

What You Need to Know About ABLE Accounts

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ADMITTED TO PRACTICE LAW IN MISSOURI AND KANSAS

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Appendix A - The ABLE Act

Appendix B - 26 U.S.C. §529A

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Appendix F - IRS Notice 2015-81 - Interim Guidance Regarding Certain Provisions of Proposed Regulations Relating to Qualified ABLE Programs

# **What You Need to Know About ABLE Accounts**

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## **1. Overview of the ABLE Act and ABLE Accounts**

An ABLE account is a relatively new type of financial account that can be owned by a person who is sufficiently disabled and satisfies a few additional requirements. Although there are some restrictions and drawbacks, the primary advantage of an ABLE account is that the person with the disability can hold and control money in excess of the resource limits (typically \$2,000) placed on “available resources” for needs-based public assistance programs, such as SSI and Medicaid, without disqualifying the person from those programs.

Initially, attorneys working with people with disabilities were not very impressed with ABLE accounts. This was primarily because any money remaining in an ABLE account upon the death of the account owner had to be paid back to the state to reimburse it for the Medicaid assistance the account owner received.

However, as attorneys become more familiar with ABLE accounts, they are discovering new and creative ways ABLE accounts can be used to help clients maintain ownership of money without being disqualified from Medicaid and SSI. For many clients, this allows them to be more independent and does not keep them as impoverished as the benefit programs require.

These materials contain an overview of ABLE accounts; citations, copies, and links to the relevant source materials (laws, proposed regulations, POMS, etc.); examples of how ABLE accounts are and possibly can be used; and, on an accompanying Excel spreadsheet, a summary of what each State has done to implement an ABLE Program. This summary compares relevant provisions of each State's ABLE program, which helps narrow down options for someone considering opening an ABLE account.

**A. What is an ABLE Account?** ABLE accounts are authorized by the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the "ABLE Act"), enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014, Pub. L. No. 113-295. The ABLE Act allows a state, or state agency or instrumentality, to establish and maintain a tax-advantaged savings program (an "ABLE program") that benefits certain individuals who have a disability. Qualified individuals can establish and own an account (an "ABLE account") managed under an ABLE program. With some restrictions, contributions can be made to an ABLE account, and distributions can be made from an ABLE account, without adverse tax consequences or causing the beneficiary to be disqualified from public benefit programs. In addition, the money in an ABLE account compounds income tax free.<sup>1</sup>

**B. Where to Find the Law on ABLE Accounts:** The ABLE Act is found in Division B of Pub. L. No. 113-295, beginning on page 48 (128 STAT. 4056). See <https://www.congress.gov/113/plaws/publ295/PLAW-113publ295.pdf>. See Appendix A for a copy.

The ABLE Act amended Section 529 of the Internal Revenue Code by adding Section 529A. This can be found at 26 U.S.C. §529A. Here is a link to this section:

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<sup>1</sup> 26 U.S.C. § 529A(a).

[http://uscode.house.gov/view.xhtml?req=\(title:26%20section:529A%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:26%20section:529A%20edition:prelim)). See Appendix B for a copy.

There is also a section in the POMS covering ABLE Accounts. See POMS SI 01130.740, at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>. See Appendix C for a copy.

Proposed regulations for §529A were issued by the Treasury Department on June 19, 2015, and published in the Federal Register on June 22, 2015, (80 Fed. Reg. 35602). For a copy of the regulations as they were originally proposed, go to <https://www.gpo.gov/fdsys/pkg/FR-2015-06-22/pdf/2015-15280.pdf>. See Appendix D for a copy.

Technical corrections to the proposed regulations were published on August 7, 2015. See [https://www.ftc.gov/system/files/documents/federal\\_register\\_notices/2015/08/150807riyocoppafrn.pdf](https://www.ftc.gov/system/files/documents/federal_register_notices/2015/08/150807riyocoppafrn.pdf). See Appendix E for a copy.

The IRS has issued Notice 2015-81 revising three provisions of the proposed regulations. See <https://www.irs.gov/pub/irs-drop/n-15-81.pdf>. See Appendix F for a copy.

