

## § 266.2

served if benefit payments were certified to another person as representative payee, the Board will appoint a representative payee in accordance with the procedures set forth in this part. The Board may appoint a representative payee even if the annuitant is a legally competent individual. If the annuitant is a legally incompetent individual, the Board may appoint the legal guardian or some other person as a representative payee.

(2) If payment is being made directly to an annuitant and a question arises concerning his or her ability to manage or direct the management of benefit payments, the Board may, if the annuitant is 18 years old or older and has not been adjudged legally incompetent, continue to pay the annuitant until the Board makes a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

### § 266.2 Recognition by the Board of a person to act in behalf of another.

(a) Regardless of the receipt of written notice of the appointment of a guardian or other person legally vested with the care of the person or estate of an incompetent or a minor who is receiving or claiming benefits or to whom any right or privilege is extended under the law, the Board may, in its discretion, validly recognize actions by and conduct transactions with others acting on behalf of the individual found by the Board to be a minor or to be unable to manage his or her affairs, if the Board finds such actions or transactions to be in the best interest of such individual.

(b) In the absence of a written notice of the appointment of a guardian or other person legally vested with the care of the person or estate of an incompetent or minor, the Board shall, except where special circumstances appear, recognize a person to act on behalf of an individual under the following circumstances:

(1) When the individual has been adjudged mentally incompetent by a court having jurisdiction to do so;

(2) When the individual has been committed to a mental institution by a court having jurisdiction to do so;

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(3) When the individual is an inmate of a mental institution;

(4) When the individual is less than 16 years of age; or

(5) When the individual is between 16 and 18 years of age and is in the care of another person and does not have the capacity to act on his or her own behalf.

### § 266.3 Information considered in determining whether to make representative payments.

In determining whether to make representative payment, the Board may consider the following information:

(a) *Evidence of legal guardianship.* Evidence of the appointment of a legal guardian or other person legally vested with the care of the person or estate of an incompetent or a minor shall be a certified copy of the court's determination.

(b) *Medical evidence.* The Board may use medical evidence, when such is available, to help determine whether an annuitant is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the annuitant and his or her knowledge of the annuitant's present condition will be used in the Board's determination, if it includes information concerning the nature of the annuitant's illness, the annuitant's chances for recovery and the opinion of the physician or other medical professional as to whether the annuitant is able to manage or direct the management of benefit payments.

(c) *Other evidence.* The Board may also consider statements of relatives, friends, and other people in a position to know and observe the annuitant, which contain information helpful to the Board in deciding whether the annuitant is able to manage or direct the management of benefit payments.

### § 266.4 Information considered in selecting a representative payee.

In selecting a representative payee, the Board tries to select the person, agency, organization or institution that will best serve the interest of the annuitant. In making this selection,

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the Board may consider such factors as the following:

(a) The relationship of the person to the annuitant, including the type of relationship, *e.g.*, family or legal guardianship; degree of relationship, if the person is a family member; and the length of association, if a non-family member;

(b) The amount of interest that the person shows in the annuitant, including the contributions the person makes to the welfare of the annuitant and the contacts and frequency of such contacts with the annuitant;

(c) Any legal authority the person, agency, organization or institution has to act on behalf of the annuitant;

(d) Whether the potential payee has custody of the annuitant;

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

(f) Verification of the social security account number, name, address, telephone number, place of employment, and main source of income if applicable, accepted as part of any person's application for designation as a representative payee, unless such person's identification has already been established to the satisfaction of the Board;

(g) Whether an applicant for designation as a representative payee has ever been convicted of a felony or misdemeanor under the statutes administered by the Board or the Social Security Act, or convicted of a felony under any other Federal or State law; and

(h) Whether the services of such person as representative payee have previously been terminated, suspended, or declined by the Board or the Social Security Administration for:

(1) Misuse of the benefits of the annuitant for whom they were intended;

(2) Failure to comply with any provision of or regulation under the Railroad Retirement Act or the Social Security Act; or

(3) Failure to meet the requirements of this part.

(i) Whether the potential payee is a creditor of the annuitant. A creditor who provides goods and services to the annuitant ordinarily may not serve as a representative payee unless such appointment poses no substantial conflict of interest and unless the creditor is:

(1) A relative who resides with the annuitant;

(2) A legal guardian or legal representative of the annuitant; or

(3) A licensed or certified care facility (or owner, administrator or employee thereof) where there annuitant resides.

### **§ 266.5 Order of preference in selecting a representative payee.**

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. The primary concern of the Board is to select the payee who will best serve the annuitant's interest. The preferences are:

(a) For annuitants 18 years old or older, the preference is:

(1) A legal guardian, spouse, or other relative who has custody of the annuitant or who demonstrates strong concern for the personal welfare of the annuitant;

(2) A friend who has custody of the annuitant or demonstrates strong concern for the personal welfare of the annuitant;

(3) A public or nonprofit agency or institution having custody of the annuitant;

(4) A private institution operated for profit and licensed under State law, which has custody of the annuitant; and

(5) Persons other than those listed above who are qualified to carry out the responsibilities of a representative payee and who are able and willing to serve as a payee for an annuitant; *e.g.*, members of community groups or organizations who volunteer to serve as representative payee for an annuitant.

(b) For annuitants under age 18, the preference is:

(1) A natural or adoptive parent who has custody of the annuitant, or a legal guardian;

(2) A natural or adoptive parent who does not have custody of the annuitant, but is contributing toward the annuitant's support and is demonstrating strong concern for the annuitant's well-being;

(3) A relative or stepparent who has custody of the annuitant;

(4) A natural or adoptive parent who does not have custody of the annuitant