

(c) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(d) Whether the potential payee has custody of the beneficiary; and

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

**§ 404.2021 What is our order of preference in selecting a representative payee for you?**

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interest. The preferences are:

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency which is licensed by the State, or bonded;

(2) A Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

(c) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An authorized social agency or custodial institution.

[47 FR 30472, July 14, 1982; 47 FR 32936, July 30, 1982, as amended at 69 FR 60232, Oct. 7, 2004]

**§ 404.2022 Who may not serve as a representative payee?**

A representative payee applicant may not serve if he/she:

(a) Has been convicted of a violation under section 208, 811 or 1632 of the Social Security Act.

(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.

(c) Receives title II, VIII, or XVI benefits through a representative payee.

(d) 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 best 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.

(e) 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.

[69 FR 60232, Oct. 7, 2004, as amended at 71 FR 61407, Oct. 18, 2006]

**§ 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 (c) 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 any previous appointment as payee was 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.