an investigation.

(a) *Nature of the investigation.* As part of the investigation, we do the following:

(1) Conduct a face-to-face interview with the payee applicant unless it is impracticable as explained in paragraph (b) of this section.

(2) Require the payee applicant to submit documented proof of identity, unless information establishing identity has recently been submitted with an application for title II, VIII or XVI benefits.

(3) Verify the payee applicant's Social Security account number or employer identification number.

(4) Determine whether the payee applicant has been convicted of a violation of section 208, 811 or 1632 of the Social Security Act.

(5) Determine whether the payee applicant has previously served as a representative payee and if any previous appointment as payee was revoked or terminated for misusing title II, VIII or XVI benefits.

(6) Use our records to verify the payee applicant's employment and/or direct receipt of title II, VIII, or XVI benefits.

(7) Verify the payee applicant's concern for the beneficiary with the beneficiary's custodian or other interested person.

(8) Require the payee applicant to provide adequate information showing his or her relationship to the beneficiary and to describe his or her responsibility for the care of the beneficiary.

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 404.2022(d)).

(b) *A face-to-face interview.* We may consider a face-to-face interview impracticable if it would cause the payee applicant undue hardship. For example, the payee applicant would have to travel a great distance to the field office. In this situation, we may conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview. We may decide

subsequent face-to-face interviews are impracticable for an organizational representative payee applicant when the organization is known by the field office as a suitable payee. We base this decision on the organization's past performance, recent contacts, and its knowledge of and compliance with reporting requirements.

■ 8. Revise § 404.2025 to read as follows:

§ 404.2025 What information must a representative payee report to us?

Anytime after we select a representative payee for you, we may ask your payee to give us information showing a continuing relationship with you, a continuing responsibility for your care, and how he/she used the payments on your behalf. If your representative payee does not give us the requested information within a reasonable period of time, we may stop sending your benefit payment to him/her—unless we determine that he/she had a satisfactory reason for not meeting our request and we subsequently receive the requested information. If we decide to stop sending your payment to your representative payee, we will consider paying you directly (in accordance with § 404.2011) while we look for a new payee.

■ 9. Revise § 404.2030 to read as follows:

§ 404.2030 How will we notify you when we decide you need a representative payee?

(a) We notify you in writing of our determination to make representative payment. This advance notice explains that we have determined that representative payment is in your interest, and it provides the name of the representative payee we have selected. We provide this notice before we actually appoint the payee. If you are under age 15, an unemancipated minor under the age of 18, or legally incompetent, our written notice goes to your legal guardian or legal representative. The advance notice:

(1) Contains language that is easily understandable to the reader.

(2) Identifies the person designated as your representative payee.

(3) Explains that you, your legal guardian, or your legal representative can appeal our determination that you need a representative payee.

(4) Explains that you, your legal guardian, or your legal representative can appeal our designation of a particular person or organization to serve as your representative payee.

(5) Explains that you, your legal guardian, or your legal representative can review the evidence upon which our designation of a particular

representative payee is based and submit additional evidence.

(b) If you, your legal guardian, or your legal representative objects to representative payment or to the designated payee, we will handle the objection as follows:

(1) If you disagree with the decision and wish to file an appeal, we will process it under subpart J of this part.

(2) If you received your advance notice by mail and you protest or file your appeal within 10 days after you receive this notice, we will delay the action until we make a decision on your protest or appeal. (If you received and signed your notice while you were in the local field office, our decision will be effective immediately.)

■ 10. Revise § 404.2040a to read as follows:

§ 404.2040a Compensation for qualified organizations serving as representative payees.

(a) *Organizations that can request compensation.* A qualified organization can request us to authorize it to collect a monthly fee from your benefit payment. A qualified organization is:

(1) Any State or local government agency with fiduciary responsibilities or whose mission is to carry out income maintenance, social service, or health care-related activities; or

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, that is tax exempt under section 501(c) of the Internal Revenue Code and that is licensed in the State in which it serves as representative payee or bonded.

