

PART 163—RECORDKEEPING

■ 3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 4. The Appendix to part 163 is amended by removing the listing for § 12.140 and adding in its place § 12.140(c) under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

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IV. * * *

§ 12.140(c) Certificate of Origin issued by Canada's Maritime Lumber Bureau.

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Chris J. Clark,

Acting Commissioner, Bureau of Customs and Border Protection.

Approved: October 13, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.
[FR Doc. 06–8761 Filed 10–16–06; 9:39 am]

BILLING CODE 9111–14–P

SOCIAL SECURITY ADMINISTRATION**20 CFR Parts 404, 408 and 416**

RIN 0960–AG09

Representative Payment Policies and Administrative Procedure for Imposing Penalties for False or Misleading Statements or Withholding of Information

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our regulations on representative payment and on the administrative procedure for imposing penalties for false or misleading statements or withholding of information to reflect and implement certain provisions of the Social Security Protection Act of 2004 (SSPA). The SSPA amends representative payment policies by providing additional safeguards for Social Security, Special Veterans and Supplemental Security Income beneficiaries served by representative payees. These changes include additional disqualifying factors for representative payee applicants, additional requirements for non-governmental fee-for-service payees, authority to redirect delivery of benefit payments when a representative payee fails to provide required accountings, and authority to treat misused benefits

as an overpayment to the representative payee. In addition, we are amending our rules to explain financial requirements for representative payees, and we have made minor clarifying plain language changes.

The SSPA also allows us to impose a penalty on any person who knowingly withholds information that is material for use in determining any right to, or the amount of, monthly benefits under titles II or XVI. The penalty is nonpayment for a specified number of months of benefits under title II that would otherwise be payable and ineligibility for the same period of time for payments under title XVI (including State supplementary payments).

DATES: These final rules are effective November 17, 2006.

Applicability Date: Sections 404.459 and 416.1340, reflecting and implementing section 201(a)(2) of Public Law 108–203 relating to the withholding of information from us, or failure to disclose information to us, will be applicable upon implementation of the centralized computer file described in section 202 of Public Law 108–203. This is because Congress provided that section 201 of the SSPA would apply only with respect to violations committed after that centralized computer file was implemented. If you want information regarding the applicability date of this provision, call or write the SSA contact person. We will publish a document announcing the applicability date in the **Federal Register** when the centralized computer file has been implemented. The remainder of §§ 404.459 and 416.1340 currently in effect is unaffected by this delay.

FOR FURTHER INFORMATION CONTACT:

Betsy M. Byrd, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7981 or TTY (410) 966–5609 for information about this **Federal Register** document. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Background

Public Law 108–203, the SSPA, enacted March 2, 2004, required a number of changes to our representative payee policy and procedures. A representative payee is the person, agency, organization, or institution selected to receive and manage benefits on behalf of an incapable beneficiary. This includes a parent who is receiving benefits on behalf of his or her minor child. The SSPA also changes the rules for imposing penalties for false or misleading statements or for withholding information.

Section 102 of the SSPA requires non-governmental fee-for-service organizational representative payees to be both bonded and licensed, provided that licensing is available in the State.

Section 103 of the SSPA expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: (1) Has been convicted of any offense resulting in imprisonment for more than 1 year, unless we determine that an exception to this prohibition is appropriate; or (2) is fleeing to avoid prosecution, or custody or confinement after conviction of a crime, or an attempt to commit a crime, that is a felony.

Section 104 of the SSPA requires fee-for-service representative payees to forfeit their fees for any months during which they misuse all or part of any beneficiary's benefits.

Section 105 of the SSPA makes non-governmental representative payees liable for any benefits they misuse and requires us to treat such misused benefits as overpayments to the representative payees, subject to overpayment recovery authorities.

Section 106 of the SSPA authorizes us to require a representative payee to receive benefits in person at a Social Security field office or a United States Government facility that we designate if the payee fails to provide an annual accounting of benefits report or other requested information.

