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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, and 416

[Docket No. SSA-2018-0028]

RIN: 0960-AI33

Advance Designation of Representative Payees for Social Security Beneficiaries

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Strengthening Protections for Social Security Beneficiaries Act of 2018 (Strengthening Protections Act) requires us to promulgate regulations specifying the information Social Security beneficiaries and applicants must provide to designate a representative payee in advance of our determination that the beneficiary needs a representative payee. We propose to revise our rules to satisfy this requirement, and to specify that we will allow individuals to designate in advance one or more potential representative payees. We also explain how we propose to consider an individual's advance designation when we select a representative payee.

DATES: To ensure that your comments are considered, we must receive them by no later than [INSERT DATE 30 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-2018-0028 so that we may associate your comments with the correct regulation.

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-2018-0028. The system will issue 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, 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: Peter Smith, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-3235. 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 Representative Payees

A representative payee is a person or an organization that we select to receive and manage Social Security benefits, Special Veterans benefits, and Supplemental Security Income (SSI) payments on behalf of a beneficiary. Generally, beneficiaries have the right to receive their benefits directly and manage them independently. However, we may determine that a beneficiary is unable to manage or direct the management of benefit payments because of the beneficiary's mental or physical condition, or because of the beneficiary's age.¹ In these cases, we appoint a representative payee when we believe it

¹ See 42 U.S.C. 405(j)(1), 807(a), 1383(a)(2)(A)(ii); 20 CFR 404.2001(b), 408.601(b), 416.601(b).

will serve the beneficiary's interest to receive benefits through a representative payee instead of receiving them directly.²

When we select a representative payee, we will choose the designee of the beneficiary's highest priority, provided that the designee is willing and able to serve, is not prohibited from serving,³ and supports the best interest of the beneficiary.⁴ It is important for us to select the best possible representative payee to ensure that the benefits are used for purposes in the best interest of the beneficiary and in accordance with other responsibilities and requirements discussed in our regulations.⁵

Background on Section 201 of the *Strengthening Protections Act*

President Trump signed the *Strengthening Protections Act* into law on April 13, 2018.⁶ Section 201 of that Act, "Advance Designation of Representative Payees," amends section 205(j)(1) of the Social Security Act⁷ to allow for advance designation of representative payees. It also requires us to promulgate regulations specifying the information that an individual must provide to designate a representative payee in advance.

Before we developed these proposed regulations, we hosted a National Disability Forum (NDF) on Advance Designation of Representative Payees, at which we received

² See 20 CFR 404.2001(a), 20 CFR 408.601(a), and 20 CFR 416.601(a).

³ See 20 CFR 404.2022 and 416.622.

⁴ See 20 CFR 404.2020 and 416.620.

⁵ See 20 CFR 404.2035, 408.635, and 416.635 and, generally, 20 CFR part 404, subpart U, 20 CFR part 408, subpart F, and 20 CFR part 416, subpart F.

⁶ <https://www.congress.gov/bill/115th-congress/house-bill/4547>

⁷ 42 U.S.C. 405(j)(1).

feedback from panelists with experience in fields relevant to our representative payee program.⁸ We considered this feedback in developing these proposed regulations.

Explanation of Advance Designation

Section 201 of the *Strengthening Protections Act* establishes that individuals who are entitled to or applying for a benefit under title II, title VIII, or title XVI, and who have attained 18 years of age or are emancipated minors, are permitted to designate in advance one or more other individuals as a possible representative payee. We propose that these applicants or beneficiaries may designate one or more possible representative payees, provided that we have not determined the applicant or beneficiary is mentally or physically incapable of managing benefit payments, or that the applicant or beneficiary has not been found legally incompetent. Based on feedback we received at the NDF, these advance designations would not expire. Consistent with the *Strengthening Protections Act*, we would only permit advance designations of individuals, not organizations.⁹

We propose that these individuals may designate possible representative payees in advance by providing us with the required information. This required information would include the name and telephone number of each advance designee and the priority order in which the individual would like us to consider the advance designees, if more than one are designated. Our current systems will allow for an applicant or beneficiary to designate up to three possible representative payees, however the relevant systems

⁸ To view additional information and materials related to the NDF, including panelist biographies and audio of the morning and afternoon sessions, go to https://www.ssa.gov/ndf/ndf_outreach.htm#ht=tab10 and click on the tab for 10/30/2018.