### **C. Summary of Relevant Requirements for a Person to Use an ABLE Account:**

Not everyone qualifies to have an ABLE account, and even if a person qualifies, there are limits on what can be transferred to an ABLE account and restrictions on how the money in an ABLE account can be spent without adverse consequences.

These materials are focused on people considering using an ABLE account, not on states or companies that are operating an ABLE program. As a result, there are portions of the ABLE Act that are beyond the scope of these materials and not included. Only the portions

that are relevant to whether an ABLE account is an option for a person to use are summarized below.

**1) The person must be sufficiently disabled prior to age 26:**

a. The “sufficiently disabled” requirement is satisfied if:

(1) the person is receiving SSI, Social Security Disability Insurance benefits (SSDI, also referred to as "DIB"), Childhood Disability Benefits (CDB), or disabled widow's or widower's benefits (DWB) because of blindness or disability that began before age 26,<sup>2</sup> or

(2) the person provides a “disability certification” prepared by the person or the person’s parent or guardian, and the disability certification is accompanied by a doctor’s written statement that the person was sufficiently disabled prior to age 26.<sup>3</sup>

(3) A “disability certification” is a written document that:

“(i) certifies that-

(l) the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less

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<sup>2</sup> 26 U.S.C. § 529A(e)(1); POMS SI 01130.740.B.1.

<sup>3</sup> 26 U.S.C. § 529A(e)(2); POMS SI 01130.740.B.1.

than 12 months, or is blind (within the meaning of section 1614(a)(2) of the Social Security Act), and

(II) such blindness or disability occurred before the date on which the individual attained age 26, and

(ii) includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.”<sup>4</sup>

b. The ABLE Act refers to a person who meets these requirements as an **“eligible individual.”**<sup>5</sup>

**2) There can be only one ABLE account per eligible individual:** If a person qualifies to have an ABLE account (i.e., is an “eligible individual”) and does not already have one, then an ABLE account can be established by the eligible individual or the eligible individual’s parent, legal guardian, or agent acting for the eligible individual under a power of attorney.<sup>6</sup> After that, money can be transferred into the ABLE account. The eligible individual or anyone else can contribute money to an ABLE account.<sup>7</sup> If the eligible individual already has an ABLE account, then,

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<sup>4</sup> 26 U.S.C. §529A(e)(2)(A).

<sup>5</sup> 26 U.S.C. § 529A(e)(1).

<sup>6</sup> POMS SI 01130.740.B.4.

<sup>7</sup> Contributions to an ABLE account can be made by any “person”. The preamble to the proposed regulations for 26 U.S.C. § 529A says, “The term *person* is defined in section 7701(a)(1) to include an individual, trust, estate, partnership, association, company, or corporation. Therefore, for purposes of section 529A(b)(1)(A), a person would include an individual and each of the entities described in section



subject to the below-described limitations, it may be possible to contribute more money to the existing ABLE account. It is not possible for an eligible individual to have more than one qualifying ABLE account.<sup>8</sup>

**3) The ABLE account can only receive cash:** Only cash can be contributed to an ABLE account.<sup>9</sup> Anything other than cash must be sold or otherwise converted to cash, and the cash can then be contributed to the ABLE account.

**4) There is a limit on the amount that can be contributed to the ABLE account:** The amount of money that can be contributed to an ABLE account in any calendar year is limited to the then-current per donee annual exclusion authorized by 26 U.S.C. §2503(b),<sup>10</sup> or in other words, the amount that can be given away as a present interest gift without incurring a taxable gift. This is \$14,000 in 2017.

If it is near the end of a calendar year, then it is possible to contribute up to \$14,000 in the current year and another \$14,000 in early January of the following year.

**5) The eligible individual's SSI will be suspended if there is more than \$100,000 in the ABLE account:** Although this will not be a problem for a few years (because contributions to an ABLE account are currently limited to \$14,000/year),

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7701(a)(1).” (emphasis in original) 80 Fed. Reg. 35602, published June 22, 2015, at 35606.

