

SOCIAL SECURITY ADMINISTRATION**20 CFR Parts 404, 408 and 416**

RIN 0960-AG09

Representative Payment Policies and Administrative Procedure for Imposing Penalties for False or Misleading Statements or Withholding of Information**AGENCY:** Social Security Administration (SSA).**ACTION:** Proposed rules.

SUMMARY: We propose to amend our regulations on representative payment and on the administrative procedure for imposing penalties for false or misleading statements or withholding of information to reflect and implement certain provisions of the Social Security Protection Act of 2004 (SSPA), Public Law 108-203. The SSPA amends representative payment policies by providing additional safeguards for Social Security, Special Veterans and Supplemental Security Income beneficiaries served by representative payees. These changes include additional disqualifying factors for representative payee applicants, additional requirements for non-governmental fee-for-service payees, authority to redirect delivery of benefit payments when a representative payee fails to provide required accountings, and authority to treat misused benefits as an overpayment to the representative payee. In addition, we propose to modify our rules to explain financial requirements for representative payees, and we also have made minor clarifying plain language changes.

The SSPA also allows SSA to impose a penalty on any person who knowingly withholds information that is material for use in determining any right to or the amount of monthly benefits under titles II or XVI. The penalty is nonpayment for a specified number of months of benefits under title II that would otherwise be payable and ineligibility for the same period of time for cash benefits under title XVI (including State supplementary payments).

DATES: To consider your comments, we must receive them no later than December 16, 2005.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; telefax to (410) 966-2830; or letter to the Commissioner

of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office, <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

FOR FURTHER INFORMATION CONTACT:

Regarding this **Federal Register** document—Robert Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-0020 or TTY (410) 966-5609; regarding eligibility or filing for benefits—our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:**Background**

Public Law 108-203, the SSPA, enacted March 2, 2004, requires a number of changes to representative payee policy and procedures. A representative payee is the person, agency, organization, or institution selected to receive and manage benefits on behalf of an incapable beneficiary. This includes a parent who is receiving benefits on behalf of his or her minor child. The SSPA also changes the rules for imposing penalties for false or misleading statements or for withholding information.

Section 102 of the SSPA requires non-governmental fee-for-service organizational representative payees to be both bonded and licensed, provided that licensing is available in the State.

Section 103 of the SSPA expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: (1) Has been convicted of any offense resulting in imprisonment for more than 1 year, unless the Commissioner of Social Security determines that an exception to

this prohibition is appropriate; or (2) is fleeing to avoid prosecution, or custody or confinement after conviction of a crime that is a felony.

Section 104 of the SSPA requires fee-for-service representative payees to forfeit their fees for any months during which they misuse all or part of any beneficiary's benefits.

Section 105 of the SSPA makes non-governmental representative payees liable for any benefits they misuse and requires SSA to treat such misused benefits as overpayments to the representative payees, subject to overpayment recovery authorities.

Section 106 of the SSPA authorizes the Commissioner of Social Security to require a representative payee to receive benefits in person at a Social Security field office or a United States Government facility designated by the Social Security Administration if the payee fails to provide an annual accounting of benefits report or other requested information.

In addition to the changes required by Public Law 108-203, we propose to clarify financial requirements for representative payees. Our current regulations specify that the interest earned on conserved funds belongs to the beneficiary. However, the regulations do not specifically address interest earned on current benefits or how current benefits should be held. We propose to specify that a representative payee must keep any payments received for the beneficiary separate from the representative payee's own funds and ensure that the beneficiary's ownership is shown unless the representative payee is the spouse or parent of the beneficiary and lives in the same household with the beneficiary. We also propose to provide for an exception to this requirement for State or local government agencies when we determine that their accounting structure sufficiently protects the beneficiaries' interest in the benefits (*i.e.*, accounting structure clearly identifies what funds belong to the beneficiary). We further propose to specify that the payee must treat any interest earned on current benefits as the beneficiary's own property. In addition, we propose to clarify that the payee is responsible for making records available for review if requested by us. These records must be examined when conducting our site visits.

Section 201(a)(2) of the SSPA amended section 1129A of the Act to help prevent and respond to fraud and abuse in SSA's programs and operations. Prior to its amendment by the SSPA, section 1129A allowed SSA to impose a penalty against any person

who makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading or that omits a material fact, or that the person makes with a knowing disregard for the truth. The statement must have been made for use in determining eligibility for or the amount of benefits under titles II or XVI. The penalty is nonpayment for 6, 12 or 24 months of benefits under title II that would otherwise be payable to the person and ineligibility for the same period of time for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

Section 201(a)(2) amended section 1129A to also allow SSA to impose this penalty against any person who withholds disclosure of information that is material for use in determining any right to or the amount of monthly benefits under titles II or XVI if the person knows, or should know, that the withholding of such disclosure is misleading. Prior to the enactment of section 201(a)(2), in order for a penalty to be imposed, the law required an affirmative act on the part of the individual of making a statement that omitted a material fact.

