



**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404, 408, and 416**

**[Docket No. SSA-2015-0006]**

**RIN 0960-AH78**

**Prohibiting Persons with Certain Criminal Convictions from Serving as Representative Payees**

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are finalizing our proposed regulations on conducting background checks to prohibit persons convicted of certain crimes from serving as representative payees under the Social Security Act (Act), as required by the Strengthening Protections for Social Security Beneficiaries Act of 2018.

**DATES:** These final rules will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Kevin Salamone, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0854. 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

Representative payees manage benefit payments for beneficiaries or recipients who are incapable, due to a mental or physical impairment, of managing their Social Security, Special Veterans Benefits, or Supplemental Security Income (SSI) payments, or of directing another person to manage those payments. Generally, if a beneficiary or recipient is under age 18, we will pay benefits to a representative payee; however, in certain situations, we make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits.<sup>1</sup> In cases where the beneficiary or recipient is 18 years or older, we select a representative payee if we believe that payment of benefits through a representative payee, rather than direct payment to the beneficiary, will better serve the beneficiary's interest. A representative payee may be an organization, such as a social service agency, or a person, such as a parent, relative, or friend of the beneficiary. We require a representative payee to use benefits in the beneficiary's best interest and, with certain exceptions, to report expenditures to us to ensure the representative payee is using funds appropriately.<sup>2</sup>

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<sup>1</sup> We use the word "beneficiary" to include both beneficiaries and recipients.

<sup>2</sup> Representative payees may receive an annual Representative Payee Report to account for the benefit payments received. In accordance with section 102 of the Strengthening Protections for Social Security Beneficiaries Act of 2018, Pub. L. 115-165, 132 Stat. 1257, 1260, we no longer require the following payees to complete an annual Representative Payee Report: (1) Natural or adoptive parents of a minor child beneficiary who primarily reside in the same household as the child; (2) a legal guardian of a minor child beneficiary who primarily resides in the same household as the child; (3) Natural or adoptive parents of a disabled adult beneficiary who primarily reside in the same household with the beneficiary; and (4) the spouse of a beneficiary.

When a person or an organization requests to serve as a representative payee, we investigate the potential representative payee to help ensure that the person or organization will perform the duties of a representative payee responsibly. We look at factors such as the potential representative payee's relationship to the beneficiary, any past performance as a representative payee for other beneficiaries, and any criminal history.

On April 13, 2018, the President signed into law the Strengthening Protections for Social Security Beneficiaries Act of 2018.<sup>3</sup> Section 202 of the law<sup>4</sup> codifies our current policy to conduct criminal background checks on representative payee applicants and to prohibit the selection of certain representative payee applicants who have a felony conviction of committing, attempting, or conspiring to commit certain crimes.<sup>5</sup> In addition, the new law requires that we conduct criminal background checks on all currently serving representative payees who do not meet one of the exceptions set out in the law, and continue to do so at least once every five years.<sup>6</sup>

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<sup>3</sup> Pub. L. 115-165, 132 Stat. 1257.

<sup>4</sup> 132 Stat. at 1267.

<sup>5</sup> Section 202(d) of the law, 132 Stat. at 1271, provides that the requirements of section 202 "shall apply with respect to any individual appointed to serve as a representative payee pursuant to section 205(j), 807, or 1631(a)(2) of the Social Security Act on or after January 1, 2019."

<sup>6</sup> Section 202(e) of Pub. L. 115-165, 132 Stat. at 1271-72. We may not apply these prohibitions as an absolute bar to serving as a representative payee if the representative payee applicant is the custodial parent of the minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained age 22, custodial spouse of the beneficiary, custodial grandparent of the minor child beneficiary, custodial court-appointed guardian of the beneficiary, parent who was previously the representative payee for his or her minor child who since turned age 18 and continued to be eligible for benefits; or if the representative payee applicant received a Presidential or gubernatorial pardon for the conviction.

On October 11, 2018, we published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*.<sup>7</sup> In the NPRM, we proposed to codify the requirements of section 202 to conduct background checks on representative payee applicants and to prohibit those representative payee applicants and representative payees with the statutorily enumerated felony convictions<sup>8</sup> from serving as a representative payee. We also proposed to implement the requirement that we conduct criminal background checks on all currently serving representative payees who do not meet one of the exceptions established in the law, and that we will continue to do so at least once every five years. We are adopting the proposed changes as final rules without revision.

In response to the NPRM, we received 11 timely submitted comments that addressed issues within the scope of our proposed rules. The comments are available through the eRulemaking docket, available online at [www.regulations.gov](http://www.regulations.gov), and then navigating to this rulemaking docket, SSA-2015-0006.

#### Public Comments and Discussion

Comment: Some commenters objected to the proposed rules in their entirety, stating that prohibiting individuals convicted of the specified felonies from being representative payees is discriminatory against these individuals based on their legal

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<sup>7</sup> 83 FR 51400. <https://www.federalregister.gov/documents/2018/10/11/2018-22168/prohibiting-persons-with-certain-criminal-convictions-from-serving-as-representative-payees>.

<sup>8</sup> We proposed to add a new paragraph to §§ 404.2022 and 416.622 of our regulations to reflect the felony prohibitions in the legislation. We are prohibited from selecting representative payee applicants with a felony conviction of: (1) human trafficking, (2) false imprisonment, (3) kidnapping, (4) rape and sexual assault, (5) first-degree homicide, (6) robbery, (7) fraud to obtain access to government assistance, (8) fraud by scheme, (9) theft of government funds or property, (10) abuse or neglect, (11) forgery, or (12) identity theft or identity fraud. As further provided in §§ 404.2022(f) and 416.622(f), we will also prohibit the selection of a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

status as convicted felons. In a related concern, other commenters who objected to the proposed rule maintained that we should provide statistical data demonstrating that 1) felons exploited their role as representative payees, or 2) prohibiting a convicted felon from serving as a representative payee results in more protection for beneficiaries.