⁹ See section 205(j)(1)(C)(ii) of the Act, as amended by the section 2(a) of the Strengthening Protections Act, 42 U.S.C. 405(j)(1)(C)(ii).

prevent us from receiving more than three designees at this time. Based on the feedback we received at the NDF, we also propose that an individual will have the option to identify the relationship of the advance designee to the individual. Further, we propose to collect and store the information provided and the date of the designation for recordkeeping purposes. We will store the information in a new system developed for this purpose. We would not collect the advance designee's Social Security number, which reflects preferences expressed during the panelist discussion at the NDF.

We also propose to consider advance designees first when selecting a representative payee. When we determine that a representative payee is necessary,¹⁰ we would first review the advance designees previously identified by the individual (if any), in the order of priority established by the individual. However, the *Strengthening Protections Act* allows us to certify payments to another individual or organization if the advance designee is unwilling or unable to serve, if the payment of the benefits to the advance designee would not satisfy the requirements in section 205(j)(2) of the Social Security Act, or if other good cause exists to not appoint an advance designee.¹¹ We would follow the established guidance set forth in our existing regulations to determine whether other good cause exists to appoint another representative payee who is not one of the advanced designees.¹² If none of the individuals designated in advance by the individual are willing, able, or suitable to be a representative payee, we would then

¹⁰ See 20 CFR 404.2010 and 416.610 for when payment will be made to a representative payee.

¹¹ See section 205(j)(1)(C)(i)(II) of the Act, as amended by the section 2(a) of the *Strengthening Protections Act*, 42 USC 405(j)(1)(C)(i)(II).

¹² See 20 CFR 404.2020, 404.2021, 416.620, and 416.621.

consider other potential representative payees by referring to our current established order of preference for representative payee selection.¹³

Our proposed selection process aligns with the input we received at the NDF, which underlined the need for a robust evaluation of an advance designee during the selection process. Ensuring that we select a representative payee who would best serve the beneficiary's interest continues to be our primary concern.

In addition to considering advance designees during the initial representative payee selection, we also propose considering advance designees when we select a subsequent representative payee. Accordingly, if an individual who currently has a representative payee requires a new representative payee, we would consider any other designees identified by the individual at a time in which that individual was eligible to make an advanced designation. If we are unable to select from remaining advance designees, we would continue to use the regulations in subpart U of part 404 and subpart F of part 416 to guide representative payee selection.

Finally, we propose that individuals who are eligible to make advance designations may withdraw or revise their advance designations at any time, provided that at the time of modification they are still eligible to make advanced designations, by informing us of the change in writing, in person, by telephone, or by direct electronic submission through our website. If the individual wishes to revise advance designations, the individual must provide the required information for any newly designated individuals.

Proposed Changes

¹³ See 20 CFR 404.2021 and 416.621

For our title II regulations, we propose to add a new section, § 404.2018 Advance designation of representative payees, to cover: 1) general information about advance designation; 2) how to designate possible representative payees in advance; 3) how to change an advance designation; 4) how we consider an advance designation when we select a representative payee; 5) how we consider an advance designation when we select a subsequent representative payee; and 6) that organizations may not be designated in advance as a possible representative payee. We also propose to add paragraph (g) in § 404.2020 to indicate that we would consider advance designation when we select representative payees. Finally, we propose to make a change to § 404.2021 to state that we will consider an advance designee before our current order of preference for representative payees.

