

August 25, 2020

Andrew Saul
Commissioner
Social Security Administration
6401 Security Blvd.
Woodlawn, MD 21207

President

David Damschen, UT

Executive Committee

Duane Davidson, WA
Michael Frerichs, IL
Deborah Goldberg, MA
Seth Magaziner, RI
Dennis Milligan, AR
Kelly Mitchell, IN
Beth Pearce, VT

Executive Director

Shaun Snyder

1201 Pennsylvania Ave, NW
Suite 800
Washington, DC 20004

www.NAST.org

Dear Commissioner Saul;

We write on behalf of the National Association of State Treasurers ABLÉ Committee, a group representing state ABLÉ program administrators from 42 states and the District of Columbia. Thank you for your support of ABLÉ programs and for the ongoing dialogue with the Committee. While we hope that the Social Security Administration (SSA) will eventually provide conclusive guidance on these issues, in the absence of a response to this letter or additional information, states will operate ABLÉ programs according to our interpretation, detailed below, of the Program Operations Manual System (POMS) and will provide the following explanation when guidance is requested from our constituents.

1. Based on the Program Operations Manual System (POMS) updated, published on April 16, 2020 at SI 01130.740 (C)(1)(a), state ABLÉ plans will inform ABLÉ account owners and potential account owners that Title I and Title XVI funds may be directly deposited into an ABLÉ Account, whether or not an eligible individual has a representative payee.
2. As per guidance provided by GN 00603.10, state ABLÉ plans will inform ABLÉ account owners and potential account owners that funds not needed for a beneficiary's current maintenance or funds commonly referred to as "back pay" may be contributed to an ABLÉ account.

Context for Item #1: Direct Deposit into ABLÉ Account

We appreciate the recent clarification in the POMS published on April 16, 2020 at SI 01130.740 (C)(1)(a) [Note] which states, "Social Security and SSI monthly benefit payments can be directly deposited into ABLÉ accounts because they are considered acceptable types of financial accounts. For more information see [GN 02402.030B.1](#)"

The new POMS statement, the most recent pronouncement in the POMS on this matter, is viewed by state ABLÉ program administrators to be conclusive. We note, there is no reference to a representative payee or any limiting qualification in SI 01130.740, save the reference to [GN 02402.030B.1](#), where the reader can find more information.

At [GN 02402.030B](#).1, in the next to last bullet, ABLÉ accounts are identified as *acceptable for direct deposit* with, again, no reference to a representative payee or any limiting qualification. However, the reader is then referred to [GN 02402.030F](#).

Given the specific statement used in SI 00130.740 allowing direct deposit, and the fact that GN02402.030F has two cross-references removed from the conclusive statement provided in the latest update, it appears to us that GN02402.030F is an overlooked cross-reference in need of update. We note, SSA had the opportunity to qualify the new addition at SI 01130.740 and chose not to.

Additionally, POMS section [GN02402.030](#) implemented October 4, 2011 and amended in May of 2019 directs the reader to GN 02402.055, which provides additional guidance on direct deposit-rep payee cases. The definitions found in this section mirror the definition of an ABLÉ account with an Authorized Legal Representative. Many representative payees also serve as guardians or power of attorney (i.e. beneficiary is the owner of the funds, separate account or sub account is mandatory for each beneficiary, the representative payee has only a fiduciary interest in the account, the beneficiary must not have direct access to the account). This section of the POMS also describes allowances for institutional representative payees to have direct deposit of SSI funds.

ABLE state program administrators consider the new April 16, 2020 amendment to the POMS, that allows Title I and Title XVI funds to be directly deposited into an ABLÉ Account whether or not an eligible individual has a representative payee, to be conclusive as written – that is to say, without qualification. Unless otherwise advised in writing, we will operate our programs according to this understanding.

Context for Item #2: Funds Not Needed for a Beneficiary’s Current Maintenance and Back Pay

SSA funds not needed for a beneficiary’s current maintenance, and funds commonly referred to as “back pay” may be contributed to an ABLÉ account.

In a previous conversation between a state ABLÉ administrator in December 2019 with a representative of the Social Security Administration West Virginia office, we were directed to GN 00603.10 *Conserving Benefits in a Savings or Checking Account* of the POMS for guidance on this issue. After review, we believe ABLÉ accounts meet each requirement set forth in the section.

First Requirement

GN 00603.010 A states, “Funds not needed for the beneficiary's current maintenance may be deposited in an interest-bearing or dividend-bearing account in a bank, trust company, credit union, or savings and loan association that is insured under either Federal or State law. Any interest earned belongs to the beneficiary and not to the payee.” Forty states and the District of Columbia offer a FDIC insured, interest-bearing savings or checking account option, where a representative payee can deposit funds not needed for current maintenance or back pay funds. Additionally, all interest earned belongs to the beneficiary.

Second Requirement

GN 00603.010 A states, “The funds must be deposited in an account that is titled to show the payee has only a fiduciary interest in the funds. A fiduciary account is an account established by a person or entity (the representative payee) for the benefit of another party (the beneficiary). The fiduciary nature of the account must be disclosed in the financial institution’s deposit account records. Funds deposited by a fiduciary on behalf of a beneficiary are owned by the beneficiary.”

