March 9, 2015

Office of Regulations and Reports Clearance
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Dear Sir/Madam:

On behalf of the American Bar Association Section of Real Property, Trust and Estate Law, we are pleased to submit the attached comments regarding periodic onsite reviews of certain representative payees under Titles II, VIII, and XVI of the Social Security Act as requested in the Federal Register / Vol. 80, No. 13 / Wednesday, January 21, 2015 / Notices SOCIAL SECURITY ADMINISTRATION [Docket No. SSA–2014–0070]. These comments were prepared with the assistance of the ABA Commission on Law and Aging.

Please note that views expressed are presented on behalf of the Section of Real Property, Trust and Estate Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and accordingly, should not be construed as representing the position of the Association.

The numbered questions below appear in the notice from the Social Security Administration. The comments from the Section are the bulleted points.

“(1) Beside those representative payees that the Act requires us to review, what representative payees should we include in our review process? What criteria should we use to select representative payees for review?”

- Onsite reviews should be made for individual payees who repeatedly fail to file the required reports, or whose reports lack accuracy or completeness.
- Onsite reviews should be conducted for all payees where there has been a credible report of abuse, neglect or exploitation of the beneficiary.
Onsite reviews should be conducted for payees who also are court-appointed guardians who have been sanctioned for malfeasance or removed by the court.

“(2) What data sources should we consider when we select which representative payees to review, and which of these data sources should we use to detect improper use of beneficiary payments?”

In selecting payees for review, SSA should consider reports from adult protective services, law enforcement, state and local aging services providers, financial institutions, and notification by courts of sanctions against guardians or removal of guardians who are also representative payees.

These are also good sources for detecting improper use of beneficiary payments.

“(3) What tools or processes should we use to hold our representative payees accountable for their responsibilities?

Fiduciary bonds would provide a resource for recovery of misused or unaccounted for funds, especially for organizational payees, and individuals serving for five or more people.

“(4) How can we reduce the likelihood of mismanagement or misuse of a beneficiary’s payments?”

We recommend that in addition to the materials provided by the Social Security Administration it is suggested that representative payees review the Consumer Financial Protection Bureau guide to serving as a payee—http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_representative.pdf

“(5) Currently, when we do a site review we focus on how a representative payee manages a beneficiary’s funds. Should our reviews focus on any other issues?”

We urge that personnel who conduct site reviews be trained on risk factors and of abuse, neglect, and exploitation. Personnel should be alert to these problems and make appropriate referrals to adult protective services or law enforcement. Research indicates that individuals who experience one form of abuse, such as exploitation by a payee misusing funds, are likely to also be experiencing other forms of abuse.
“(6) What ideas do you have to improve the representative payee program overall?”

- Encourage development of payee programs using volunteer attorneys, accountants and other reliable professionals to serve those who lack a trustworthy and interested payee.
- Develop approaches to exchange information with courts with guardianship authority; develop joint training programs.
- Disseminate clear information about the representative payee system and the “red flags” of misuse. This information should be disseminated throughout the relevant federal programs as well as state and community networks.
- Consider extending onsite reviews to outside contractors such as protection and advocacy programs or the organizations that belong to the National Disability Rights Network.

Respectfully submitted,

Gideon Rothschild,
Chair, Section of Real Property, Trust and Estate Law