(b) *Requirements qualified organizations must meet.* Organizations that are qualified under paragraphs (a)(1) or (a)(2) of this section must also meet the following requirements before we can authorize them to collect a monthly fee.

(1) A qualified organization must regularly provide representative payee services concurrently to at least five beneficiaries. An organization which has received our authorization to collect a fee for representative payee services, but is temporarily (not more than 6 months) not a payee for at least five beneficiaries, may request our approval to continue to collect fees.

(2) A qualified organization must demonstrate that it is not a creditor of the beneficiary. See paragraph (c) of this section for exceptions to the requirement regarding creditors.

(c) *Creditor relationship.* On a case-by-case basis, we may authorize an organization to collect a fee for payee services despite the creditor

relationship. (For example, the creditor is the beneficiary's landlord.) To provide this authorization, we will review all of the evidence submitted by the organization and authorize collection of a fee when:

(1) The creditor services (e.g., providing housing) provided by the organization help to meet the current needs of the beneficiary; and

(2) The amount the organization charges the beneficiary for these services is commensurate with the beneficiary's ability to pay.

(d) *Authorization process.* (1) An organization must request in writing and receive an authorization from us *before* it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (a), (b), and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that it meets the requirements of this section, and additional investigation by us proves it suitable to serve, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) *Revocation and cancellation of the authorization.* (1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written notice to us.

(f) *Notices.* The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (a), (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) *Limitation on fees.* (1) An organization authorized to collect a fee under this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a

beneficiary. The limit on the fee a qualified organization may collect for providing payee services increases by the same percentage as the annual cost of living adjustment (COLA). The increased fee amount (rounded to the nearest dollar) is taken beginning with the benefit for December (received in January).

(2) Any agreement providing for a fee in excess of the amount permitted shall be void and treated as misuse of your benefits by the organization under § 404.2041.

(3) A fee may be collected for any month during which the organization—

(i) Provides representative payee services;

(ii) Receives a benefit payment for the beneficiary; and

(iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with § 404.2045.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payment for these months and the organization:

(i) Received our approval to collect a fee for the months for which payment is made;

(ii) Provided payee services in the months for which payment is made; and

(iii) Was the payee when the retroactive payment was paid by us.

(6) An authorized organization can collect a fee for providing representative payee services from another source if the total amount of the fee collected from both the beneficiary and the other source does not exceed the amount authorized by us.

■ 11. Revise § 404.2041 to read as follows:

§ 404.2041 Who is liable if your representative payee misuses your benefits?

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.

(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your

alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(c) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(d) The term “negligent failure” used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) We did not timely investigate a reported allegation of misuse; or

(3) We did not take the necessary steps to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.

(e) Our repayment of misused benefits under these provisions does not alter the representative payee’s liability and responsibility as described in paragraph (a) of this section.

■ 12. Revise § 404.2050 to read as follows:

§ 404.2050 When will we select a new representative payee for you?

When we learn that your interest is not served by sending your benefit payment to your present representative payee or that your present payee is no longer able or willing to carry out payee responsibilities, we will promptly stop sending your payment to the payee. We will then send your benefit payment to an alternative payee or directly to you, until we find a suitable payee. We may suspend payment as explained in § 404.2011(c) if we find that paying you directly would cause substantial harm and we cannot find a suitable alternative representative payee before your next payment is due. We will terminate payment of benefits to your representative payee and find a new payee or pay you directly if the present payee:

(a) Has been found by us or a court of competent jurisdiction to have misused your benefits;

(b) Has not used the benefit payments on your behalf in accordance with the guidelines in this subpart;

(c) Has not carried out the other responsibilities described in this subpart;

(d) Dies;

(e) No longer wishes to be your payee;

(f) Is unable to manage your benefit payments; or

(g) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information we request.

■ 13. Revise § 404.2065 to read as follows:

§ 404.2065 How does your representative payee account for the use of benefits?

