

§ 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 these benefits can be repaid to you.

(b) We will repay benefits in cases when we determine that a representative payee misused benefits and we were negligent in the investigation or monitoring of that representative payee. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount repaid by the misuser.

(c) 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.

(d) 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.