In addition to the changes required by Public Law 108–203, we are clarifying financial requirements for representative payees. Our current regulations specify that the interest earned on conserved funds belongs to the beneficiary. However, the regulations do not specifically address interest earned on current benefits or how current benefits should be held. We are now specifying that a representative payee must keep any payments received for the beneficiary separate from the representative payee's own funds and ensure that the beneficiary's ownership is shown, unless the representative

payee is the spouse or parent of the beneficiary and lives in the same household with the beneficiary. We also provide for an exception to this requirement for State or local government agencies when we determine that their accounting structure sufficiently protects the beneficiaries' interest in the benefits (i.e., accounting structure clearly identifies what funds belong to the beneficiary). We are further specifying that the payee must treat any interest earned on current benefits as the beneficiary's own property. In addition, we are clarifying that the payee is responsible for making records available for review if requested by us.

Section 201(a)(2) of the SSPA amended section 1129A of the Social Security Act (the Act) to help us prevent and respond to fraud and abuse in our programs and operations. Prior to its amendment by the SSPA, section 1129A allowed us to impose a penalty against any person who makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading or that omits a material fact, or that the person makes with a knowing disregard for the truth. The statement must have been made for use in determining eligibility for, or the amount of, benefits under titles II or XVI. The sanction period of nonpayment lasts for 6 consecutive months for the first occurrence, 12 consecutive months for the second occurrence, and 24 consecutive months for each subsequent occurrence for benefits under title II that would otherwise be payable to the person. For payments under title XVI (including State supplementary payments that we make under § 416.2005), the penalty results in ineligibility for the same periods of time.

Section 201(a)(2) amended section 1129A of the Act to also allow us to impose this penalty against any person who withholds disclosure of information that is material for use in determining any right to, or the amount of, monthly benefits under titles II or XVI if the person knows, or should know, that the withholding of such disclosure is misleading. Prior to the enactment of section 201(a)(2), in order for a penalty to be imposed, the law required an affirmative act on the part of the individual who made the statement that omitted a material fact.

This new penalty under section 1129A of the Act applies only for violations occurring after the date on which we implement the centralized computer file described in section 202 of the SSPA to record the date of

submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status. As noted above in the Applicability Date section of the preamble, we will publish a document announcing the applicability date in the **Federal Register** when the centralized computer file has been implemented.

Explanation of Changes on Representative Payment

Because our regulations for representative payment under the title VIII program cross-refer to the appropriate material in our title II representative payment rules, most of the changes to our title II representative payment regulations also apply to title VIII. We have shown a specific rule for title VIII only when a cross-reference to the title II rules would not be sufficient.

We are making the following changes to our representative payment regulations:

1. We are amending §§ 404.2022 and 416.622 to explain that a person who is convicted of an offense resulting in imprisonment for more than 1 year may not serve as a representative payee. These sections also explain that we may make an exception to this rule if the nature of the conviction poses no risk to the beneficiary and selection of the applicant is in the beneficiary's best interest.

2. We are amending §§ 404.2035 and 416.635 to explain that a representative payee must keep any payments received for the beneficiary separate from the payee's own funds and ensure the beneficiary's ownership is shown, unless the payee is the spouse or parent of the beneficiary and lives in the same household with the beneficiary. We will provide for an exception to this requirement for State or local government agencies that use a different accounting structure. We would grant such an exception to a State or local government agency if we determine that its accounting structure sufficiently protects the beneficiaries' interest in the benefits. These sections also explain that the payee must treat any interest earned on current benefits as the beneficiary's own property.

3. We are amending §§ 404.2035 and 416.635 to require representative payees to make available to us their records supporting their written accounting reports. We believe those records are essential to verify the written reports.

4. We are amending §§ 404.2040a and 416.640a to require fee-for-service non-governmental community-based nonprofit organizational representative payees to be both bonded and licensed (provided that licensing is available in

the State). The bond must be of a sufficient amount to repay any funds (current Social Security benefits and Supplemental Security Income payments, plus any conserved funds and interest) lost by the beneficiaries in the event of misuse or theft, and the license must be appropriate under the laws of the State for the type of services the organization provides. These bonding and licensing requirements do not apply to the title VIII program. In addition, these sections explain that a fee-for-service representative payee must forfeit its fee for the months during which it misused benefits.

5. We are amending §§ 404.2041 and 416.641 to explain that a non-governmental representative payee will be liable for any benefits it misuses and that we will treat the misused benefits as an overpayment to the representative payee, subject to overpayment recovery authorities.