A representative payee must account for the use of benefits. We require written reports from your representative payee no less than annually (except for certain State institutions which participate in a separate onsite review program). We may verify how your representative payee used the funds. Your representative payee should keep records of how benefits were used in order to make accounting reports and make those records available upon our request. We may ask your representative payee to give us the following information:

(a) Where you lived during the accounting period;

(b) Who made the decisions on how your benefits were spent or saved;

(c) How your benefit payments were used; and

(d) How much of your benefit payments were saved and how the savings were invested.

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (SVB)

■ 14. Add new Subpart F to Part 408 to read as follows:

Subpart F—Representative Payment

Sec.

408.601 What is this subpart about?

408.610 When will we send your SVB payments to a representative payee?

408.611 What happens to your monthly benefits while we are finding a suitable representative payee for you?

408.615 What information do we consider in determining whether we will pay your benefits to a representative payee?

408.620 What information do we consider in selecting the proper representative payee for you?

408.621 What is our order of preference in selecting a representative payee for you?

408.622 Who may not serve as a representative payee?

408.624 How do we investigate a representative payee applicant?

408.625 What information must a representative payee report to us?

408.630 How will we notify you when we decide you need a representative payee?

408.635 What are the responsibilities of your representative payee?

408.640 How must your representative payee use your benefits?

408.641 Who is liable if your representative payee misuses your benefits?

408.645 What must your representative payee do with unused benefits?

408.650 When will we select a new representative payee for you?

408.655 When will we stop making your payments to a representative payee?

408.660 What happens to your accumulated funds when your representative payee changes?

408.665 How does your representative payee account for the use of your SVB payments?

Subpart F—Representative Payment

Authority: Secs. 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1007, and 1010).

§ 408.601 What is this subpart about?

(a) *Explanation of representative payment.* This subpart explains the policies and procedures we follow to determine whether to pay your benefits to a representative payee and to select a representative payee for you. It also explains the responsibilities your representative payee has for using the funds he or she receives on your behalf. A representative payee may be either an individual or an organization. We will select a representative payee to receive your benefits if we believe your interests will be better served by paying a representative payee than by paying you directly. Generally, we appoint a representative payee if we determine you are unable to manage or direct the management of your own benefit payments. Because the representative payment policies and procedures we use for the title VIII program closely parallel our title II policies and procedures, we provide cross-references to the appropriate material in our title II representative payment rules in subpart U of part 404 of this chapter.

(b) *Policy we use to determine whether to make representative payment.* For an explanation of the policy we use to determine whether to pay your SVB to a representative payee, see § 404.2001(b) of this chapter.

§ 408.610 When will we send your SVB payments to a representative payee?

In determining when we will pay your benefits to a representative payee, we follow the rules in § 404.2010(a) of this chapter.

§ 408.611 What happens to your monthly benefits while we are finding a suitable representative payee for you?

For an explanation of the policy we use to determine what happens to your monthly benefits while we are finding a suitable representative payee for you, see § 404.2011 of this chapter.

§ 408.615 What information do we consider in determining whether we will pay your benefits to a representative payee?

We determine whether to pay your benefits to a representative payee after considering the information listed in § 404.2015 of this chapter.

§ 408.620 What information do we consider in selecting the proper representative payee for you?

To select a proper representative payee for you, we consider the information listed in § 404.2020 of this chapter.

§ 408.621 What is our order of preference in selecting a representative payee for you?

We use the preference list in § 404.2021(a) of this chapter as a guide in selecting the proper representative payee for you.

§ 408.622 Who may not serve as a representative payee?

For a list of individuals who may not serve as a representative payee, see § 404.2022 of this chapter.

§ 408.624 How do we investigate a representative payee applicant?

Before selecting an individual or organization as your representative payee, we investigate him or her following the rules in § 404.2024 of this chapter.

§ 408.625 What information must a representative payee report to us?

Your representative payee must report to us information as described in § 404.2025 of this chapter.

§ 408.630 How will we notify you when we decide you need a representative payee?

(a) We notify you in writing of our determination to make representative payment. If you are legally incompetent, our written notice is sent to your legal guardian or legal representative. The notice explains that we have determined that representative payment is in your interest, and it provides the name of the representative payee we have selected. The notice:

- (1) Contains language that is easily understandable to the reader.
- (2) Identifies the person designated as your representative payee.
- (3) Explains that you, your legal guardian, or your legal representative can appeal our determination that you need a representative payee.

