

- 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 contained in these proposed regulations was effective November 5, 1990—the date OBRA 90 was enacted. The other OBRA 90 representative payee provisions addressed by these proposed rules were effective with respect to determinations regarding payment of benefits to representative payees made on or after July 1, 1991.

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 can 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 propose to add a new subpart F—Representative Payment to part 408 of our regulations to set forth the representative payment rules applicable to the SVB program.

Explanation of Proposed Regulations

We are proposing the following changes in our regulations to reflect the amendments to the Act made by sections 5105(a)(1) and (2), and (c) of OBRA 90; 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 and section 401 of Public Law 106–170.

A. Restitution

We propose to amend §§ 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 propose to add 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 would 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 would result in substantial harm to the beneficiary.

2. Findings of substantial harm would be made on a case-by-case basis. We would find substantial harm in cases where direct payment of benefits is expected to result in physical or mental injury to the beneficiary (such as instances when the beneficiary cannot deal with the stress associated with handling his or her own financial affairs). We also would 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 would 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 would 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. This is because a finding of substantial harm will not materially affect the beneficiary since delay or suspension of direct payment is temporary. Beneficiaries who have their benefits temporarily suspended can challenge 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