



4191-02U

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: Final rule.

SUMMARY: We are finalizing our proposed regulations specifying the information Social Security beneficiaries and applicants must provide to designate individuals as their possible representative payee in advance of our determination that the beneficiary needs a representative payee. These regulations additionally set forth how we will consider an individual's advance designation when we select a representative payee, and fulfill our obligation under 201 of the Strengthening Protections for Social Security Beneficiaries Act of 2018.

DATES: This final rule is effective [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

A representative payee is a person or 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 youth.¹ In these cases, we appoint a representative payee when we believe it will serve the beneficiary's interest to receive benefits through a representative payee instead of receiving them directly.²

On April 13, 2018, President Trump signed into law the *Strengthening Protections for Social Security Beneficiaries Act of 2018 (Strengthening Protections Act)*.³ Section 201 of the *Strengthening Protections Act*, entitled "Advance Designation of Representative Payees," amended section 205(j)(1) of the Social Security Act⁴ to allow for advance designation of representative payees. It also required us to promulgate regulations specifying the information that an individual must provide to designate a representative payee in advance.

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).

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

³ Pub. L. 115-165, 132 Stat. 1257. Available at: <https://www.congress.gov/115/plaws/publ165/PLAW-115publ165.pdf>.

⁴ 42 USC 405(j)(1).

To help us develop the information that we need, we hosted a National Disability Forum (NDF) on Advance Designation of Representative Payees on October 30, 2018⁵, at which we received feedback from panelists with experience in fields relevant to our representative payee program. Following the NDF and taking the feedback we received into consideration, we published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* on November 26, 2019.⁶ In the NPRM, we proposed that applicants or beneficiaries may designate one or more potential representative payees, provided that we have not determined the applicant or beneficiary to be mentally or physically incapable of managing benefit payments, or that the applicant or beneficiary has not been found legally incompetent. Consistent with the *Strengthening Protections Act*, we proposed to permit advance designations of individuals only, not organizations.⁷

We proposed that eligible individuals may designate potential representative payees in advance by providing us with the information we require. This required information includes 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 is designated. We noted that current systems limitations allow us to receive up to three advance designations. We also proposed to consider advance designees first when selecting a representative payee. When we determine that a representative payee is necessary,⁸ we would first review the advance designees previously identified by the individual (if any), in the order of priority established by the

⁵ Information related to this NDF is available on our Internet site at https://www.ssa.gov/ndf/ndf_outreach.htm, under the October 30, 2018 tab.

⁶ 84 FR 65040.

⁷ See section 205(j)(1)(C)(ii) of the Act, as amended by the section 201(a) of the Strengthening Protections Act, 42 USC 405(j)(1)(C)(ii).

⁸ See 20 CFR 404.2010 and 416.610 for when we will make payment to a representative payee.

individual. Finally, we proposed 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. Individuals could withdraw or revise their advance designations by informing us of the change in writing, in person, by telephone, or by direct electronic submission through our website. We also proposed that individuals who wish to revise their advance designations must provide the required information for any newly designated individuals.

In response to the NPRM, we received four timely proffered comment submissions. Below, we did not summarize or respond to one comment that was outside the scope of the proposed rule, and one comment that agreed with the proposal and did not suggest any changes. All comments are viewable through the eRulemaking docket, available online at www.regulations.gov, docket number SSA-2018-0028.

Public Comments and Discussion

Comment: One commenter suggested that to assess the suitability of a person whom a beneficiary wishes to advance designate, including any risk of coercion, undue influence, or exploitation, we should interview proposed advance designees in person and in the company of the beneficiary. If an in-person interview is not possible, the commenter suggested that interviews could take place by video or phone.

Response: The commenter is asking that we use different procedures for representative payees who are advanced designated than for any other applicants we are considering for representative payee appointment. This would be unnecessary and would

establish a disparate standard. In response to the commenter's concern that we ensure the potential representative payee is appropriate, we reiterate that we will not appoint someone to be a representative payee solely because the individual designated them in advance. As stated in the NPRM, all advance designees will undergo the same procedures as anyone else under consideration to be a representative payee.

For example, we interview payee applicants as part of our normal selection procedures.⁹ These same selection procedures will apply when we evaluate an advance designee at the time that a representative payee is needed. We conduct interviews in person, except under certain circumstances. In those situations where we do not conduct an in-person interview, we generally require one by phone or videoconference. However, we do not require that the payee applicant interview occur in the company of the beneficiary. Under existing regulations, beneficiaries receive advance notice of payee appointments and are afforded the right to appeal the selection.¹⁰ Additionally, the payee applicant's responses during the interview are given under penalty of perjury.

Comment: One commenter recommended that before appointing an advance designee as a representative payee, we should confirm the beneficiary still prefers the advance designee to serve as representative payee.

Response: Before appointing any representative payee, we always provide advance notice to the beneficiary notifying him or her of the need for a payee and

⁹ See 20 CFR 404.2024, 408.624, 416.624 for how we investigate a representative payee applicant, including when we conduct a face-to-face interview with the payee applicant.

¹⁰ 20 CFR 404.2030, 408.630, 416.630.

identifying the payee. The advance notice also provides the beneficiary with the right to appeal the selection. Additionally, once advance designation begins, we will send a notice annually to beneficiaries who have advance designations on record reminding them of their advance designees. The notice will instruct the beneficiary to review the advance designees to confirm the accuracy of the information and to update the information as necessary. So, the information in a beneficiary's advance designation will be relatively recent regardless of when the beneficiary initially submitted the advance designation.