The preamble to the proposed regulations goes on to say, “The legislative history of section 529A suggests that a “person” described in section 529A(b)(1)(A) includes the designated beneficiary of an ABLE account. See 160 Cong. Rec. H7051, H8317, H8318, H8321, H8322 (2014).”, 80 Fed. Reg 35602 at 35607.

<sup>8</sup> 26 U.S.C. § 529A(b)(1)(B); 26 U.S.C. § 529A(c)(4); POMS SI 01130.740.A.

<sup>9</sup> 26 U.S.C. § 529A(b)(2)(A); POMS SI 01130.740.B.2.

<sup>10</sup> 26 U.S.C. § 529A(b)(2)(B); POMS SI 01130.740.B.2.

even though there are no limits on how much money can be held in an ABLE account, if the eligible individual's ABLE account exceeds \$100,000, the excess will be deemed to be an available (countable) resource for SSI purposes and the eligible individual's SSI will be suspended.<sup>11</sup>

This is not a problem if the eligible individual is not receiving SSI. Nor does this cause the eligible individual to be disqualified from Medicaid.<sup>12</sup> This is one of the reasons the eligible individual's SSI is suspended instead of terminated. If the eligible individual lives in a §1634 state (states that entered into an agreement that requests the Social Security Administration to make Medicaid eligibility determinations on behalf of the state), then losing SSI would cause a loss of Medicaid. However, merely suspending SSI does not have this effect.

**6) The eligible individual's Medicaid will not be affected if the ABLE account accumulates too much money, but further contributions may be prohibited:** Money in an ABLE account will not be deemed to be an available resource for Medicaid eligibility purposes, no matter how large the ABLE account becomes.<sup>13</sup> However, additional contributions to an ABLE account may be prohibited if the value of the ABLE account exceeds the limit a state may have imposed on a qualified tuition program (that authorizes the establishment of a "529

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<sup>11</sup> Pub. L. 113–295, div. B, title I, §103(a)(2) and §103(b), Dec. 19, 2014, 128 Stat. 4063; POMS SI 01130.740.C.3; POMS SI 01130.740.D.1.

<sup>12</sup> Pub. L. 113–295, div. B, title I, §103(b)(2), Dec. 19, 2014, 128 Stat. 4063; POMS SI 01130.740.D.1.a.

<sup>13</sup> Pub. L. 113–295, div. B, title I, §103(a), Dec. 19, 2014, 128 Stat. 4063.

plan”).<sup>14</sup> See the Excel spreadsheet that accompanies these materials for information regarding each state’s published maximum limit.

**7) An ABLE account cannot be pledged as security:** Neither the entire ABLE account, nor any portion of an ABLE account, can be used to provide security for any loan.

**8) An ABLE account can be rolled over into another ABLE account:** An ABLE account can be rolled over from one ABLE account to another ABLE account for the same designated beneficiary, but not more frequently than once every twelve months.<sup>15</sup>

**9) The designated beneficiary of an ABLE account can be changed:** The designated beneficiary of an ABLE account can be changed, but only to another “eligible individual” who is a “member of the family” of the former designated beneficiary.<sup>16</sup> A “member of the family” is defined as the designated beneficiary’s brother, sister, stepbrother, or stepsister, including those who are adopted.<sup>17</sup>

**D. How Money Contributed to an ABLE Account is Treated and Can be Used:**

Money in an ABLE account is supposed to be used to pay for the “qualified disability

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<sup>14</sup> 26 U.S.C. §529A(b)(6).

<sup>15</sup> 26 U.S.C. §529A(c)(1)(C)(i) and §529A(c)(1)(C)(iii).

<sup>16</sup> 26 U.S.C. §529A(c)(1)(C)(ii).