This new penalty under section 1129A of the Act will be effective with respect to violations committed after the date on which SSA implements the centralized computer file described in section 202 of the SSPA. This centralized computer file will electronically record information about changes in work status that a disability beneficiary (or representative) reports to SSA and is expected to be implemented in February 2006.

Explanation of Proposed Changes on Representative Payment

Because our regulations for representative payment under the title VIII program cross-reference the appropriate material in our title II representative payment rules, most of the changes we now propose to our title II representative payment regulations would also apply to title VIII. Where only a cross-reference to the title II rules would not be sufficient, we propose a specific rule for title VIII.

We are proposing the following policy changes to our representative payment regulations:

1. We propose to amend §§ 404.2022 and 416.622 to explain that a person who is convicted of an offense resulting in imprisonment for more than 1 year may not serve as a representative payee. These sections also would explain that we may make an exception to this rule if the nature of the conviction poses no

risk to the beneficiary and selection of the applicant is in the beneficiary's best interest. In addition, these sections would explain that a person who is fleeing prosecution, custody or confinement for a crime, or an attempt to commit a crime that is a felony may not serve as a representative payee. If we identify a currently serving payee who is no longer qualified for this reason, we will allow them 10 days to respond to notification before making any payee change.

2. We propose to amend §§ 404.2035 and 416.635 to explain that a representative payee must keep any payments received for the beneficiary separate from the payee's own funds and ensure the beneficiary's ownership is shown unless the payee is the spouse or parent of the beneficiary and lives in the same household with the beneficiary. We also propose to provide for an exception to this requirement for State or local government agencies that use a different accounting structure. We would grant such an exception to a State or local government agency if we determine that its accounting structure sufficiently protects the beneficiaries' interest in the benefits. Also, these sections would explain that the payee must treat any interest earned on current benefits as the beneficiary's own property.

3. We propose to amend §§ 404.2035 and 416.635 to require representative payees to make available to us their records supporting their written accounting reports. We believe those records are essential to verify the written reports.

4. We propose to amend existing §§ 404.2040a and 416.640a to require fee-for-service non-governmental community-based nonprofit organizational representative payees to be both bonded and licensed (provided that licensing is available in the State). The bond would have to be of a sufficient amount to repay any funds (current social security benefits and supplemental security income payments plus any conserved funds and interest) lost by the beneficiaries in the event of misuse or theft, and the license would have to be appropriate under the laws of the State for the type of services the organization provides. These bonding and licensing requirements would not apply to the title VIII program. In addition, these sections would explain that a fee-for-service representative payee must forfeit its fee for the months during which it misused benefits.

5. We propose to amend §§ 404.2041 and 416.641 to explain that a non-governmental representative payee will be liable for any benefits it misuses and

that SSA will treat the misused benefits as an overpayment to the representative payee, subject to overpayment recovery authorities.

6. We propose to amend §§ 404.2065 and 416.665 to explain that we may require a representative payee to receive benefits in person at a local Social Security field office or a United States Government facility designated by the Social Security Administration if the payee fails to provide an annual accounting of benefits or other requested information. We propose to make a similar amendment to § 408.665, but the benefits would be directed to a United States Government facility designated by the Social Security Administration.

Explanation of Proposed Changes on Administrative Procedures for Imposing Administrative Penalties

We propose to amend §§ 404.459 and 416.1340 of our regulations by revising the heading and paragraphs (a) and (e) of each section to reflect that, as a result of section 201 of the SSPA, an individual will be subject to the penalty if he or she withholds information that is material for use in determining any right to or the amount of monthly benefits under title II or XVI if the person knows, or should know, that the withholding of the information is misleading.

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to comments you may have on the substance of these proposed rules, we also invite your comments on how to make these rules easier to understand. For example:

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

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules

meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, the rules have been reviewed by OMB.

Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995

We have reviewed the proposed rules for compliance with Executive Order 13132 and the Unfunded Mandates Reform Act of 1995 (UMRA of 1995). We have determined that the proposed rules are not significant within the meaning of the UMRA of 1995 nor will they have any substantial direct effects on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government within the meaning of Executive Order 13132.