For our title XVI regulations, we propose parallel changes. We would add a new section, § 416.618 Advance designation of representative payees, to cover the same six categories that we propose for title II. We would also add paragraph (g) in section § 416.620 to indicate that we would consider advance designation when we select representative payees. Similarly, we propose to make a change to § 416.621 to state that we will consider an advance designee before our current order of preference for representative payees. Finally, we propose to correct a grammatical error in the authority citation for subpart F of part 416.

For title VIII, we propose adding a new section, § 408.618 Advance designation of representative payees, to refer to § 404.2018, § 404.2020, and § 404.2021 for relevant information related to advance designation.

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and will consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?

- Would a different format make the rules easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

REGULATORY PROCEDURES

Executive Order 12866, as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed 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.

EO 13771

This proposed rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature, and because it does not impose costs that reach the E.O. 12866 threshold for significance.

Anticipated Costs to Our Programs:

SSA's Office of the Chief Actuary estimates that implementation of this rule will result in a very small increase in program cost for the Social Security and Supplemental Security Income programs over the 10-year period 2020 through 2029. This small increase would be considered de minimis under E.O. 13771.

Anticipated Administrative Costs to SSA:

Our Office of Budget, Finance, and Management estimates that this change will result in administrative costs to the agency of approximately \$275 million over 10 years, with none of the annual costs meeting or exceeding the E.O. 12866 threshold of \$100 million. The administrative estimates comprise the costs for creating and running the

online application; field office interviews; employee processing time; and sending annual mailers.

Paperwork Reduction Act

Section 404.2018 of these proposed rules imposes a new public reporting burden: the requirement for affected members of the public to use SSA's prescribed paper form or online application to submit the names of advance designees. SSA previously solicited comment on these proposed information collection instruments via a notice published in the *Federal Register*¹⁴. In response to that notice, several members of the public submitted comments. We provide a document detailing these comments, as well as our responses, as a supplemental document to this proposed rulemaking.

We have not changed the proposed Information Collection Request (ICR) since the publication of the above-referenced standalone *Federal Register* notice. However, we are again soliciting comment on the proposed ICR for section 404.2018 as part of this notice of proposed rule. Below is a chart showing current burden estimates for the proposed information collection instruments that will implement section 404.2018.

¹⁴ August 13, 2019 at 84 FR 40121

Modality of Completion	Number of Responses	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Total Annual Opportunity Cost (dollars)**
SSA-4547 - Paper Version	85,733	1	6	8,573	\$16.36*	\$140,254**
SSA-4547 - Intranet version (SSI Claims System; MCS; iMAIN)	8,451,966	1	6	845,200	\$16.36*	\$13,827,472**
i4547- Internet version	3,201,466	1	6	320,147	\$16.36*	\$5,237,605**
Totals	11,739,194			1,173,919		\$19,205,331**

* We based these figures on an average of the hourly wages for the various respondents, which includes: DI; retiree; and survivors' payments as reported in SSA's disability insurance payment data, and the average hourly salary for U.S. workers, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.** The total estimated burden hours for this ICR is **1,173,919 hours** (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$19,205,331**. This figure represents the theoretical

amount a respondent could have earned during the time they completed the form. SSA does not actually charge respondents to complete our applications.

We note that this burden calculation assumes 100 percent of beneficiaries and applicants who are eligible to advance designate will choose to do so.

We are requesting public comments on this Information Collection Request. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget

Attn: Desk Officer for SSA

Fax Number: 202-395-6974

E-mail address: OIRA_Submission@omb.eop.gov

Social Security Administration, OLCA

Attn: Reports Clearance Director

3100 West High Rise

6401 Security Blvd.

Baltimore, MD 21235

Fax: 410-966-2830

Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], which is 30 days after the publication of this proposed rule. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(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; and 96.006, Supplemental Security Income).

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 408

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

20 CFR Part 416

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

Andrew Saul,
Commissioner of Social Security.