<sup>17</sup> This is derived from a combination of 26 U.S.C. §529A(e)(4), 26 U.S.C. §152(d)(2)(B), and §152(f)(1)(B).

expenses” of the “designated beneficiary.” The "**designated beneficiary**" of an ABLE account is the "eligible individual" who established and is the owner of the ABLE account.<sup>18</sup>

**1) Contributions to, earnings, and distributions from an ABLE account for qualified disability expenses are not taxable:** Contributions to an ABLE account qualify as a non-taxable present interest gift for gift tax purposes<sup>19</sup> and earnings on funds invested in an ABLE account are not treated as taxable income.<sup>20</sup> In addition, distributions to or for the benefit of the designated beneficiary of the ABLE account that are used for “qualified disability expenses” are not included in the designated beneficiary’s gross taxable income<sup>21</sup> and are not deemed to be taxable gifts.<sup>22</sup>

**2) Contributions to, earnings, and distributions from an ABLE account for any reason are not “income” for SSI and Medicaid:** Similarly, for needs-based public assistance programs such as SSI and Medicaid, contributions to an ABLE account and earnings on ABLE account investments are not “income” for eligibility purposes.<sup>23</sup> Also, distributions from an ABLE account for any reason are not treated as income.<sup>24</sup> Instead, all distributions from an ABLE account are deemed to be a

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<sup>18</sup> 26 U.S.C. § 529A(e)(3). An “eligible individual” is described in Section 1.C.1)b of these materials, above. See *Supra* footnote 5.

<sup>19</sup> 26 U.S.C. § 529A(c)(2)(A).

<sup>20</sup> 26 U.S.C. § 529A(a). An exception is if the income is unrelated business taxable income as described in 26 U.S.C. § 511.

<sup>21</sup> 26 U.S.C. § 529A(c)(1)(B).

<sup>22</sup> 26 U.S.C. § 529A(c)(2)(B).

<sup>23</sup> Pub. L. 113–295, div. B, title I, §103(a), Dec. 19, 2014, 128 Stat. 4063; POMS SI 01130.740.C.1 and SI 01130.740.C.2.

<sup>24</sup> Pub. L. 113–295, div. B, title I, §103(a), Dec. 19, 2014, 128 Stat. 4063.

conversion of a resource from one form to another.<sup>25</sup> Thus, even if the distribution from the ABLE account is used for something that is not a qualified disability expense, the amount distributed will not be deemed to be “income” for SSI purposes, so there will not be a dollar-for-dollar reduction against future SSI payments. Instead, the amount will be deemed to be a “resource” that is countable towards the \$2,000 maximum the beneficiary can have and maintain eligibility for SSI.

**3) “Qualified Disability Expense” definition:** “Qualified disability expenses” are defined as “any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses:”<sup>26</sup>

- education,
- housing,
- transportation,
- employment training and support,
- assistive technology and personal support services,
- health,
- prevention and wellness,
- financial management and administrative services,
- legal fees,
- expenses for oversight and monitoring,
- funeral and burial expenses,

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<sup>25</sup> POMS SI 01130.740.C.4.

<sup>26</sup> 26 U.S.C. § 529A(e)(5).

- other expenses, which are approved by the Secretary under regulations and consistent with the purposes of 26 U.S.C. § 529A, and
- basic living expenses.<sup>27</sup>

**4) “Housing Expense” definition:** “Housing expenses” that qualify as “qualified disability expenses” are defined as the same expenses that are used for in-kind support and maintenance purposes.<sup>28</sup> These include:

- Mortgage (including property insurance required by the mortgage holder);
- Real property taxes;
- Rent;
- Heating fuel;
- Gas;
- Electricity;
- Water;
- Sewer; or
- Garbage removal.

**E. Tax Consequences for ABLE Account Distributions that are Not “Qualified Disability Expenses”:** Section 529A imposes two adverse tax consequences if there are distributions from an ABLE account for items that are not a “qualified disability expense”. These are:

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<sup>27</sup> “Basic living expenses” is added to the above list by POMS SI 01130.740.B.5.

<sup>28</sup> POMS SI 01130.740.B.8.

