

MEMORANDUM:

To: Congressional Structured Settlements Caucus Members
From: Eric Vaughn, Executive Director, NSSTA
Subject: ABLE Accounts & Structured Settlements Direct Funding Issue
Date: June 2, 2022

Overview: The National Structured Settlements Trade Association is working to identify legislative or regulatory solutions required for qualified disabled individuals to benefit from ABLE accounts directly funded by structured settlements.

Background: The National Structured Settlement Trade Association, is a non-profit industry association representing 1,200 licensed consultants, attorneys, insurance companies, P&C companies and other professionals working to promote the establishment and preservation of structured settlements to provide financial security for injury claimants and their families through periodic payments.

What is a structured settlement? A voluntary injury claim settlement agreement that is utilized to resolve a dispute where the plaintiff receives future periodic payments in addition to or lieu of a lump sum. The payments can be made in regular monthly or annual installments or in lump sums. The payments can begin immediately or be deferred to a later date. The party obligated to make the future payments typically purchases a life insurance annuity to guarantee the payments are made in full.

What are the benefits of a structured settlement for an ABLE account?

- Income tax-free payments for qualified IRC 104(a)(2) settlements
- Convenient, dependable pre-determined payments from a life insurance company
- Stress-free investment because payments are guaranteed
- Security of optional lifetime payments
- With additional option to designate a beneficiary to receive remaining guaranteed payments
- No investment fees or ongoing management costs

Comparing ABLE Accounts and Structured Settlements (Periodic Payments)

- Both are created under the Internal Revenue Code
 - ABLE – IRC 529A
 - Structured settlements – IRC 104(a)(2) and 130
- Both are supported by public policy
 - ABLE - *“to provide secure funding for disability expenses”*
 - Structured Settlement - *“to provide long-term financial security”*

- Both benefit disabled individuals
 - ABLE – the eligibility threshold for the onset of disability is age 26
 - Structured Settlement – an income tax exclusion is available for the amount of any periodic payments received (other than for punitive damages) on account of personal physical injuries or physical sickness.
- One significant difference – Social Security Law
 - ABLE – The SSA has published updated POMS guidance for ABLE accounts effective March 13, 2020
 - Structured Settlements - no specific authority exists for “*structured settlements*” under Social Security Law – legislation, regulations or the POMS

Structured Settlements and ABLE Accounts Should be a Perfect Match

- ABLE accounts offer a valuable method for helping qualified disabled personal injury victims supplement their settlements with both tax advantages and means-tested government benefits.
- Direct payment of structured settlements into ABLE accounts should provide a convenient, reliable and secure settlement planning solution
- The “*sales justification*” for “*direct funding*” an ABLE account with a structured settlement need not be “*investment*” or “*interest rate*” based.
- Instead, the structured settlement ABLE combination should be based upon shared public policy objectives as well as the convenience, dependability and security of the guaranteed periodic payments.
- This guarantee is provided by a highly rated life insurance company, supervised by a state insurance department and backed by a state insurance guarantee association.

The Direct Funding Problem:

- Despite clear and favorable IRS Code Section tax authority, no specific authority exists for “*structured settlements*” under Social Security Law
- The SSA and some state Medicaid agencies view structured settlements as analogous to “*benefit payments*” and/or “*mandatory support payments*” under the ABLE Accounts.
- Therefore, in some cases, structured settlements paid directly into an ABLE accounts have been considered income under the Social Security law.
- In those cases, direct funding could disqualify an ABLE beneficiary from receiving SSI, Medicaid, and other means-tested public benefits.
- As a result, attorneys and other professionals are reluctant to recommend “*direct funding*” of ABLE accounts with structured settlements – despite the obvious advantages.