(4) Explains that you, your legal guardian, or your legal representative can appeal our designation of a particular person to serve as representative payee.

(b) If you, your legal guardian, or your legal representative objects to representative payment or to the designated payee, you can file a formal appeal.

§ 408.635 What are the responsibilities of your representative payee?

For a list of your representative payee's responsibilities, see § 404.2035 of this chapter.

§ 408.640 How must your representative payee use your benefits?

Your representative payee must use your benefits in accordance with the rules in § 404.2040 of this chapter.

§ 408.641 Who is liable if your representative payee misuses your benefits?

For the rules we follow to determine who is liable for repayment of misused benefits, see § 404.2041 of this chapter.

§ 408.645 What must your representative payee do with unused benefits?

If your representative payee has accumulated benefits for you, he or she must conserve or invest them as provided in § 404.2045 of this chapter.

§ 408.650 When will we select a new representative payee for you?

We follow the rules in § 404.2050 of this chapter to determine when we will select a new representative payee for you.

§ 408.655 When will we stop making your payments to a representative payee?

To determine when we will stop representative payment for you, we follow the rules in § 404.2055 of this chapter.

§ 408.660 What happens to your accumulated funds when your representative payee changes?

For a description of what happens to your accumulated funds (including the interest earned on the funds) when we change your representative payee or when you begin receiving benefits directly, see § 404.2060 of this chapter.

§ 408.665 How does your representative payee account for the use of your SVB payments?

Your representative payee must account for the use of your benefits as specified in § 404.2065 of this chapter.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart F—Representative Payment

■ 15. The authority citation for subpart F continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 16. Add § 416.611 to read as follows:

§ 416.611 What happens to your monthly benefits while we are finding a suitable representative payee for you?

(a) *We may pay you directly.* We will pay current monthly benefits directly to you while finding a suitable representative payee unless we determine that paying you directly would cause substantial harm to you. We determine substantial harm as follows:

(1) If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will presume that substantial harm exists. However, we will allow you to rebut this presumption by presenting evidence that direct payment would not cause you substantial harm.

(2) If you do not fit any of these categories, we make findings of substantial harm on a case-by-case basis. We consider all matters that may affect your ability to manage your benefits in your own best interest. We decide that substantial harm exists if both of the following conditions exist:

(i) Directly receiving benefits can be expected to cause you serious physical or mental injury.

(ii) The possible effect of the injury would outweigh the effect of having no income to meet your basic needs.

(b) *We may delay or suspend your payments.* If we find that direct payment will cause substantial harm to you, we may delay (in the case of initial eligibility for benefits) or suspend (in the case of existing eligibility for benefits) payments for as long as one month while we try to find a suitable representative payee. If we do not find a payee within one month, we will pay you directly. If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will withhold payment until a representative payee is appointed even if it takes longer than one month. We will, however, as noted in paragraph (a)(1) of this section, allow you to present evidence to rebut the

presumption that direct payment would cause you substantial harm. See § 416.601(b)(3) for our policy on suspending the benefits if you are currently receiving benefits directly.

Example 1: Substantial Harm Exists. We are unable to find a representative payee for Mr. X, a 67 year old claimant receiving title XVI benefits based on age who is an alcoholic. Based on contacts with the doctor and beneficiary, we determine that Mr. X was hospitalized recently for his drinking. Paying him directly will cause serious injury, so we may delay payment for as long as one month based on substantial harm while we locate a suitable representative payee.

Example 2: Substantial Harm Does Not Exist. We approve a claim for Mr. Y, a title XVI claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that Mr. Y needs assistance in managing benefits, but we have not found a representative payee. Although we believe that Mr. Y may not use the money wisely, there is no indication that receiving funds directly would cause him substantial harm (*i.e.*, serious physical or mental injury). We must pay current benefits directly to Mr. Y while we locate a suitable representative payee.