- 1) The amount of the distribution will be included in the taxable income of the designated beneficiary of the account, but only "in the manner as provided under Section 72" of the tax code.<sup>29</sup>
  - a. 26 U.S.C. §72 contains the provisions for taxation of annuities. Essentially, this Section breaks each distribution into two parts: principal and income. The principal portion is not taxable and the income portion is taxable.
  - b. In the context of an ABLE account, this means that only the portion of the non-qualified disability expense distribution that is attributable to earnings on the ABLE account will be included in the designated beneficiary's gross taxable income.
  - c. For example, if there was \$14,000 in an ABLE account and it was invested and earned 2%, there would be \$280 of earnings in the ABLE account after a year. If the entire \$14,280 was distributed for something that was not a qualified disability expense, there would only be \$280 (the earnings portion) added to the designated beneficiary's gross income. The \$14,000 (principal portion) would not be taxable.
- 2) In addition to the inclusion of the earnings-portion of the non-qualified disability expense distribution in the gross taxable income of the designated

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<sup>29</sup> 26 U.S.C. § 529A(c)(1)(A) and (B).

beneficiary, there will also be a 10% additional tax imposed unless the distribution was made on or after the designated beneficiary's death.<sup>30</sup>

- a. However, this additional tax is only 10% of the amount of the ABLE account distribution that was included in the taxable income of the designated beneficiary.
- b. Continuing the above example, since only \$280 of taxable income is included in the designated beneficiary's gross taxable income, the additional tax imposed would be 10% of \$280, or \$28.
- c. Thus, the total negative impact of a \$14,280 distribution from the designated beneficiary's ABLE account for items that do not qualify as a "qualified disability expense" would be \$280 added to the designated beneficiary's gross income (which will only result in an income tax if the designated beneficiary's income is high enough to be taxable) and a \$28 tax that is in addition to any other income tax the designated beneficiary would have to pay.

**F. Medicaid Must Be Repaid Upon Death of the Designated Beneficiary:** When the designated beneficiary dies, the money remaining in the ABLE account must be used to repay any state(s) that provided Medicaid assistance to the designated beneficiary, if the state makes a claim. However, the repayment is subject to the following rules:<sup>31</sup>

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<sup>30</sup> 26 U.S.C. § 529A(c)(3).

<sup>31</sup> 26 U.S.C. §529A(f).



**1) Only Medicaid received since the ABLE account was established:**

Unlike a self-settled special needs trust established under the authority of 42 U.S.C. §1396p(d)(4)(A) or (C), a state is only entitled to be reimbursed from an ABLE account for Medicaid expenditures made for the benefit of the designated beneficiary after the ABLE account was established. With a d4A or d4C trust, the state can recover for all Medicaid expenditures made for the benefit of the trust beneficiary, even those made prior to the establishment of the trust.

**2) “Qualified disability expenses” can be paid before the State:** The money remaining in a deceased designated beneficiary’s ABLE account can be used to pay any “outstanding payments due for qualified disability expenses” before the state is reimbursed for Medicaid expenditures. This includes, among other items, the payment of funeral and burial expenses. These usually cannot be paid from a d4A or d4C trust after the beneficiary’s death.

Also, any Medicaid Buy-In premiums paid to the State are to be deducted from the payback.

## **2. Thoughts on How and When to Consider Using ABLE Accounts**

There are many situations when an ABLE account should be considered as a method to hold money for an eligible individual. As ABLE accounts continue to be utilized by special needs and elder law attorneys, there will be more and more creative uses discovered. A few of these are described below.

**A. Getting more spending money to an eligible individual:** It is not uncommon for a person who has a disability to have sufficient intellectual capacity to be able to handle

some or all of the his or her assets. However, if the person is receiving SSI or Medicaid assistance, the amount of money the person can accumulate and control is limited to a small amount, usually no more than \$2,000 at the end of each month.

In addition, the spending money available to a person who is receiving SSI or Medicaid assistance is limited to the person's earnings from work and what the person receives from a benefit program such as SSI or SSD. If the person receives money from any other source (such as a relative, friend, or trust), it will cause the person to suffer a reduction or loss of needs-based public assistance benefits.

