

(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 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 they had an appointment as payee 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 applicant to provide adequate information showing his or her relationship to the beneficiary and 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 cares for children or disabled individuals in the home and no alternative caregiver is available, or is employed and cannot arrange for time off from work, or 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 send this notice before we actually appoint the payee and allow you 10 days from the receipt of the notice to protest the proposed payee appointment before we certify payment to 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: