

Social Security Administration

§416.641

receive an authorization from us *before* it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (a), (b), and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that it meets the requirements of this section, and additional investigation by us proves it suitable to serve, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) *Revocation and cancellation of the authorization.* (1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written notice to us.

(f) *Notices.* The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (a), (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) *Limitation on fees.* (1) An organization authorized to collect a fee under this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a beneficiary. The limit on the fee a qualified organization may collect for providing payee services increases by the same percentage as the annual cost of living adjustment (COLA). The increased fee amount (rounded to the nearest dollar)

is taken beginning with the payment for January.

(2) Any agreement providing for a fee in excess of the amount permitted shall be void and treated as misuse of your benefits by the organization under §416.641.

(3) A fee may be collected for any month during which the organization—

(i) Provides representative payee services;

(ii) Receives a benefit payment for the beneficiary; and

(iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with §416.645.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payment for these months and the organization:

(i) Received our approval to collect a fee for the months for which payment is made;

(ii) Provided payee services in the months for which payment is made; and

(iii) Was the payee when the retroactive payment was paid by us.

(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.

(7) An authorized organization can collect a fee for providing representative payee services from another source if the total amount of the fee collected from both the beneficiary and the other source does not exceed the amount authorized by us.

[69 FR 60238, Oct. 7, 2004, as amended at 71 FR 61408, Oct. 18, 2006]

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

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will

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make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.

(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(c) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(d) The term "negligent failure" used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) We did not investigate timely a reported allegation of misuse; or

(3) We did not take the steps necessary 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 E of this part.

[69 FR 60239, Oct. 7, 2004, as amended at 71 FR 61409, Oct. 18, 2006]

§ 416.645 Conservation and investment of benefit payments.

(a) *General.* If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they 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 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 personal needs of the beneficiaries. However, not all those funds were disbursed for this purpose. As a result, 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