However, if the person has an ABLE account, then additional money can be transferred to the ABLE account without negatively impacting the person's SSI or Medicaid benefits. This allows the person to have more money to spend for items the person wants or needs.

**B. Avoiding in-kind support and maintenance when the designated beneficiary is receiving SSI:** An ABLE account can be very helpful if the designated beneficiary is receiving SSI benefits, needs help paying for food or shelter expenses, and avoiding the limitations imposed on in-kind support and maintenance will be helpful to the beneficiary.

In order to fully understand why, it is important to focus on this attribute of an ABLE account:

- in addition to contributions to an ABLE account not being treated as "income" for SSI eligibility purposes,
- distributions from an ABLE account that are used to pay for any "qualified disability expenses," including housing expenses, are also not treated as "income" for SSI eligibility purposes.

Instead, such distributions are treated as a “conversion of a resource from one form to another.”<sup>32</sup>

This means that money taken from an ABLE account to pay for the ABLE account designated beneficiary’s housing expenses will not be deemed to be in-kind support and maintenance as long as the distribution is used for the housing related expenses within the same month the money is removed from the ABLE account.<sup>33</sup> This means the distributions will not cause a reduction in the recipient’s future SSI payments.

**C. Illustrations of how ABLE accounts can be used:** In order to illustrate how ABLE accounts can be used to accomplish what is described above, and why ABLE accounts can be an important tool to use in the right situations, consider the following examples.

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<sup>32</sup> See POMS SI 01130.740.C.4, which says, “Do not count ABLE account distributions as income. A distribution from an ABLE account is not income but is a conversion of a resource from one form to another, see SI 01110.600B.4.

Do not count distributions from an ABLE account as income of the designated beneficiary, regardless of whether the distributions are for non-housing QDEs, housing QDEs, or non-qualified expenses.” (emphasis added)

<sup>33</sup> See POMS SI 01130.740.D.2, which says “Count a distribution for a housing-related QDE [qualified disability expense] or for an expense that is not a QDE as a resource, if the beneficiary retains the distribution into the month following the month of receipt. If the beneficiary spends the distribution within the month of receipt, there is no effect on eligibility. However, apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account.” (emphasis added)

This POMS section seems to contradict Section 103(a)(1) of the ABLE Act which says that a distribution for housing expenses shall not be disregarded for SSI eligibility purposes. However, the Social Security Administration has satisfied this by treating such distributions as resource transfers. Therefore, as described in the above-referenced POMS section, if there is a distribution for housing expenses from an ABLE account to the designated beneficiary that is not spent on the housing expense within the month it is received by the beneficiary, then the unspent amount is deemed to be a countable resource to the beneficiary in the following month. This may have the effect of causing the beneficiary to be disqualified from SSI because of having too many resources.

**1) Special needs trust distributions to an ABLE account:** If an eligible individual is the beneficiary of a special needs trust (it does not matter whether it is a third party-settled trust or a self-settled d4A or d4C trust), then each year the trustee can distribute the maximum amount allowed into the beneficiary's ABLE account. In 2017, this means the ABLE account receives \$14,000. This is not "income" to the beneficiary because it went directly from the special needs trust into the ABLE account.<sup>34</sup>

The money in the ABLE account can then be used to pay the beneficiary's "qualified disability expenses" or, if income taxation and having potential excess available resources are not an issue, for anything the beneficiary wants.

This can be particularly helpful when used to pay for housing expenses of the beneficiary. If the trustee distributes to the ABLE account, and then the money in the ABLE account is used to pay for housing expenses of the designated beneficiary, there will not be any in-kind support and maintenance. Whereas, if that was done directly from the trust, by the trustee paying the beneficiary's rent or utility bills directly, SSI would treat that as in-kind support and maintenance and reduce the beneficiary's SSI accordingly.<sup>35</sup>

But since these expenses are paid from the beneficiary's ABLE account, there is no in-kind support and maintenance, and no corresponding reduction in the

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<sup>34</sup> At the time these materials are prepared, some special needs law attorneys are concerned that the Social Security Administration may take the position that distributions from a self-settled special needs trust to the trust beneficiary's ABLE account will be disallowed, or that such distributions that can be traced to being used for the beneficiary's housing expenses will be treated as in-kind support and maintenance despite the fact they were paid from the ABLE account. It is hoped this will be clarified in the near future.