Comment: One commenter suggested that our field office staff should fully document reasons for a determination not to select an advance designee.

Response: Under existing procedure, whenever we do not select a payee applicant, we document the non-selection reason in our electronic Representative Payee System (eRPS) (OMB No. 0960-0814). We will include an option in the eRPS system to annotate advance designee status for the payee applicant. We are also building functionality in the system's new Advance Designation screens to document the contacts made with advance designees and why we did not select an advance designee. Our program instructions will direct staff to include notes explaining the decision any time an advance designee is not selected as payee.

Comment: One commenter recommended that we should annually notify the beneficiary to remind them of advance designees and ask for any updates or changes to their contact information.

Response: This will be part of our process, as we explained in the NPRM. Section 201(d) of the *Strengthening Protections Act* requires that annually “the Commissioner of Social Security shall notify each individual entitled to a benefit under title II, VIII, or XVI of the Social Security Act of the name of any individual designated to serve as the individual's representative payee. . . .” So, we will send a notice annually to beneficiaries reminding them of their advance designees. The notice will instruct the beneficiary to review the accuracy of the advance designee information and to update the information if necessary.

Comment: One commenter suggested that when a beneficiary designates an individual, we should provide notice of the designation to the advance designee.

Response: We considered whether to notify individuals who are advance designated at the time that the advance designation occurs. We decided against this action because the burden on the public and us outweighed the benefit of notifying individuals that they had been advance designated, because a designee may never be called upon to serve as a payee. At the time that we determine that a beneficiary is incapable and we begin development of a payee, we will contact the advance designee to determine the person’s availability, willingness, and suitability to serve as a payee.

Comment: One commenter suggested that the information we are proposing to collect might not be enough to identify the advance designees and that we should consider collecting more information, including date of birth and current address.¹¹

Response: We considered whether to collect additional information about the advance designees, but we determined that their names and telephone numbers are sufficient to contact the advance designee. We also considered whether to collect advance designees' current addresses; however, our process for contacting advance designees will only include contacting them by telephone. If an advance designee is unreachable by telephone, we will contact the beneficiary to obtain updated contact information for the individual.

The commenter noted that a long time may have passed between the time the the beneficiary originally makes the advance designation and when we attempt to contact the advance designee. For this reason, we will send a notice annually to beneficiaries who have made advance designations reminding them of their advance designees. The notice will instruct the beneficiary to review the advance designees to assess the accuracy of the information provided and to update the information if necessary. We will not collect an advance designee's date of birth at the time of advance designation because this information is unnecessary. Once we determine that a beneficiary is incapable and we

¹¹ The information we proposed to collect in the NPRM included 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.

need to appoint a payee, we will confirm the identity of the advance designee as part of our normal payee development procedures.

Comment: One commenter suggested that we communicate the option of advance designation to current beneficiaries.

Response: We agree with this suggestion. The agency is developing marketing tools and external communication plans to create a broad awareness of advance designation procedures.

REGULATORY PROCEDURES

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, final rules become effective 30 days following their publication in the Federal Register. However, the APA provides exceptions to allow for earlier effective dates including “as otherwise provided by the agency for good cause found and published with the rule” 5 U.S.C. 553(d)(3).

We determined that good cause exists for dispensing with the 30-day delay in the effective date of this final rule. This final rule merely codifies a statutory directive which the agency is required by law to begin by April 2020. As well, the public comments did not raise any novel issues or concerns. We therefore find it is in the public interest to make this final rule effective 14 days after its publication in the Federal Register.

Executive Order 12866, as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and OMB 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 this final rule.

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

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this final 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 final rule will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, the

Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

EO 13771

This final rule is not subject to the requirements of Executive Order 13771 because it is not a significant regulatory action under E.O. 12866.

Anticipated Costs to Our Programs:

Our Office of the Chief Actuary estimates that implementing this final rule will result in a very small increase in program costs for the Social Security and Supplemental Security Income programs over the 10-year period 2020 through 2029.

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 “economically significant” 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.

Congressional Review Act (CRA)

Pursuant to the Congressional Review Act (5 U.S.C. 801, et seq.), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act (PRA)

Section 404.2018 of this final rule imposes a new public reporting burden: the requirement for affected members of the public to use our prescribed paper form or online application to submit the names and telephone numbers of advance designees. We previously solicited comment on these proposed information collection instruments via a notice published in the *Federal Register*.¹² In response to that notice, several members of the public submitted comments. We previously provided a document detailing these comments, as well as our responses, in the rulemaking docket on Regulations.gov under Supporting and Related Material for this rule’s NPRM.

We did not change the proposed Information Collection Request (ICR) originally shared with the publication of the above-referenced standalone *Federal Register* notice. However, we again solicited comment on the proposed ICR for section 404.2018 as part of the NPRM. We did not receive any further comments or requests for information relating to the PRA in response to that solicitation of comment, and we are not making any further changes to this ICR now. Accordingly, OMB pre-approved the ICR under OMB number No. 0960-0814. This approval will be considered final when this final rule becomes effective.

¹² 84 FR 40121 (August 13, 2019).

(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).

Dated: January 31, 2020.

Andrew Saul,
Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart U of part 404, subpart F of part 408, and subpart F of part 416 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(s) 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 paragraphs (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 payee.

3. Amend § 404.2020 by revising paragraphs (e) and (f) and adding paragraph (g) to read 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 text 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.

PART 416-- 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 paragraphs (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 revising paragraphs (e) and (f) and adding paragraph (g) to read 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 text 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:

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