

## **Summary of CSPN meeting with the Social Security Administration on September 17, 2015**

CSPN representatives had a positive meeting this afternoon with various SSA officials who are working on addressing the interplay between ABLE accounts and SSI benefits.

The lead contact at SSA is Eric Skidmore, Director, Office of SSI and Program Integrity Policy, Office of Income Security Programs, SSA. His email address is [Eric.Skidmore@ssa.gov](mailto:Eric.Skidmore@ssa.gov).

SSA intends to address the treatment of ABLE accounts through instructions to its field officers to be set forth in its Program Operations Manual System (POMS). SSA expects such instructions to be published in November. POMS instructions are developed internally at SSA without any prior publication for public comment. There is no official procedure for comment on the relevant POMS instructions, but the SSA representatives at the meeting indicated that they would welcome input on the instructions both before and after they are published; the instructions apparently can be adjusted in SSA's discretion.

Most of the discussion centered on SSA's expectations and need for information from the state programs about the type of distribution made from an ABLE account to an ABLE beneficiary (qualified housing, qualified non-housing, non-qualified.) The SSA representatives indicated that based on Treasury's proposed regulations, SSI expects to receive monthly file transfers from the ABLE programs breaking down distributions to an account beneficiary into these categories. The CSPN representatives described the various logistical issues and administrative burdens that such a requirement would create for state programs, and that CSPN has asked Treasury to limit the monthly reporting to SSA to the amount of a distribution, without categorizing it.

The SSA representatives stated that they had not fully appreciated the issues associated with distribution categorization by ABLE programs, and seemed particularly interested in the possibility of debit card transactions, acknowledging the difficulty ABLE programs would face in requiring contemporaneous certification by the beneficiary of the type of expense. They also acknowledged that since the SSI impact of a distribution would depend on how the distribution is actually spent by the beneficiary, not on how the beneficiary, at the time of distribution, certifies to the ABLE program s/he plans to spend the distribution, the categorization of the distribution by an ABLE program is of limited usefulness to SSA. The SSA representatives acknowledged that the distribution process could be handled by SSA receiving just the distribution amount information from the ABLE program and then matching it with existing self-reporting by the beneficiary. They already do that for some programs, but they don't like it, because it requires staff and budget, and they are trying to get out of that position in general. They are looking forward to a process that is "simple" from their perspective. So, while they articulated sympathy, indeed empathy, for the states not wanting the administrative burden of categorizing distributions by type, and receptivity to suggestions on easing that burden, they were fairly clear that they don't want to shoulder additional administrative burden either, even though they are the most logical entity to categorize the eventual application by the beneficiary of ABLE account distributions, both in terms of expertise and as recipients of required monthly self-reporting from SSI beneficiaries of any events affecting their SSI eligibility. There will need to be follow-up discussions on this.

The SSA representatives stated that specific data elements to be included in the monthly data transmission from an ABLÉ program to SSA, as well as transmission and security protocols, will be set forth in a Computer Matching Agreement to be executed by the SSA with each state. SSA anticipates that it will take a considerable period of time for it to develop the infrastructure to receive the data files. They did not yet seem to have decided how to deal with programs that launch before they are able to receive electronic transmissions of the data files (i.e., will paper copies need to be transmitted until they are ready to receive data feeds.)

There was some general discussion on the impact of ABLÉ account distributions on SSI eligibility. Because the ABLÉ account is owned by the beneficiary, a distribution from the account will not be considered income to the beneficiary for SSI eligibility purposes irrespective of whether the distribution is qualified or unqualified. Any SSI eligibility issues are on the asset side once the money leaves the ABLÉ account. If the money is spent in the same month as the distribution occurs, there will be no impact. If the money sits around for an additional period but is ultimately expended on a non-housing qualified expense, there will be no impact, but the longer it is retained before expenditure, the greater the risk that if SSA ultimately determines that the distribution was not applied to a qualified non-housing expense, the beneficiary will lose eligibility for a potentially lengthy retroactive period and be liable for the overpayments received. The SSA representatives advised that any distribution should be spent as quickly as possible after withdrawal. It is unclear whether SSA will impose any time limits on how long the money can sit around outside the ABLÉ account before it is spent on a qualified non-housing expense, but to avoid negative consequences for SSI purposes it must be so spent before the account is closed.

We discussed the status of an ABLÉ distribution used to buy a tangible asset, such as a motorized wheelchair or a tv set. The SSA representatives indicated that for SSI eligibility determination purposes a tangible asset purchased with an ABLÉ account distribution would be treated no differently than it would be treated if purchased with any other source of funds. However, the SSA representatives indicated that there are broad exclusions, for purposes of asset determinations, for tangible assets relating to the beneficiary's disability and for household goods/personal effects, so that a wheelchair or a tv set would be excluded in asset determinations whether or not purchased with ABLÉ account funds and whether or not the ABLÉ account expenditure constitutes a qualified disability expense for tax purposes.

While we will need to work through this further and confirm, it seems that if the beneficiary spends a distribution within the same month as the withdrawal is made, the cash held outside the ABLÉ account will have no SSI eligibility impact irrespective of how the money is spent. If the cash held outside the ABLÉ account is not spent within the month in which it is withdrawn from the ABLÉ account but is ultimately spent on a qualified non-housing expense, the cash held outside the ABLÉ account will have no SSI eligibility impact, but, on the flip side, if not ultimately spent on a qualified non-housing expense, the cash may cause the beneficiary to fail the asset test with resulting retroactive loss of benefits for the period during which such cash was held outside the ABLÉ account. Once the cash is used to purchase a tangible asset, the tangible asset itself in most circumstances is likely to be excluded for SSI eligibility purposes, irrespective of whether the expenditure constitutes a qualified disability expense. So the SSI eligibility risk, though not nonexistent, appears manageable if the withdrawal is spent promptly;

if not spent promptly, there is somewhat greater risk for eligibility during the period from withdrawal to expenditure, which again is manageable if the money is ultimately spent on something that is clearly a qualified non-housing expense.

SSA indicated that the exclusion from assets for SSI eligibility purposes of ABLE rollover funds for the up to 60 day period in which they may be held outside the ABLE account will be addressed in the POMS instructions to be released in November.