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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

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effect as though such matters or actions had been submitted or taken by the ward, if the ward had capacity to act in his or her own behalf; *Provided, however,* That the Board may, if it deems it necessary, require the guardian or other person legally vested with the care of the person or estate of an incompetent or a minor to submit a certified copy of an order from the court of appointment authorizing some particular action which the guardian or other person legally vested with the care of the person or estate desires to take in connection with the application.

### § 266.13 When a new representative payee will be selected.

When the Board learns that the interests of the annuitant are not served by continuing payment to the present representative payee or that the present representative payee is no longer able to carry out the payee responsibilities, the Board will undertake to find a new representative payee. The Board will select a new representative payee if the Board finds a preferred payee or if the present payee—

- (a) Has not used the benefit payments on the annuitant's behalf in accordance with the guidelines in this part;
- (b) Has not carried out the other responsibilities described in this part;
- (c) Dies;
- (d) No longer wishes to be representative payee;
- (e) Is unable to manage the benefit payments; or
- (f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which the Board requests.

### § 266.14 When representative payment will be stopped.

If an annuitant receiving representative payment shows the Board that he or she is mentally and physically able to manage or direct the management of benefit payments, the Board will make direct payment to the annuitant. Information which the annuitant may give to the Board to support his or her request for direct payment include the following:

(a) A physician's statement regarding the annuitant's condition, or a statement by a medical officer of the institution where the annuitant is or was confined, showing that the annuitant is able to manage or direct the management of his or her funds;

(b) A certified copy of a court order restoring the annuitant's rights in a case where an annuitant was adjudged legally incompetent; or

(c) Other evidence which establishes the annuitant's ability to manage or direct the management of benefits.

### § 266.15 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested funds from railroad retirement payments made to him or her on behalf of an annuitant shall, upon direction of the Board, transfer any such funds (including interest or dividends earned from investment of such funds) to a successor representative payee appointed by the Board, or, at the option of the Board, shall transfer such funds, including interest, to the Board for payment to a successor payee or to the annuitant.

## PART 295—PAYMENTS PURSUANT TO COURT DECREE OR COURT-APPROVED PROPERTY SETTLEMENT

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AUTHORITY: 45 U.S.C. 231f; 45 U.S.C. 231m.

SOURCE: 51 FR 12845, Apr. 16, 1986, unless otherwise noted.

### § 295.1 Introduction.

(a) *Purpose.* This part implements section 419 of Pub. L. 98-76 (97 Stat. 438), which amended section 14 of the Railroad Retirement Act to provide that, with respect to annuity amounts payable for months beginning with September 1983, the Board must comply with a court decree of divorce, annulment or legal separation, or with