For the reasons stated in the preamble, we propose to amend subpart U of part 404 of title 20 of the Code of Federal Regulations as set forth below:

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

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. Add section § 404.2018 to read as follows:

§ 404.2018 Advance designation of representative payees.

(a) *General.* An individual who:

- (1) Is entitled to or an applicant for a benefit and;
- (2) Has attained 18 years of age or is an emancipated minor,

may designate in advance one or more individuals to possibly serve as a representative payee for the individual if we determine that payment will be made to a representative payee (see § 404.2010(a)). An individual may not designate in advance possible representative payees if we have information that the individual is either- legally incompetent or mentally incapable of managing his or her benefit payments; or physically

incapable of managing or directing the management of his or her benefit payments.

(b) *How to designate possible representative payees in advance.* Individuals who meet the requirements in paragraph (a) of this section may designate in advance their choice(s) for possible representative payees by indicating their decision to designate a representative payee in advance and providing us with the required information. In addition to the required information, an individual may choose to provide us with the relationship of the advance designee to the individual. The information we require before we will consider an advance designee as a possible representative payee is:

(1) The name of the advance designee,

(2) A telephone number of the advance designee, and

(3) The order of priority in which the individual would like us to consider the advance designees, if he or she designates more than one advance designee.

(c) *How to make changes to advance designation.* Individuals who meet the requirements in paragraph (a) of this section may change their advance designees by informing us of the change and providing the required information (see paragraph (b)(1) through (3) of this section) to us. Individuals who meet the requirements in paragraph (a)

of this section may withdraw their advance designation by informing us of the withdrawal.

(d) *How we consider advance designation when we select a representative payee.*

(1) If we determine that payment will be made to a representative payee, we will review an individual's advance designees in the order listed by the individual and select the first advance designee who meets the criteria for selection. To meet the criteria for selection—

(i) The advance designee must be willing and able to serve as a representative payee,

(ii) Appointment of the advance designee must comply with the requirements in section 205(j)(2) of the Social Security Act, and

(iii) There must be no other good cause (see §§ 404.2020 and 404.2021) to prevent us from selecting the advance designee.

(2) If none of the advance designees meet the criteria for selection, we will use our list of categories of preferred payees (see § 404.2021), along with our other regulations in subpart U of this part, as a guide to select a suitable representative payee.

(e) *How we consider advance designation when we select a subsequent representative payee.* If an individual who currently has a representative payee requires a change of representative payee, we will consider any other designees identified by the individual at a time in which that individual was eligible to make an advanced designation, under paragraph (d) of this section.

(f) *Organizations.* An individual may not designate in advance an organization to serve as his or her possible representative payees.

3. Amend § 404.2020 by
 - a. Revising paragraphs (e), and (f), and;
 - b. Adding paragraph (g).

The revisions and addition reads as follows:

§ 404.2020 Information considered in selecting a representative payee.

* * * * *

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

(f) The potential payee's criminal history; and

(g) Whether the beneficiary made an advance designation (see § 404.2018).

4. Amend § 404.2021 by revising the introductory paragraph to read as follows:

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

As a guide in selecting a representative payee, we have established categories of preferred payees. These preferences are flexible. We will consider an individual's advance designee(s) (see § 404.2018) before we consider other potential representative payees in the categories of preferred payees listed in this section. When we select a representative payee, we will choose the designee of the beneficiary's highest priority, provided that the designee is willing and able to serve, is not prohibited from serving (see § 404.2022), and supports the best interest of the beneficiary (see § 404.2020). The preferences are:

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

5. The authority citation for subpart F of part 408 is revised to read as follows:

Authority: Secs. 205(j)(1)(C), 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 405(j)(1)(C), 902(a)(5), 1007, and 1010).