(c) *How we pay delayed or suspended benefits.* Payment of benefits, which were delayed or suspended pending appointment of a representative payee, can be made to you or your representative payee as a single sum or in installments when we determine that installments are in your best interest.

■ 17. Amend § 416.621 by revising the section heading and paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) to read as follows:

§ 416.621 What is our order of preference in selecting a representative payee for you?

* * * * *

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

* * * * *

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency licensed by the State, or bonded;

(2) A Federal, State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

* * * * *

■ 18. Add § 416.622 to read as follows:

§ 416.622 Who may not serve as a representative payee?

A representative payee applicant may not serve if he/she:

(a) Has been convicted of a violation under section 208, 811 or 1632 of the Social Security Act.

(b) Receives title II, VIII, or XVI benefits through a representative payee.

(c) Previously served as a representative payee and was found by us, or a court of competent jurisdiction, to have misused title II, VIII or XVI benefits. However, if we decide to make an exception to the prohibition, we must evaluate the payee's performance at least every 3 months until we are satisfied that the payee poses no risk to the beneficiary's best interest.

Exceptions are made on a case-by-case basis if all of the following are true:

(1) Direct payment of benefits to the beneficiary is not in the beneficiary's best interest.

(2) No suitable alternative payee is available.

(3) Selecting the payee applicant as representative payee would be in the best interest of the beneficiary.

(4) The information we have indicates the applicant is now suitable to serve as a representative payee.

(5) The payee applicant has repaid the misused benefits or has a plan to repay them.

(d) Is a creditor. A creditor is someone who provides you with goods or services for consideration. This restriction does not apply to the creditor who poses no risk to you and whose financial relationship with you presents no substantial conflict of interest, and is any of the following:

(1) A relative living in the same household as you do.

(2) Your legal guardian or legal representative.

(3) A facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State.

(4) A qualified organization authorized to collect a monthly fee from you for expenses incurred in providing representative payee services for you, under § 416.640a.

(5) An administrator, owner, or employee of the facility in which you live and we are unable to locate an alternative representative payee.

(6) Any other individual we deem appropriate based on a written determination.

Example 1: Sharon applies to be representative payee for Ron who we have determined needs assistance in managing his benefits. Sharon has been renting a room to Ron for several years and assists Ron in handling his other financial obligations, as needed. She charges Ron a reasonable amount of rent. Ron has no other family or friends willing to help manage his benefits or to act as representative payee. Sharon has demonstrated that her interest in and concern for Ron goes beyond her desire to collect the rent each month. In this instance, we may select Sharon as Ron's representative payee because a more suitable payee is not available, she appears to pose no risk to Ron and there is minimal conflict of interest. We will document this decision.

Example 2: In a situation similar to the one above, Ron's landlord indicates that she is applying to be payee only to ensure receipt of her rent. If there is money left after payment of the rent, she will give it directly to Ron to manage on his own. In this situation, we would not select the landlord as Ron's representative payee because of the substantial conflict of interest and lack of interest in his well being.

■ 19. Add § 416.624 to read as follows:

§ 416.624 How do we investigate a representative payee applicant?

Before selecting an individual or organization to act as your representative payee, we will perform an investigation.

(a) *Nature of the investigation.* As part of the investigation, we do the following:

(1) Conduct a face-to-face interview with the payee applicant unless it is impracticable as explained in paragraph (b) of this section.

(2) Require the payee applicant to submit documented proof of identity, unless information establishing identity has recently been submitted with an application for title II, VIII or XVI benefits.

(3) Verify the payee applicant's Social Security account number or employer identification number.

(4) Determine whether the payee applicant has been convicted of a violation of section 208, 811 or 1632 of the Social Security Act.

(5) Determine whether the payee applicant has previously served as a representative payee and if any previous appointment as payee was revoked or terminated for misusing title II, VIII or XVI benefits.

(6) Use our records to verify the payee applicant's employment and/or direct receipt of title II, VIII, or XVI benefits.

(7) Verify the payee applicant's concern for the beneficiary with the beneficiary's custodian or other interested person.

