

Railroad Retirement Board

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not be served by releasing payment to the annuitant.

§ 266.8 Advance notice of the determination to make representative payment.

(a) As a general rule, whenever the Board intends to make representative payment and to name a representative payee, the Board will notify the annuitant or, in the case of an unemancipated minor under age 18, or an individual who is legally incompetent, the individual acting on his or her behalf of the Board's proposed actions. Such notice will tell the person that the Board plans to name a representative payee and who that payee will be. The notice will also ask the person to contact the Board within 15 days of the date of the notice if he or she objects to either proposed action. If he or she objects to either proposed action, the objecting party may—

- (1) Review the evidence upon which the proposed actions will be based; and
- (2) Submit any additional evidence regarding the proposed actions.

(b) If the objecting party objects to the proposed actions, the Board will review its proposed determinations and consider any additional information provided. The Board will then issue a decision on whether to appoint a representative payee and who that payee will be. If the objecting party is dissatisfied with either determination, he or she may request a reconsideration under part 260 of this chapter.

(c) If the objecting party does not file a timely objection to the proposed actions, the Board will issue a decision on whether to appoint a representative payee and who that payee will be. If the objecting party is dissatisfied with either determination, he or she may request a reconsideration under part 260 of this chapter.

(d) A request for reconsideration or an appeal from a determination under this section under part 260 of this chapter shall not prevent the Board from making payments to a representative payee during the pendency of such reconsideration or appeal.

(e) The Board's failure or refusal to select an individual as representative payee or the Board's termination of representative payee status with re-

spect to an individual is not subject to a request for reconsideration or an appeal under part 260 of this chapter by such individual.

§ 266.9 Responsibilities of a representative payee.

(a) A representative payee shall, subject to review by the Board and to such requirements as it may from time-to-time prescribe, apply the payments made to him or her on behalf of the annuitant only for the use and benefit of such annuitant, and in a manner and for purposes which are in the annuitant's best interests.

(b) A representative payee shall notify the Board of any event that will affect the amount of benefits the annuitant receives or the right of the annuitant to receive benefits.

(c) A representative payee shall notify the Board of any change in his or her circumstances that would affect performance of the payee responsibilities.

§ 266.10 Use of benefit payments.

(a) *Current maintenance.* Payments made to an individual as representative payee on behalf of an annuitant shall be considered as having been applied for the use and benefit of the annuitant when they are used for the annuitant's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

Example: An aged annuitant is entitled to a monthly railroad retirement benefit of \$800. His son, who is his representative payee, disburses his benefits in the following manner:

Rent and utilities	\$500
Medical	50
Food	80
Clothing (coat)	90
Savings	60
Miscellaneous	20

The above expenditures would represent proper disbursements on behalf of the annuitant.

(b) *Institutional care.* If an annuitant is receiving care in a Federal, state, or private institution because of mental or physical incapacity, current maintenance includes the customary charges made by the institution in providing care and maintenance, as well as expenditures for those items which will

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aid in the annuitant's recovery or release from the institution or expenses for personal needs which will improve the annuitant's conditions while in the institution.

(c) *Support of legal dependents.* If the current maintenance needs of the annuitant are met, the representative payee may use part of the payments for the support of the annuitant's legally dependent spouse, child, and/or parent.

(d) *Claims of creditors.* Where a debt arose prior to the first month for which benefits are certified to a representative payee, the representative payee may satisfy such debt out of present benefit payments only if the current and reasonably foreseeable needs of the annuitant are met.

Example: A retroactive railroad retirement annuity check in the amount of \$2,100, representing benefits due for November 1989 through January 1990, was issued on behalf of the annuitant to the annuitant's daughter, who is the representative payee. The check was certified in February 1990. The nursing home, where the annuitant resides, is owed money for maintenance expenses the annuitant incurred prior to February 1990.

If the accrual is not required for the annuitant's current maintenance and the annuitant had no foreseeable needs which would require large disbursements, the expenditure of the accrual or part thereof for the past due maintenance charges would be consistent with the Board's guidelines.

§266.11 Conservation and investment of benefit payments.

(a) *General.* If benefit payments made to a representative payee are not needed for the annuitant's current maintenance or reasonably foreseeable needs or the support of legal dependents or to pay creditors in accordance with §266.10, they shall be conserved or invested on behalf of the annuitant. Such funds must be invested in accordance with the rules applicable to investment of trust estates by trustees. Any investment must show clearly that the representative payee holds the property in trust for the annuitant.

(b) *Preferred investments.* Preferred investments for excess funds are deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association

which is insured under either Federal or State law, direct obligations of the United States Government or obligations for which both principal and interest are guaranteed unconditionally by the United States Government. The account must be in a form which shows clearly that the representative payee has only a fiduciary, and not a personal, interest in the funds. If the payee is the legally appointed guardian or fiduciary of the annuitant, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

(Name of annuitant)

(Social Security Number), for whom

(Name of payee)

is representative payee for Railroad Retirement benefits;

(2) For interest or dividend paying accounts—

(Name of annuitant) by

(Name of payee), representative payee.

(c) *Interest and dividend payments.* The interest and dividends which result from an investment are the property of the annuitant and may not be considered to be the property of the representative payee.

(d) *Prohibition against commingling.* The representative payee shall not commingle his or her personal funds with the representative payments. A representative payee may consolidate and maintain an annuitant's funds in an account with other annuitants if he or she maintains a separate, accurate and complete accounting of each annuitant's funds under his or her control.

§266.12 Effect of matters or actions submitted or taken by legal guardian, etc.

All matters and actions in connection with an annuity submitted or taken by the guardian or other person legally vested with the care of the person or estate of an incompetent or a minor shall be considered by the Board in the same manner and with the same