

**ADVOCACY PRIORITY:
FINANCIAL AND TAX PLANNING**

Monitor and respond to tax and financial planning proposals that may negatively impact older adults and individuals with disabilities.

Description

Tax and financial planning proposals need to be monitored to identify their potential impacts on older adults and individuals with disabilities. NAELA's interests in tax and financial planning policy are very broad and could include legislative proposals related to expanding or contracting federal health care programs or enabling new investment or savings accounts (e.g., ABLE Act) as well as regulatory changes.

Rationale

Changes to the Internal Revenue Code (e.g., pending IRS proposed rule relating to taxation of lump-sum Social Security benefits, and pending IRS final rule relating to basis reporting between estate and person acquiring property from decedent) could greatly impact the decisions of NAELA members' clients.

In addition to NAELA's public policy guidelines that discuss support for policies that facilitate the use of trusts to aid beneficiaries with special health care needs,¹ this policy intersects with five areas of elder and special needs law:

- **Pensions and Retirement Security:** Changes in tax and financial planning can affect pension and retirement benefits for older adults, making it essential to monitor and respond to proposals that may impact retirement security.
- **Medicaid, Social Security, SSI, and SSDI:** Tax and financial planning proposals can influence Medicaid eligibility, Social Security benefits, and eligibility for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), requiring advocacy to protect these vital income and health care resources.

¹ NAELA approved special needs public policy guidelines in April 2009, according to the NAELA Policies and Procedures Manual dated November 2018. These recommendations incorporate recommendations relating to trusts and appear to be consistent with the [NAELA Public Policy Guidelines: Special Needs](#) (last revised April 2007).

- **Tort Reform:** Financial planning proposals may intersect with tort reform efforts, particularly regarding compensation for individuals with disabilities who experience harm due to negligence or misconduct.
- **Legal Services:** Monitoring tax and financial planning proposals enhances legal services for individuals with disabilities and older adults.
- **Special Needs Planning:** Tax and financial planning proposals can impact special needs planning, and in turn the ability for individuals with disabilities to continue to qualify for Medicaid or other public benefits.

Value to NAELA Members and Their Clients

- NAELA supports the use of well-crafted and appropriately regulated financial planning vehicles to support the needs of older adults and individuals with disabilities to live with independence and dignity and avoid impoverishment.
- Even well-intentioned real estate reporting requirements intended to strengthen anti-money laundering laws and enforcement might have a detrimental impact on the tenets underpinning NAELA members' legal services, such as attorney-client privilege, and therefore should be monitored and responded to appropriately.
- A federal law or regulation might give states or the federal government discretion or mandates that serve to limit or disincentivize financial planning vehicles through asset or income counting rules relevant to Medicaid or SSI eligibility.
- The [proposed](#) Financial Crimes Enforcement Network (FinCEN) reporting requirements that require attorneys to break professional rules of conduct, attorney-client privilege, or ABA Model Rules in connection with "non-financed" transfers may also negatively impact older adults and individuals with disabilities without serving a rational public policy goal.

Legislation and Regulations

- US Code Title 26: Internal Revenue Code generally. Also:
 - [26 USC § 529A](#): Qualified ABLE programs
 - U.S. Code of Federal Regulations [Title 26](#)
- [42 U.S.C. § 1396 et seq.](#): Medicaid statute generally. Also:
 - [§ 1396a\(17\)\(B\)](#): Presumption that spouses are legally responsible for each other's medically necessary expenses as well as their own
 - [§ 1396r-5](#): Treatment of income and resources for certain institutionalized spouses
 - [§ 1396p](#): Medicaid estate recovery

- [42 U.S.C. §§ 1381-1383f](#): SSI statute generally.
- [31 CFR Part 1031](#): Proposed FinCEN regulations, “Reports Required to be Made by Persons Involved in Real Estate Closings and Settlements”

Recent NAELA Advocacy

- Submitted comment letter opposing inclusion of non-financed residential real estate transfers in anti-money laundering [regulations](#) issued by the Department of the Treasury, on the grounds that it would create a financial and administrative burden on both the reporter and the Department of the Treasury as well as cause attorneys to violate their legal and ethical duties.
- Submitted comment letter to House Energy & Commerce Committee in response to 2022 Request for Information, “Disability Policies in the 21st Century: Building Opportunities for Work and Inclusion,” that discussed a wide range of topics including Medicaid-compliant annuities, asset protection instruments, and ABLE Accounts.

Future Opportunities

- Continued monitoring of Medicaid, Social Security, and tax policy changes at the federal and state level to assess impact to older adults and individuals with disabilities.
- Depending on the outcome of the FinCEN proposed regulation, consider litigation and policy strategies (legislation or regulation) to roll back the reporting requirement.