(8) Require the payee applicant to provide adequate information showing his or her relationship to the beneficiary and to describe his or her responsibility for the care of the beneficiary.

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 416.622(d)).

(b) *A face-to-face interview.* We may consider a face-to-face interview impracticable if it would cause the payee applicant undue hardship. For example, the payee applicant would have to travel a great distance to the field office. In this situation, we may conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview. We may decide subsequent face-to-face interviews are impracticable for an organizational representative payee applicant when the organization is known by the field office as a suitable payee. We base this decision on the organization's past performance, recent contacts, and its knowledge of and compliance with reporting requirements.

■ 20. Revise § 416.625 to read as follows:

§ 416.625 What information must a representative payee report to us?

Anytime after we select a representative payee for you, we may ask your payee to give us information showing a continuing relationship with you, a continuing responsibility for your care, and how he/she used the payments on your behalf. If your representative payee does not give us the requested information within a reasonable period of time, we may stop sending your benefit payment to him/her—unless we determine that he/she had a satisfactory reason for not meeting our request and we subsequently receive the requested information. If we decide to stop sending your benefit payment to your representative payee, we will consider paying you directly (in accordance with § 416.611) while we look for a new payee.

■ 21. Revise § 416.630 to read as follows:

§ 416.630 How will we notify you when we decide you need a representative payee?

(a) We notify you in writing of our determination to make representative payment. This advance notice explains that we have determined that representative payment is in your interest, and it provides the name of the

representative payee we have selected. We provide this notice before we actually appoint the payee. If you are under age 15, an unemancipated minor under the age of 18, or legally incompetent, our written notice goes to your legal guardian or legal representative. The advance notice:

(1) Contains language that is easily understandable to the reader.

(2) Identifies the person designated as your representative payee.

(3) Explains that you, your legal guardian, or your legal representative can appeal our determination that you need a representative payee.

(4) Explains that you, your legal guardian, or your legal representative can appeal our designation of a particular person to serve as your representative payee.

(5) Explains that you, your legal guardian, or your legal representative can review the evidence upon which our designation of a particular representative payee is based and submit additional evidence.

(b) If you, your legal guardian, or your legal representative objects to representative payment or to the designated payee, we will handle the objection as follows:

(1) If you disagree with the decision and wish to file an appeal, we will process it under subpart N of this part.

(2) If you received your advance notice by mail and you protest or file your appeal within 10 days after you receive the notice, we will delay the action until we make a decision on your protest or appeal. (If you received and signed your notice while you were in the local field office, our decision will be effective immediately.)

■ 22. Revise § 416.640a to read as follows:

§ 416.640a Compensation for qualified organizations serving as representative payees.

(a) *Organizations that can request compensation.* A qualified organization can request us to authorize it to collect a monthly fee from your benefit payment. A qualified organization is:

(1) Any State or local government agency with fiduciary responsibilities or whose mission is to carry out income maintenance, social service, or health care-related activities; or

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, that is tax exempt under section 501(c) of the Internal Revenue Code and that is licensed in the State in which it serves as representative payee or bonded.

(b) *Requirements qualified organizations must meet.* Organizations

that are qualified under paragraphs (a)(1) or (a)(2) of this section must also meet the following requirements before we can authorize them to collect a monthly fee.

(1) A qualified organization must regularly provide representative payee services concurrently to at least five beneficiaries. An organization which has received our authorization to collect a fee for representative payee services, but is temporarily (not more than 6 months) not a payee for at least five beneficiaries, may request our approval to continue to collect fees.

(2) A qualified organization must demonstrate that it is not a creditor of the beneficiary. See paragraph (c) of this section for exceptions to the requirement regarding creditors.

(c) *Creditor relationship.* On a case-by-case basis, we may authorize an organization to collect a fee for payee services despite the creditor relationship. (For example, the creditor is the beneficiary's landlord.) To provide this authorization, we will review all of the evidence submitted by the organization and authorize collection of a fee when:

(1) The creditor services (e.g., providing housing) provided by the organization help to meet the current needs of the beneficiary; and

(2) The amount the organization charges the beneficiary for these services is commensurate with the beneficiary's ability to pay.