6. Add § 408.618 to subpart F to read as follows:

§ 408.618 Advance designation of representative payees

For information about advance designation, how to designate representative payees in advance, how to make changes to advance designations, how we consider an advance designation when we select a representative payee, how we consider an advance designation when we select a subsequent representative payee, and other relevant information, see §§ 404.2018, 404.2020, and 404.2021 of this chapter.

PART416-- SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

7. The authority citation for subpart F of part 416 is revised to read as follows:

Authority: Secs. 205(j)(1)(C), 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 405(j)(1)(C), 902(a)(5), 1383(a)(2) and (d)(1)).

8. Add § 416.618 to subpart F to read as follows:

§ 416.618 Advance designation of representative payees.

- (a) *General.* An individual who:

- (1) Is eligible for or an applicant for a benefit; and

- (2) Has attained 18 years of age or is an emancipated minor,

may designate in advance one or more individuals to possibly serve as a

representative payee for the individual if we determine that payment will be made to a representative payee (see §416.610(a)). An individual may not designate in advance possible representative payees if we have information that the individual is either legally incompetent or mentally incapable of managing his or her benefit payments; or physically incapable of managing or directing the management of his or her benefit payments.

(b) *How to designate possible representative payees in advance.* Individuals who meet the requirements in paragraph (a) of this section may designate in advance their choice(s) for possible representative payees by indicating their decision to designate a representative payee in advance and providing us with the required information. In addition to the required information, an individual may choose to provide us with the relationship of the advance designee to the individual. The information we require before we will consider an advance designee as a possible representative payee is:

- (1) The name of the advance designee,
- (2) A telephone number of the advance designee, and
- (3) The order of priority in which the individual would like us to consider the advance designees if he or she designates more than one advance designee.

(c) *How to make changes to advance designation.* Individuals who meet the requirements in paragraph (a) of this section may change their advance designees by informing us of the change and providing the required information (see paragraph (b)(1) through (3) of this section) to us. Individuals who meet the requirements in paragraph (a) of this section may withdraw their advance designation by informing us of the withdrawal.

(d) *How we consider advance designation when we select a representative payee.*

(1) If we determine that payment will be made to a representative payee, we will review advance designees in the order listed by the individual and select the first advance designee who meets the criteria for selection. To meet the criteria for selection—

(i) The advance designee must be willing and able to serve as a representative payee,

(ii) Appointment of the advance designee must comply with the requirements in section 205(j)(2) of the Social Security Act, and

(iii) There must be no other good cause (see §§ 416.620 and 416.621) to prevent us from selecting the advance designee.

(2) If none of the advance designees meet the criteria for selection, we will use our list of categories of preferred payees (see § 416.621), along with our other regulations in subpart F of this part, as a guide to select a suitable representative payee.

(e) *How we consider advance designation when we select a subsequent representative payee.* If an individual who currently has a representative payee requires a change of representative payee, we will consider any other designees identified by the individual at a time in which that individual was eligible to make an advanced designation, under paragraph (d) of this section.

(f) *Organizations.* An individual may not designate in advance an organization to serve as his or her possible representative payee.

9. Amend § 416.620 by
 - a. Revising paragraphs (e) and (f), and
 - b. Adding paragraph (g):

The revisions and addition reads as follows:

§ 416.620 Information considered in selecting a representative payee.

* * * * *

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

needs of the beneficiary;

(f) The potential payee's criminal history; and

(g) Whether the beneficiary made an advance designation (see § 416.618).

10. Amend § 416.621 by revising the introductory paragraph to read as follows:

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

As a guide in selecting a representative payee, we have established categories of preferred payees. These preferences are flexible. We will consider an individual's advance designees (see § 416.618) before we consider other potential representative payees in the categories of preferred payees listed in this section. When we select a representative payee, we will choose the designee of the beneficiary's highest priority, provided that the designee is willing and able to serve, is not prohibited from serving (see § 416.622), and supports the best interest of the beneficiary (see § 416.620). The preferences are:

* * * * *