6. We are amending §§ 404.2065, 408.665 and 416.665 to explain that we may require a representative payee to receive benefits in person at a local Social Security field office or a United States Government facility that we designate if the payee fails to provide an annual accounting of benefits or other requested information.

Explanation of Changes on Administrative Procedures for Imposing Administrative Penalties

We are amending §§ 404.459 and 416.1340 of our regulations by revising the heading and paragraphs (a) and (e) of each section to reflect that, as a result of section 201 of the SSPA, an individual will be subject to the penalty if he or she withholds information that is material for use in determining any right to, or the amount of, monthly benefits under title II or XVI if the person knows, or should know, that the withholding of the information is misleading.

Public Comments

On October 17, 2005, we published proposed rules in the **Federal Register** at 70 FR 60251 and provided a 60-day comment period. We received comments from four organizations and one individual. We carefully considered all of the comments in publishing these final rules. Because some of the comments received were quite detailed, we have condensed, summarized and paraphrased them in the following discussion. However, we have tried to present all views adequately and to carefully address all of the issues raised by the commenters that are within the scope of the proposed rules. We have not addressed in this preamble

comments that are outside the scope of this rulemaking proceeding.

Comment: One commenter stated that exempting spouses and parents from the obligations to keep the beneficiary's funds separate from their own funds and to show the beneficiary's ownership of his or her funds will make it more difficult for us to track and account for the beneficiary's funds and make it easier for a spouse or parent to misuse the beneficiary's funds and not be caught.

Response: We do not agree with this comment. We still require custodial parents or spouses to account annually for the funds received on behalf of a child or spouse. We afford this exception to parents or spouses living in the same households as their children or spouses in recognition of the inherent familial bonds and in support of family relationships. This exemption allows families the flexibility to manage their own finances without unwarranted, unnecessary, or excessive Federal Government intrusion.

Comment: One commenter suggested that we create a discretionary exception to the 10-day period allowed for payees to respond to notification that they are no longer qualified to serve because they have an unsatisfied felony warrant. The commenter stated that we should allow for a longer time period for the payee to dispute the information in order to ensure that the beneficiary does not lose an otherwise good payee.

Response: On December 6, 2005, the U.S. Court of Appeals for the Second Circuit issued a decision in the Fowlkes Court Case invalidating SSA's fugitive felon policy, which relies on an outstanding felony warrant as the sole basis for finding that an individual is a fugitive felon. The court ruled that SSA must have evidence that the individual knew that his or her apprehension was sought and consciously evaded arrest. Because of this case, we will be reviewing all fugitive felon policies and plan to publish a final rule at a later time. All comments regarding fugitive felons will be addressed as part of that publication. Therefore, we have removed the fugitive felon provision that was in the notice of proposed rulemaking.

Comment: One commenter who supported the proposed bar against felons being representative payees, and the exception to that rule recommended that we provide additional language that would allow us to consider how long ago the offense occurred and the nature of the offense.

Response: The procedures for appointing persons who have a criminal history are provided in our operating

instructions (found in the Program Operations Manual System (POMS), chapter GN 00502 at <https://s044a90.ssa.gov/apps10/poms.nsf/>) and do not need to be addressed in these regulations. When we make a determination involving such an applicant, our procedures discuss weighing information about the nature of the crime and when it occurred, along with the relationship to, and custody of, the beneficiary.

Comment: One commenter suggested that we expand the proposed language regarding the redirection of benefit checks and require specific actions on the part of field office personnel in handling representative payees who have not responded to our request to complete an annual payee report. Another commenter suggested that we revise the proposed language to stress that the provision allowing for the redirection of benefit checks should be used sparingly to avoid delays in processing cases and to prevent potential harm to beneficiaries which might occur by interrupting benefits.

Response: When we request it, the representative payee is required by §§ 404.2025, 404.2035, 416.625, and 416.635 to account for how benefits were used. These final rules do not change that requirement. Rather, the redirection provision outlined in these rules provides field office personnel with an additional tool to use, at their discretion, to obtain accounting information when we request it. The description in these final rules regarding the frequency and manner in which this provision will be applied will give local field offices the flexibility to address payees on a case-by-case basis. In this way, field offices can use their experience with payees to decide which actions are most likely to succeed in obtaining the accounting report with the least harm to beneficiaries and without causing delays in the processing of critical workloads.

