



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2018-0048]

Review and Reassessment of the Social Security Administration's (SSA) Representative Payee Selection and Replacement Policies

AGENCY: Social Security Administration.

ACTION: Notice; Request for Comments.

SUMMARY: We are requesting information on the appropriateness of our order of preference lists for selecting representative payees (payees) and the effectiveness of our policy and operational procedures in determining when to change a payee. We are seeking this information to determine whether and how we should make any changes to our representative payee program to help ensure that we select suitable payees for our beneficiaries.

DATES: To ensure that your comments are considered, we must receive them no later than

[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2018-0048 so that we may associate your comments with the correct document.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2018-0048. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966-2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Erinn Demers, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (877) 405-3671 x23810. 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:

Background

On April 13, 2018, Congress passed the Strengthening Protections for Social Security Beneficiaries Act of 2018, Pub. L. 115-165. Section 204 of that law requires the Commissioner to conduct a review and reassessment, with opportunity for public comment, of the appropriateness of the order of preference for selecting representative payees (payees) and the effectiveness of our policy and operations for changing payees. We will submit a report on the results of the review and reassessment to Congress within 18 months of enactment.

A person who receives benefits from us may be unable to manage those benefits for reasons such as his or her young age or mental or physical impairment. In these cases, we select a payee if we believe that representative payment, rather than direct payment of benefits, will better serve the beneficiary's interest. Generally, we select a payee if we determine that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. The payee may be an organization or a person, such as a parent, relative, or friend of the beneficiary.

We review and evaluate each representative payee application individually to determine the best representative payee. We carefully screen and consider all applicants, before we make a selection, to ensure the beneficiary's best interest is served. In determining the best payee choice,

we consider all factors, including the applicant's relationship to the beneficiary, the applicant's concern for the beneficiary's well-being, whether there is a financial relationship (creditor) between the applicant and the beneficiary, and whether or not the applicant has custody of the beneficiary.

Sections 205(j) and 1631(a)(2) of the Social Security Act (Act), our regulations at 20 CFR 404.2021 and 20 CFR 416.621, and our Program Operations Manual System (POMS) instructions at GN 00502.105¹ provide guidelines for payee preference that we use as a developmental guide in selecting a representative payee. The payee preference lists do not negate our responsibility to investigate whether we should select a payee applicant to serve a beneficiary. Our primary concern is to select the payee who will best serve the beneficiary's interest. Generally, the applicants on the payee preference lists are the preferred candidates shown in the preferred order of selection. For example, for beneficiaries 18 years or older (except those who are disabled and also have a drug addiction or alcoholism condition) the regulations indicate that a legal guardian, spouse, or other relative who has custody of the beneficiary or who demonstrates strong concern for the beneficiary generally has a higher preference than an organization. For disabled beneficiaries 18 years or older with a drug addiction or alcohol condition, the regulations reflect the statutory preference for certain agencies and organizations over a family member. For beneficiaries under age 18, the regulations indicate that a natural or adoptive parent with custody of the beneficiary, or a guardian generally has a higher preference than a relative who does not have custody.

¹ Available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502105>.

We are seeking comment about whether our existing order of payee preference is appropriate, particularly with respect to the selection of public or non-profit agencies or institutions and for-profit institutions or creditors of the beneficiary as representative payees. Our POMS at GN 00501.013² define different organizations as follows. State and local institutions are institutions funded and operated by a State or local government. Typical examples are State psychiatric institutions, county developmental centers for individuals with intellectual disabilities and State hospitals. A private or for-profit is an institution operated by an individual or corporation to make a profit. Privately owned nursing homes, board and care homes, and extended care facilities are examples of these institutions. A non-profit institution is a not-for-profit, non-governmental institution, such as a home operated by a religious organization or charity. A financial organization is an organization with the primary purpose of handling money, such as a bank, credit union, or savings and loan association. A “social agency” is a non-custodial entity that provides social service assistance to the community, such as State or county Department of Social Services, Child Protective Services, Catholic Charities, Lutheran Social Services, and United Way agencies. An official is an agent of a State or other governmental entity who performs duties as a job function rather than as an individual in the community. Officials are typically public guardians and officers of the court. Our POMS at GN 00502.135³ defines a creditor as an individual or organization who provides the beneficiary with goods or services for monetary consideration. Under the Act, we will generally not appoint a creditor of a beneficiary to serve as the beneficiary’s representative payee. However, there are exceptions, such as when the creditor is a relative living in the same household, a legal guardian, or a facility

² Available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200501013>.

³ Available at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502135>.

that is licensed or certified as a care facility under the laws of a State or political subdivision.⁴

The order of preference list does not incorporate creditor status.

We are also seeking comment about whether our policies and controls are sufficient to prevent an inappropriate change of payee. Under existing policies and procedures, if we need to change a payee, we identify a new payee using the order of preference list and our other policies in our POMS at GN 00502.100 through GN 00502.181.⁵ We are also attentive to any indication that an adult beneficiary no longer needs a representative payee. If we are considering making the payee change, we generally contact the current payee for his or her input, unless it would be inappropriate to do so. During our contact with the current payee, we discuss issues such as:

- The payee's knowledge of the beneficiary's whereabouts and living arrangements;
- His/her reasons for wanting or not wanting to continue as payee; and
- Any information pertinent to the beneficiary's capability.

We evaluate the results obtained from the contact with the current payee and exercise judgment when determining if we should appoint another payee.

Request for Comments

We ask for your comments about the appropriateness of our order of preference lists for selecting payees and the effectiveness of our policy and operational procedures in determining when to change a representative payee. We ask that, in preparing comments, you address questions such as:

⁴ Sections 205(j)(2)(C)(i)(III) and (iii) and 1631(a)(2)(B)(iii)(III) and (v) of the Act, 42 USC 405(j)(2)(C)(i)(III) and (iii), and 1383(a)(2)(B)(iii)(III) and (v).

⁵ Available at: <https://secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restricttocategory=02005>.

- (1) Is the current order of preference list appropriate when selecting or changing a representative payee?
- (2) If you believe that the order of preference list is not appropriate, what would you change about the order of preference list?
- (3) Should we change how we consider public and non-profit agencies or institutions and private, for-profit institutions in our order of preference list?
- (4) Since there are statutory provisions that generally prevent a creditor from serving as a representative payee, should we consider creditor status in our order of preference list? If so, how should we consider creditor status in light of the statute?
- (5) Are our policy and operational procedures effective in properly determining whether to change a representative payee?
- (6) Do we effectively determine when to change from a payee that has a higher order of preference (such as a family member) to a payee that has a lower order of preference (such as a creditor)?
- (7) When a request to change a payee arises from someone other than the beneficiary, do we effectively determine the need to change the payee?
- (8) What would you change about our policies and procedures to help us determine when to change a payee?
- (9) Is there any evidence of difficulty in finding suitable payees, over time and in various circumstances? If so, how should this evidence influence our order of preference list and our policies for changing payees?

Please see the information under ADDRESSES earlier in this document for methods to give us your comments. We will not respond to your comments, but we will consider them as we review our policies and instructions to determine if we should revise or update them.

Nancy A. Berryhill,
Acting Commissioner of Social Security.

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