

misused benefits to us. We will always make every reasonable effort to obtain restitution of misused benefits;

- We will be liable for repayment of misused benefits if such misuse by a representative payee results from our negligent failure to investigate or monitor the representative payee. The term “negligent failure” as used in the proposed regulation means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but were negligent in that effort;

- For title XVI purposes, when we find that our negligent failure to investigate or monitor a representative payee results in misuse of SSI benefits which involve federally administered State supplementary payments, 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 propose to amend §§ 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 propose to amend §§ 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 propose to amend 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 also propose to amend §§ 404.902 and 416.1402, paragraphs (o) and (d), respectively, to remove the reference to DAA being a contributing factor material to the disability determination. We included a new paragraph (x) and (o), respectively, to include misuse of benefits by a representative payee when we were negligent in failing to investigate or monitor the payee as an initial determination subject to judicial review.

#### *K. Representative Payment of SVB*

Section 807 of the Act authorizes SSA to pay your SVB benefits to a representative payee when we determine that would be in your interest. 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 proposing 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. Proposed subpart F would consist 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 may 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.

#### **Clarity of These Regulations**

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to comments you may have on the substance of these proposed rules, we also invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?