The sub-elements in the second requirement are:

- (1) Funds must be in an account that is titled to show the payee has only a fiduciary interest.
- (2) The fiduciary account is established by the person or entity (the representative payee).
- (3) For the benefit of the beneficiary.
- (4) The fiduciary nature of the account must be disclosed in the financial account records.
- (5) Funds deposited by a fiduciary on behalf of the beneficiary are owned by the beneficiary.

Regarding sub-element (1), All ABLE plans can title an account to show the payee only has a fiduciary interest in the funds as prescribed by GN 00603.010 (B)(1).

Regarding sub-element (2), our view is described in our response to Item #1.

Regarding sub-element (3), we cite to proposed rule 80 FR 35602 which incorporates Notice 2015-18, 2015-12 IRB 765 (March 23, 2015), that clarifies Section 529A guidance will confirm that the owner of the ABLE account is the designated beneficiary of the account, and that the person with signature authority over (if not the designated beneficiary of) the account may neither have **nor acquire any beneficial interest in the ABLE account** and must administer that account for **the benefit of the designated beneficiary of that account**.

Regarding sub-element (4), disclosure of the fiduciary nature of the account can be achieved through proper titling.

Regarding sub-element (5), we call attention to federal law at 26 USC § 529A(e)(3) “*The term “designated beneficiary” in connection with an ABLE account established under a qualified ABLE program means the eligible individual who established an ABLE account and is the **owner** of such account.*”

The NAST ABLE Committee believes that GN 00603.10 does not prohibit a beneficiary’s current maintenance or funds commonly referred to as “back pay” from being contributed to an ABLE Account and will advise beneficiaries as such when asked.

We appreciate SSA’s timely review and response, which will allow SSA benefits specialists and state ABLE plan administrators to answer beneficiaries’ questions with consistency and clarity. Our collaborative efforts will do even more to improve the lives of Americans with disabilities.

Thank you.

Sincerely,



Fiona Ma, CPA
California State Treasurer &
NAST ABLE Committee Chair



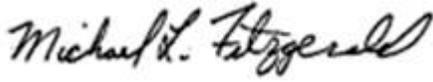
John McMillan
Alabama State Treasurer &
NAST ABLE Committee Vice-Chair



Curt L. Decker
Executive Director
National Disability Rights Network



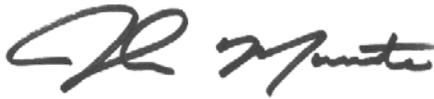
Michael Frerichs
Illinois State Treasurer



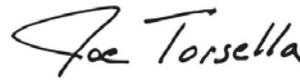
Michael L. Fitzgerald
Iowa State Treasurer



Scott Fitzpatrick
Missouri State Treasurer



John Murante
Nebraska State Treasurer & Enable Savings
Plan Program Trustee



Joseph M. Torsella
Pennsylvania State Treasurer



Duane Davidson
Washington State Treasurer



Anita Kelley
Savings Director
State of Alabama Treasurer's Office



Dante Allen
Executive Director
California ABLE Act Board



Daniel M. Madrid
Chief Operating Officer
Delaware State Treasury



JJ Hanley
Director
IL ABLE



Bette Ann Mobley
Director
Maryland ABLE



Zach Haughawout, Esq.
Director of STABLE Account
Office of Ohio Treasurer Robert Sprague



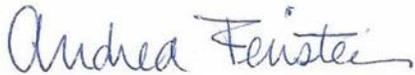
Linda A. Fernandez
Director, Educational Opportunities and
Investments Division
Texas Comptroller's Office



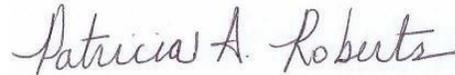
Mary Morris
Chief Executive Officer
Virginia529 / ABLEnow



Peter Tassoni
Plan Administrator
Washington State ABLE



Andrea Feinstein
Managing Director
AKF Consulting Group



Patricia Roberts
Chief Operating Officer
Gift of College, Inc.



Mary Anne Busse
Managing Director
Great Disclosure LLC



Chris Lynch
Managing Director, Education Savings
TIAA

CC Senator Robert P. Casey, Jr., PA
 Senator Jerry Moran, KS
 Senator Chris Van Hollen, MD
 Senator Pat Roberts, KS
 Congressman Tony Cardenas, CA
 Congresswoman Cathy McMorris Rodgers, WA
 Eric Skidmore Deputy Commissioner, Legislation and Congressional Affairs, SSA

Royce Min, General Counsel, SSA
Darlynda Bogle, Asst. Deputy Commissioner, Communications, SSA
Stephen McGraw, Director Division of Strategic Communications, SSA
Joie Hill, Social Insurance Specialist, Office of External Affairs, SSA
Dana Apfel, Senior Program Analyst, SSA
Alexa Gant, Manager and Program Analyst, SSA
Taina Edlund, Senior Technician Reviewer, IRS, Department of the Treasury
Julia Parnell, Attorney, IRS, Department of the Treasury
Catherine Hughes, Attorney Advisor, Office of Tax Policy, Department of Treasury
Janine Cook, Deputy Associate Chief Counsel, IRS/Office of Chief Counsel