(d) *Authorization process.* (1) An organization must request in writing and receive an authorization from us *before* it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (a), (b), and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that it meets the requirements of this section, and additional investigation by us proves it suitable to serve, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) *Revocation and cancellation of the authorization.* (1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written notice to us.

(f) *Notices.* The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (a), (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) *Limitation on fees.* (1) An organization authorized to collect a fee under this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a beneficiary. The limit on the fee a qualified organization may collect for providing payee services increases by the same percentage as the annual cost of living adjustment (COLA). The increased fee amount (rounded to the nearest dollar) is taken beginning with the payment for January.

(2) Any agreement providing for a fee in excess of the amount permitted shall be void and treated as misuse of your benefits by the organization under § 416.641.

(3) A fee may be collected for any month during which the organization—

- (i) Provides representative payee services;
- (ii) Receives a benefit payment for the beneficiary; and
- (iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with § 416.645.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payment for these months and the organization:

- (i) Received our approval to collect a fee for the months for which payment is made;
- (ii) Provided payee services in the months for which payment is made; and
- (iii) Was the payee when the retroactive payment was paid by us.

(6) An authorized organization can collect a fee for providing representative payee services from another source if the total amount of the fee collected from both the beneficiary and the other

source does not exceed the amount authorized by us.

■ 23. Revise § 416.641 to read as follows:

§ 416.641 Who is liable if your representative payee misuses your benefits?

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.

(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(c) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(d) The term “negligent failure” used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) We did not investigate timely a reported allegation of misuse; or

(3) We did not take the steps necessary to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.

(e) Our repayment of misused benefits under these provisions does not alter the representative payee's liability and responsibility as described in paragraph (a) of this section.

■ 24. Revise § 416.650 to read as follows:

§ 416.650 When will we select a new representative payee for you?

When we learn that your interest is not served by sending your benefit payment to your present representative payee or that your present payee is no longer able or willing to carry out payee responsibilities, we will promptly stop sending your payment to the payee. We will then send your benefit payment to an alternative payee or directly to you, until we find a suitable payee. We may suspend payment as explained in § 416.611(c) if we find that paying you directly would cause substantial harm and we cannot find a suitable alternative representative payee before your next payment is due. We will terminate payment of benefits to your representative payee and find a new payee or pay you directly if the present payee:

(a) Has been found by us or a court of competent jurisdiction to have misused your benefits;

(b) Has not used the benefit payments on your behalf in accordance with the guidelines in this subpart;

(c) Has not carried out the other responsibilities described in this subpart;

(d) Dies;

(e) No longer wishes to be your payee;

(f) Is unable to manage your benefit payments; or

(g) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information we request.

■ 25. Revise § 416.665 to read as follows:

§ 416.665 How does your representative payee account for the use of benefits?

A representative payee must account for the use of benefits. We require written reports from your representative payee no less than annually (except for certain State institutions which participate in a separate onsite review program). We may verify how your representative payee used the funds. Your representative payee should keep records of how benefits were used in order to make accounting reports and make those records available upon our request. We may ask your representative payee to give us the following information:

(a) Where you lived during the accounting period;

(b) Who made the decisions on how your benefits were spent or saved;

(c) How your benefit payments were used; and

(d) How much of your benefit payments were saved and how the savings were invested.

**Subpart N—Determinations,
Administrative Review Process, and
Reopening of Determinations and
Decisions**

■ 26. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383(b)); 31 U.S.C. 3720A.

■ 27. Amend § 416.1402 by revising paragraph (d), removing the word “and” at the end of paragraph (m), removing the period at the end of paragraph (n) and adding “; and,” in its place, and adding paragraph (o) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(d) Whether the payment of your benefits will be made, on your behalf, to a representative payee;

* * * * *

(o) Whether we were negligent in investigating or monitoring or failing to investigate or monitor your representative payee, which resulted in the misuse of benefits by your representative payee.