Comment: A commenter noted that in order to differentiate between "improper use" and "misuse," the regulations should include the definition of the term "misuse" as described in section 205(j)(9) of the Act. This commenter also noted that it would be helpful to include examples of "improper use."

Response: Because the law includes the definition of the term "misuse," we do not believe that we need to include it in these regulations. "Improper use" is currently discussed in our operating instructions (found in POMS chapter GN 00602), and we do not believe it needs to be addressed in these regulations as it is a different concept

and is outside the scope of the proposed rule.

Comment: A commenter recommended that a representative payee who has been charged with an overpayment due to the misuse of a beneficiary's funds should have the right to seek waiver of the overpayment.

Response: A representative payee who is charged with an overpayment due to misuse of a beneficiary's funds is entitled to the same rights that we give to all overpaid individuals, including the right to request waiver of overpayment recovery, and the full administrative appeals process.

Comment: One commenter expressed a concern that we might impose a penalty on a beneficiary if his or her representative payee made a false or misleading statement or intentionally withheld information to be used in determining the amount of, or the eligibility for, a benefit. The comment stated that such a penalty would unfairly punish the beneficiary because of the actions of another.

Response: We agree that it would be unfair to penalize a person because of another person's actions and believe the regulation is clear in this regard. In addition, current processing instructions for administrative sanction (found in POMS chapter GN 02604) cases specifically state that we will not impose a sanction on a beneficiary because a representative payee makes a false or misleading statement on the beneficiary's behalf, unless there is evidence that the beneficiary knowingly caused the false statement to be made. Those existing instructions will apply to the knowing withholding of information by a representative payee if the information affects the amount of, or eligibility for, a payment.

Comment: One commenter was concerned that we would impose a penalty on a person who unknowingly made an incorrect statement.

Response: The regulations reflecting the statutory provision providing penalties for knowingly making false or misleading statements have been in effect since 2000. These final rules now amend those regulations to reflect legislation that extends the penalties to cover situations where a claimant or recipient fails to provide information that affects the amount of, or eligibility for, a payment, but only if the person knows or should know that the failure to do so is misleading. Our regulations have provided that the decision to impose a sanction will be based on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion, and will be documented with the basis and

rationale for that decision. In determining whether a person acted knowingly, our regulations have provided that we will consider, among other things, any physical, mental, educational or linguistic limitations the person might have, as well as the significance of the person's false or misleading statement or omission in terms of its likely impact on benefits. Those same guidelines will apply to persons who fail to report important information. We have an internal review process already established to help ensure that sanctions are imposed only when the evidence supports the finding that the person being penalized acted or failed to provide information knowingly.

Comment: One commenter addressed the possibility that a person might attempt to return to work and fail to report that attempt because he or she was not aware of the need to report. The commenter suggested that we should take steps to ensure that disabled beneficiaries are reminded periodically of the need to contact us if they resume work activities.

Response: We routinely remind beneficiaries of the need to report specific changes and events that might affect their payment status. We do this with mid-year mailers, check stuffers and redetermination notices. Under these final rules, we will not impose a penalty on a beneficiary for failing to report an event unless the evidence supports a finding that the person knew or should have known of the need to report.

Comment: One commenter was concerned that a person who is incapable of understanding the reporting requirements might be penalized for not reporting something using the "should have known" standard.

Response: We believe the existing regulations and instructions clearly explain when a person should know to report something. We have used the "should have known" standard for imposing penalties for false or misleading statements since 2000. During that time, we are not aware of any problem with applying the "should have known" standard, which is mandated by Congress. Our regulations and instructions clearly state that if a person cannot be aware of something because of a physical or mental impairment, we will not find that the person should be aware, and we will not impose a penalty.

Comment: The same commenter also pointed out the need for more detailed instructions about considering a

person's limitations and lack of proficiency with the English language.

