

**§ 404.2045**

**20 CFR Ch. III (4-1-11 Edition)**

(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.

(e) 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.

(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.

[69 FR 60234, Oct. 7, 2004, as amended at 71 FR 61408, Oct. 18, 2006]

**§ 404.2045 Conservation and investment of benefit payments.**

(a) *General.* After the representative payee has used benefit payments consistent with the guidelines in this subpart (see § 404.2040 regarding use of benefits), any remaining amount shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

*Example:* A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several Social Security beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the current support and maintenance of the beneficiaries as well as for miscellaneous needs the beneficiaries may have. Several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over \$150, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) *Preferred investments.* Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or

savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

\_\_\_\_\_ (Name of beneficiary)  
\_\_\_\_\_ (Social Security Number), for  
whom \_\_\_\_\_ (Name of payee) is representative  
payee for Social Security benefits;

(2) For interest or dividend paying  
accounts—

\_\_\_\_\_ (Name of beneficiary) by  
\_\_\_\_\_ (Name of payee), representative  
payee.

(c) *Interest and dividend payments.* The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

[47 FR 30472, July 14, 1982, as amended at 54 FR 35483, Aug. 28, 1989]

**§ 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;

## Social Security Administration

## § 404.2101

(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.

[69 FR 60235, Oct. 7, 2004]

### § 404.2055 When representative payment will be stopped.

If a beneficiary receiving representative payment shows us that he or she is mentally and physically able to manage or direct the management of benefit payments, we will make direct payment. Information which the beneficiary may give us to support his or her request for direct payment include the following—

(a) A physician's statement regarding the beneficiary's condition, or a statement by a medical officer of the institution where the beneficiary is or was confined, showing that the beneficiary is able to manage or direct the management of his or her funds; or

(b) A certified copy of a court order restoring the beneficiary's rights in a case where a beneficiary was adjudged legally incompetent; or

(c) Other evidence which establishes the beneficiary's ability to manage or direct the management of benefits.

### § 404.2060 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds and the interest earned from the invested funds to either a successor payee, to the beneficiary, or to us, as we will specify. If the funds and the earned interest are returned to us, we will recertify them to a successor representative payee or to the beneficiary.

[47 FR 30472, July 14, 1982; 47 FR 34781, Aug. 11, 1982, as amended at 75 FR 7552, Feb. 22, 2010]

### § 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:

(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.

[69 FR 60235, Oct. 7, 2004, as amended at 71 FR 61408, Oct. 18, 2006]

## Subpart V—Payments for Vocational Rehabilitation Services

AUTHORITY: Secs. 205(a), 222, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 422, and 902(a)(5)).

SOURCE: 48 FR 6293, Feb. 10, 1983, unless otherwise noted.

### GENERAL PROVISIONS

#### § 404.2101 General.

Section 222(d) of the Social Security Act authorizes the transfer from the