our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) *Limitation on fees.* (1) An organization authorized to collect a fee pursuant to this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a beneficiary if the fee does not exceed the lesser of—

(i) 10 percent of the beneficiary's monthly benefit payments; or

(ii) $25.00 per month.

(2) Any agreement providing for a fee in excess of the amount permitted under paragraph (g)(1) of this section shall be void and treated as misuse of benefits by the organization of the individual's benefits under § 416.641.

(3) A fee may be collected for any month during which the organization—

(i) Provides representative payee services;

(ii) Receives a benefit payment for the beneficiary; and

(iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with § 416.645.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payments for these months and the organization:

(i) Received our approval to collect a fee for the months for which payment is made;

(ii) Provided payee services in the months for which payment is made; and

(iii) Was the payee when the retroactive payment was paid by us.

(6) An authorized organization may not collect a fee for the expenses it incurred in providing representative payee services if these expenses are paid from another source.

(7) An authorized organization may collect a fee for representative payee services from the entire monthly benefit amount received, including any payment of a federally-administered State supplementary payment under subpart T of this part.

(8) In the case of an institutionalized beneficiary a fee may not be withheld from benefits which must be set aside for the beneficiary's personal needs in accordance with § 416.640(c).

[57 FR 23057, June 1, 1992; 57 FR 27091, June 17, 1992]

§ 416.641 Liability for misuse of benefit payments.

Our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary. The payee personally, and not SSA, may be liable if the payee misuses the beneficiary's benefits.

§ 416.645 Conservation and investment of benefit payments.

(a) *General.* If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the personal needs of the beneficiaries. However, not all those funds were disbursed for this purpose. As a result, several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over $150, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) *Preferred investments.* Preferred investments for excess funds are U.S. Savings Bonds and 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. The account must be in a form