Response: We acknowledge the commenters' concerns regarding these prohibitions. However, these rules restate the statutory prohibitions enacted by Congress and signed into law by the President, and as such we do not have the discretion to adopt the commenters' suggestions.

Comment: Other commenters asked whether there was a statute of limitations on our review of past criminal convictions, indicating that a criminal conviction, even for one of the crimes specified in the proposed rule, should be disregarded after a long enough period of time has lapsed after the conviction. In this regard, commenters also asked which crimes will be included in our criminal background checks.

Response: The enacted statute and these final rules do not provide an exception based on how long in the past a criminal conviction for one of the prohibited felonies may have occurred. Our criminal background checks look for all convictions for the prohibited felonies in the background history of a representative payee applicant and existing representative payees. Regarding the issue of which crimes will be included in our criminal background checks: both the statute and this regulation list the specific crimes that prohibit individuals from becoming representative payees. However, we consider and evaluate all available information when we evaluate the suitability of a representative payee applicant. Accordingly, if our criminal background checks reveal

convictions for a crime other than the ones listed as a qualifying bar in the statute and in this regulation, we may consider those convictions when we determine whether an applicant will be a suitable representative payee. While the convictions listed in the statute and in this regulation result in prohibition from serving as a representative payee, unless specifically excepted, we will not consider other convictions to absolutely prohibit the representative payee applicant from being selected as a representative payee.

Comment: Other commenters questioned whether a conviction for a prohibited felony would bar a person from serving as a representative payee for elderly parents or grandparents, or what would happen if a beneficiary only has prospective representative payees barred by these rules.

Response: The enacted statute and these final rules do not provide an exception for a child or grandchild with a prohibited felony to serve as a representative payee for either a parent or grandparent. However, under the statute and our rules, if the child or grandchild is the custodial court-appointed guardian of the beneficiary, or has received a Presidential or gubernatorial pardon for the conviction, we would not consider the conviction an absolute bar to serving as the representative payee.

Comment: One commenter disagreed with our usage of the term “custody” and “custodial spouse” because individuals who live at home with family, or in a group home, should not be interpreted as being in the family’s custody. This commenter made suggestions for alternate language.

Response: We acknowledge the commenter’s concern regarding the terminology, particularly in common usage. However, our use of “custodial” directly reflects the enacted statutory language.

## REGULATORY PROCEDURES

### Executive Order 12866 as supplemented by Executive Order 13563

We consulted with OMB and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB did not formally review the final rule.

### Executive Order 13771

This final rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature and results in no more than de minimis costs.

### Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

### Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them.<sup>9</sup>

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<sup>9</sup> Sections 205(a), 702(a)(5), and 1631(d)(1).

(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; and 96.020 – Special Benefits for Certain World War II Veterans))

## **List of Subjects**

### **20 CFR Part 404**

Administrative practice and procedure, Aged, Blind, Disability benefits, Disability insurance, Old-Age, Survivors, Reporting and recordkeeping requirements, Social security.

### **20 CFR Part 408**

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Veterans.

### **20 CFR Part 416**

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

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Nancy A. Berryhill,  
Acting Commissioner of Social Security.

For the reasons stated in the preamble, we amend 20 CFR chapter III, parts 404, 408, and 416 as set forth below:

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

**Subpart U — Representative Payment**

1. 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)).

2. Amend § 404.2020 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

**§404.2020 Information considered in selecting a representative payee.**

\* \* \* \* \*

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

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

(f) The potential payee's criminal history.

3. Amend § 404.2022 by adding paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) Was convicted under Federal or State law of a felony for: human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors

in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

4. Amend § 404.2024 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

**§404.2024 How do we investigate a representative payee applicant?**

\* \* \* \* \*

(a) \* \* \*

(9) Determine whether the payee applicant is a creditor of the beneficiary (see §404.2022(e)).

(10) Conduct a criminal background check on the payee applicant.

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5. Add § 404.2026 to read as follows:

**§ 404.2026 How do we investigate an appointed representative payee?**

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at least once every 5 years.

## **PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

### **Subpart F — Representative Payment**

6. 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).

7. Add § 408.626 to read as follows:

#### **§ 408.626 How do we investigate an appointed representative payee?**

After we select an individual or organization as your representative payee, we investigate him or her following the rules in §404.2026 of this chapter.

## **PART 416- SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

### **Subpart F — Representative Payment**

8. 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)).

9. Amend § 416.620 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

**§416.620 Information considered in selecting a representative payee.**

\* \* \* \* \*

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

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

(f) The potential payee's criminal history.

10. Amend § 416.622 by adding paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) Was convicted under Federal or State law of a felony for: human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will

not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

11. Amend § 416.624 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

**§416.624 How do we investigate a representative payee applicant?**

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(a)\* \* \*

(9) Determine whether the payee applicant is a creditor of the beneficiary (see §416.622(e)).

(10) Conduct a criminal background check on the payee applicant.

\* \* \* \* \*

12. Add § 416.626 to read as follows:

**§ 416.626 How do we investigate an appointed representative payee?**

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at least once every 5 years.

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