The provision requiring a State license for certain qualified organizations seeking compensation for serving as representative payees affects a very small number of organizational payees and will not significantly impact the States. First, the total number of organizations seeking compensation is very small, approximately 800. There are a significant number of State or local government agencies within this group which we do not require to be licensed. Only the small number of remaining organizations (community-based nonprofit social service organizations) must seek State licensing. Second, such organizations should already have obtained the necessary license to be in compliance with State law. Therefore, the very small number of organizations seeking a State license will not significantly impact the States.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of these burdens because they were not considered during the clearance of the forms.

Section	Annual number of responses	Frequency of response	Average burden per response	Estimated annual burden
404.2035(d)	550,000	1	.083	45,650
404.2035(e); 404.2065; 408.665				1
404.2035(f)	5,500	1	.083	457
416.635(d)	300,000	1	.083	24,900
416.635(e); 416.665				1
416.635(f)	3,000	1	.083	250
Total	858,500			71,257

An Information Collection Request has been submitted to OMB. 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 on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to OMB and to the Social Security Administration at the following addresses/numbers: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974. Social Security Administration, Attn: SSA Reports Clearance Officer, Rm: 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, Fax Number: 410-965-6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

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

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, Aged; Reporting and recordkeeping requirements, Social Security; Special Veterans benefits; Veterans.

20 CFR Part 416

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

Dated: October 7, 2005.

Jo Anne B. Barnhart,
Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts E and U of part 404, subpart F of part 408, and subparts F and M of part 416 of Title 20 of the Code of Federal Regulations as follows:

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

Subpart E—[Amended]

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 423(e), 424a, 425, 902(a)(5), 1320a-8a) and 48 U.S.C. 1801.

2. Amend § 404.459 by revising the heading and paragraphs (a) and (e) to read as follows:

§ 404.459 Penalty for making false or misleading statements or withholding information.

(a) *When may SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading, or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth, or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify SSA) of a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

* * * * *

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failed to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to

disclose in terms of its likely impact on your benefits.

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Subpart U—[Amended]

3. 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)).

4. Amend § 404.2022 by redesignating paragraphs (b), (c) and (d) as paragraphs (d), (e) and (f) and adding new paragraphs (b) and (c) to read as follows:

§ 404.2022 Who may not serve as a representative payee?

* * * * *

(b) Is fleeing to avoid prosecution, or custody or confinement after conviction of a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which he/she flees (or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding one year, regardless of the actual sentence imposed). If we identify a currently serving payee who is no longer qualified for this reason, we will allow them 10 days to respond to notification before making any payee change.

(c) Has been convicted of an offense resulting in imprisonment for more than 1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk to the beneficiary and the exception is in the beneficiary's best interest.

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5. Revise § 404.2035 to read as follows:

§ 404.2035 What are the responsibilities of your representative payee?

A representative payee has a responsibility to—

(a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in your best interests.

(b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement.

(c) Treat any interest earned on the benefits as your property.

(d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your

right to receive benefits, or how you receive them;

(e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us; and

(f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities.

6. Amend § 404.2040a by revising paragraph (a)(2), redesignating paragraph (g)(6) as (g)(7), and adding a new paragraph (g)(6) to read as follows:

§ 404.2040a Compensation for qualified organizations serving as representative payees.

* * * * *

(a) * * *

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, which is tax exempt under section 501(c) of the Internal Revenue Code and which is bonded/insured to cover misuse and embezzlement by officers and employees and which is licensed in each State in which it serves as representative payee (if licensing is available in the State). The minimum amount of bonding or insurance coverage must equal the average monthly amount of social security payments received by the organization plus the amount of the beneficiaries' conserved funds (i.e., beneficiaries' saved social security benefits) plus interest on hand. For example, an organization that has conserved funds of \$5,000 and receives an average of \$12,000 a month in social security payments must be bonded/insured for a minimum of \$17,000. The license must be appropriate under the laws of the State for the type of services the organization provides. An example of an appropriately licensed organization is a community mental health center holding a State license to provide community mental health services.

* * * * *

(g) * * *

(6) Fees for services may not be taken from beneficiary benefits for the months for which the Commissioner or a court of competent jurisdiction determines that the representative payee misused benefits. Any fees collected for such months will be treated as a part of the beneficiary's misused benefits.

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7. Amend § 404.2041 by adding a new paragraph (f) to read as follows:

§ 404.2041 Who is liable if your representative payee misuses your benefits?

* * * * *

(f) Any amounts that the representative payee misuses and does not refund will be treated as an overpayment to that representative payee. See subpart F of part 404.

