

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 which 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 propose to add 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 A representative payee applicant whose prior certification or appointment as representative payee was revoked or terminated for misusing title II, VIII or XVI benefits generally may not be appointed as a representative payee.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.*, someone who provides the beneficiary with

goods or services for monetary 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 propose to add 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 propose to amend 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 proposed §§ 404.2011 and 416.611, until we select a payee.

F. Organizational Representative Payees

We propose to amend existing §§ 404.2040a and 416.640a to remove the requirement that the organization must have been in existence prior to October 1, 1988. We propose to include State or local government agencies as qualified organizations for purposes of collecting fees. We also propose to revise 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.

G. Liability for Misused Benefits

We propose to amend §§ 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