Response: Our current operating instructions for imposing administrative sanctions (found in POMS chapter GN 02604) contain guidelines that are much more detailed than the regulatory language contained in these final rules. We intend to update those instructions to include even more examples of scenarios that might arise. We do not believe that such detailed information should be included in the regulations.

Other Changes

For the reasons discussed above, we have not changed the text of the proposed rules based on public comments. However, in addition to a few minor technical changes for clarification purposes, we did make two significant changes. First, as noted in our response to a public comment, we are not including the provision on fugitive felons that was included in the NPRM. Instead, we are reviewing all of our fugitive felon policies and will publish a final rule on this representative payee provision at a later time. Second, we have changed the regulation text for § 408.665 from the NPRM to indicate that a title VIII beneficiary may also be served by a local Social Security field office as well as a United States Government facility.

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995

We have reviewed these final rules for compliance with Executive Order 13132 and the Unfunded Mandates Reform Act of 1995 (UMRA of 1995). We have determined that the final rules are not significant within the meaning of the UMRA of 1995, nor will they have any substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government within the meaning of Executive Order 13132.

The provision requiring a State license for certain qualified organizations seeking compensation for serving as representative payees affects a very small number of organizational payees and will not have a significant impact on the States. First, the total number of organizations seeking compensation is very small, approximately 800. We do not require most of the organizations within this group to be licensed because they are State or local government agencies. Only the very small number of remaining organizations (community-based nonprofit social service organizations) must seek State licensing. Second, such organizations should already have obtained the necessary license to be in compliance with State law. Therefore, the very small number of organizations seeking a State license will not have a significant impact on the States.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain information collection requirements that require Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, we have submitted a clearance request to OMB for approval. We will publish the OMB number and expiration date upon approval.

As required by the PRA, we published an NPRM in the **Federal Register** on October 17, 2005 at 70 FR 60251. In this NPRM, we solicited comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. None of the comments submitted in response to the Notice addressed the specific issues cited above.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; 96.020, Special Benefits for Certain World War II Veterans)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure, Aged; Reporting and recordkeeping requirements, Social Security; Special Veterans benefits; Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income (SSI).

Dated: July 10, 2006.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts E and U of part 404, subpart F of part 408, and subparts F and M of part 416 of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart E—[Amended]

■ 1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

■ 2. Amend § 404.459 by revising the section heading and paragraphs (a) and (e) to read as follows:

§ 404.459 Penalty for making false or misleading statements or withholding information.

(a) *Why would SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading; or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth; or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify us) of, a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

* * * * *

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failed to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to disclose in terms of its likely impact on your benefits.

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Subpart U—[Amended]

■ 3. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 4. Amend § 404.2022 by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e) and adding a new paragraph (b) to read as follows:

§ 404.2022 Who may not serve as a representative payee?

* * * * *

(b) Has been convicted of an offense resulting in imprisonment for more than

1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk to the beneficiary and the exception is in the beneficiary's best interest.

* * * * *

■ 5. Revise § 404.2035 to read as follows:

§ 404.2035 What are the responsibilities of your representative payee?

A representative payee has a responsibility to—

(a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in your best interests;

(b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement;

(c) Treat any interest earned on the benefits as your property;

(d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;

(e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us; and

(f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities.

■ 6. Amend § 404.2040a by revising paragraph (a)(2), redesignating paragraph (g)(6) as (g)(7), and adding a new paragraph (g)(6) to read as follows:

§ 404.2040a Compensation for qualified organizations serving as representative payees.

(a) * * *

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, which is tax exempt under section 501(c) of the Internal Revenue Code and which is bonded/insured to cover misuse and embezzlement by officers and employees and which is licensed in each State in which it serves as representative payee (if licensing is available in the State). The minimum amount of bonding or insurance coverage must equal the average monthly amount of social security payments received by the organization

plus the amount of the beneficiaries' conserved funds (i.e., beneficiaries' saved social security benefits) plus interest on hand. For example, an organization that has conserved funds of \$5,000 and receives an average of \$12,000 a month in social security payments must be bonded/insured for a minimum of \$17,000. The license must be appropriate under the laws of the State for the type of services the organization provides. An example of an appropriately licensed organization is a community mental health center holding a State license to provide community mental health services.