8. Amend § 404.2065 by revising the introductory text to read as follows:

§ 404.2065 How does your representative payee account for the use of benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except for certain State institutions that participate in a separate onsite review program). We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility designated by the Social Security Administration serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or SSA's past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (SVB)

Subpart F—[Amended]

9. 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).

10. Revise § 408.665 to read as follows:

§ 408.665 How does your representative payee account for the use of your SVB benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year. We may verify how your representative payee used your benefits. Your representative payee should keep

records of how benefits were used in order to provide accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required report, we may require your payee to appear in person at a United States Government facility designated by the Social Security Administration serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or SSA's past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

(a) Where you lived during the accounting period;

(b) Who made the decisions on how your benefits were spent or saved;

(c) How your benefit payments were used; and

(d) How much of your benefit payments were saved and how the savings were invested.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart F—[Amended]

11. The authority citation for subpart F 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)).

12. Amend § 416.622 by redesignating paragraphs (b), (c) and (d) as paragraphs (d), (e) and (f) and adding new paragraphs (b) and (c) to read as follows:

§ 416.622 Who may not serve as a representative payee?

* * * * *

(b) Is fleeing to avoid prosecution, or custody or confinement after conviction of a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which he/she flees (or in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding one year, regardless of the actual sentence imposed). If we identify a currently serving payee who is no longer qualified for this reason, we will allow them 10 days to respond to notification before making any payee change.

(c) Has been convicted of an offense resulting in imprisonment for more than 1 year. However, we may make an exception to this prohibition, if the nature of the conviction is such that selection of the applicant poses no risk

to the beneficiary and the exception is in the beneficiary's best interest.

* * * * *

13. Revise § 416.635 to read as follows:

§ 416.635 What are the responsibilities of your representative payee?

A representative payee has a responsibility to—

(a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines under the guidelines in this subpart, to be in your best interests.

(b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement.

(c) Treat any interest earned on the benefits as your property.

(d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;

(e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us; and

(f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities.

(g) If you are under age 18 (including cases in which your low birth weight is a contributing factor material to our determination that you are disabled), ensure that you are receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits (see § 416.994a(i)).

14. Amend § 416.640a by revising paragraph (a)(2), redesignating paragraph (g)(6) as (g)(7), and adding a new paragraph (g)(6) to read as follows:

§ 416.640a Compensation for qualified organizations serving as representative payees.

* * * * *

(a) * * *

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, which is tax exempt under section 501(c) of the Internal Revenue Code and which is bonded/insured to cover misuse and embezzlement by officers and employees and licensed in each State in which it serves as

representative payee (if licensing is available in the State). The minimum amount of bonding or insurance coverage must equal the average monthly amount of supplemental security income payments received by the organization plus the amount of the beneficiaries' conserved funds (i.e., beneficiaries' saved supplemental security income payments) plus interest on hand. For example, an organization that has conserved funds of \$5,000 and receives an average of \$12,000 a month in supplemental security income payments must be bonded/insured for a minimum of \$17,000. The license must be appropriate under the laws of the State for the type of services the organization provides. An example of an appropriately licensed organization is a community mental health center holding a State license to provide community mental health services.

* * * * *

(g) * * *

(6) Fees for services may not be taken from beneficiary benefits for the months for which the Commissioner or a court of competent jurisdiction determines that the representative payee misused benefits. Any fees collected for such months will be treated as a part of the beneficiary's misused benefits.

* * * * *

15. Amend § 416.641 by adding a new paragraph (f) to read as follows:

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

* * * * *

(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 part 416.

16. Amend § 416.665 by revising the introductory text to read as follows:

§ 416.665 How does your representative payee account for the use of benefits?

Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except for certain State institutions that participate in a separate onsite review program). We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States

Government facility designated by the Social Security Administration serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or SSA's past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

* * * * *

Subpart M—[Amended]

17. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

18. Amend § 416.1340 by revising the heading and paragraphs (a) and (e) to read as follows:

§ 416.1340 Penalty for making false or misleading statements or withholding information.

(a) *When may SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading, or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth, or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify SSA) of, a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

* * * * *

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report

a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failure to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to disclose in terms of its likely impact on your benefits.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 801

[REG–114444–05]

RIN 1545–BE45

Balanced System for Measuring Organizational and Employee Performance Within the Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations designed to modify 26 CFR part 801, the regulations governing the IRS Balanced System for Measuring Organizational and Employee Performance, to clarify when quantity measures, which are not tax enforcement results, may be used in measuring organizational and employee performance. The temporary regulations affect internal operations of the IRS and the systems it employs to evaluate the performance of organizations within the IRS. The text of the temporary regulations also serves as the text of these proposed regulations.