* * * * *

(g) * * *

(6) Fees for services may not be taken from beneficiary benefits for the months for which we or a court of competent jurisdiction determine(s) that the representative payee misused benefits. Any fees collected for such months will be treated as a part of the beneficiary's misused benefits.

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■ 7. Amend § 404.2041 by adding a new paragraph (f) to read as follows:

§ 404.2041 Who is liable if your representative payee misuses your benefits?

* * * * *

(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart F of this part.

■ 8. Amend § 404.2065 by revising the introductory text to read as follows:

§ 404.2065 How does your representative payee account for the use of benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except for certain State institutions that participate in a separate onsite review program). We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history

of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (SVB)

Subpart F—[Amended]

■ 9. The authority citation for subpart F of part 408 continues to read as follows:

Authority: Secs. 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1007, and 1010).

■ 10. Revise § 408.665 to read as follows:

§ 408.665 How does your representative payee account for the use of your SVB benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year. We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to provide accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required report, we may require your payee to appear in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. 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 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart F—[Amended]

■ 11. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 12. Amend § 416.622 by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e) and adding a new paragraph (b) to read as follows:

§ 416.622 Who may not serve as a representative payee?

* * * * *

(b) Has been convicted of an offense resulting in imprisonment for more than 1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk to the beneficiary and the exception is in the beneficiary's best interest.

* * * * *

■ 13. Revise § 416.635 to read as follows:

§ 416.635 What are the responsibilities of your representative payee?

A representative payee has a responsibility to—

(a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines under the guidelines in this subpart, to be in your best interests;

(b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement;

(c) Treat any interest earned on the benefits as your property;

(d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;

(e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us;

(f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities; and

(g) Ensure that you are receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits (see § 416.994a(i)) if you are under age 18 (including cases in which your low birth weight is a contributing factor material to our determination that you are disabled).

■ 14. Amend § 416.640a by revising paragraph (a)(2), redesignating

paragraph (g)(6) as (g)(7), and adding a new paragraph (g)(6) to read as follows:

§ 416.640a Compensation for qualified organizations serving as representative payees.

(a) * * *

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, which is tax exempt under section 501(c) of the Internal Revenue Code and which is bonded/insured to cover misuse and embezzlement by officers and employees and which is licensed in each State in which it serves as representative payee (if licensing is available in the State). The minimum amount of bonding or insurance coverage must equal the average monthly amount of supplemental security income payments received by the organization plus the amount of the beneficiaries' conserved funds (i.e., beneficiaries' saved supplemental security income payments) plus interest on hand. For example, an organization that has conserved funds of \$5,000 and receives an average of \$12,000 a month in supplemental security income payments must be bonded/insured for a minimum of \$17,000. The license must be appropriate under the laws of the State for the type of services the organization provides. An example of an appropriately licensed organization is a community mental health center holding a State license to provide community mental health services.

* * * * *

(g) * * *

(6) Fees for services may not be taken from beneficiary benefits for the months for which we or a court of competent jurisdiction determine(s) that the representative payee misused benefits. Any fees collected for such months will be treated as a part of the beneficiary's misused benefits.

* * * * *

■ 15. Amend § 416.641 by adding a new paragraph (f) to read as follows:

§ 416.641 Who is liable if your representative payee misuses your benefits?

* * * * *

(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart E of this part.

■ 16. Amend § 416.665 by revising the introductory text to read as follows:

§ 416.665 How does your representative payee account for the use of benefits?

Your representative payee must account for the use of your benefits. We

require written reports from your representative payee at least once a year (except for certain State institutions that participate in a separate onsite review program). We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

* * * * *

Subpart M—[Amended]

■ 17. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

■ 18. Amend § 416.1340 by revising the section heading and paragraphs (a) and (e) to read as follows:

§ 416.1340 Penalty for making false or misleading statements or withholding information.

(a) *Why would SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading; or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth; or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify us) of, a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of,

monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

* * * * *

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failed to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to disclose in terms of its likely impact on your benefits.

* * * * *

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–127]

Drawbridge Operation Regulations; Passaic River, Harrison, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Dock Bridge across the Passaic River at mile 5.0, at Harrison, New Jersey. Under this temporary deviation, the bridge may