<sup>35</sup> POMS SI 01120.201.I.1.b.

beneficiary's SSI. Also, the investment earnings portion of the distribution will not be added to the beneficiary's taxable income nor subject to a 10% penalty because the distribution from the ABLE account is used to pay a qualified disability expense.

It is important, however, that any money distributed from the ABLE account be actually spent on the housing expenses within the same month that it is distributed from the ABLE account. Failure to do so will result in the unspent amount being deemed to be a countable resource for SSI eligibility purposes.<sup>36</sup>

**2) Gifts from others to an ABLE account:** Parents or other relatives or friends may want to help an eligible individual who is receiving SSI pay for housing expenses or other qualified disability expenses. If they give money to the individual, there will be a dollar for dollar offset against the individual's SSI, after the first \$20/month is ignored. If they directly pay the individual's rent or utilities such as electricity, gas, water, sewer, or garbage removal, they will be providing in-kind support and maintenance to the individual. In 2017, receiving in-kind support and maintenance will cause a the individual's SSI to be reduced for one month by \$265,<sup>37</sup> or the fair market value of the food or shelter expenses that were paid, if less. But if these people contribute to the eligible individual's ABLE account, then

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<sup>36</sup> See *Supra* footnote 33.

<sup>37</sup> The Presumed Maximum Rule is applied in most situations when in-kind support and maintenance is provided to an SSI recipient. This rule values the in-kind support and maintenance as the lesser of: (i) Its actual value; or (ii) its "Presumed Maximum Value" of 1/3 of the maximum monthly SSI payment, plus \$20. A person's SSI is reduced by the value of the in-kind support and maintenance as determined by the Presumed Maximum Value rule.

In 2017, the maximum SSI payment is \$735.  $\$735/3 = \$245 + \$20 = \$265$ . This is the Presumed Maximum Value of the in-kind support and maintenance provided during a month towards to an SSI recipient.

the money can be used for these expenses without any reduction in the individual's SSI.

**3) Paying a structured settlement directly into an ABLE account:** An eligible individual who is receiving money from a lawsuit settlement can direct that a portion of the settlement be placed into a structured settlement annuity that distributes \$14,000 each calendar year into the eligible individual's ABLE account. These distributions to the ABLE account are not income and will not adversely impact the eligible individual's SSI or Medicaid, and the money in the ABLE account can be used by the eligible individual to pay for his or her qualified disability expenses.

Although this is possible, careful consideration should be given before this is done. Questions that need to be addressed are: What happens if Congress repeals the ABLE Act? Or what if the beneficiary dies shortly after the settlement? Can the structured settlement payments that were directed to the ABLE account be paid to a contingent beneficiary? If so, who or what should that be?

**4) A small amount, or portion of a larger amount, received put into an ABLE account:** If an eligible individual is receiving money from a settlement, inheritance, or some other source, up to \$14,000 of this money can be transferred directly into the eligible individual's ABLE account. As a result, the money no longer is an "available" or "countable" resource" and the eligible individual retains eligibility for SSI and Medicaid. The money in the ABLE account can be used to pay for the eligible individual's qualified disability expenses, including housing expenses, without any adverse impact on the eligible individual's SSI or Medicaid benefits.

**5) UTMA account transferred to an ABLE account:** When a child reaches the age of 18 years, money in an UTMA account for a child will be deemed to be an available resource and countable towards the \$2,000 limit imposed by SSI and most, if not all, Medicaid programs.<sup>38</sup> If the child is an “eligible individual”, the custodian of the UTMA account can transfer up to \$14,000 of the UTMA account into an ABLE account for the child. This will remove the money from being deemed to be an available resource for needs-based public assistance eligibility purposes.

**6) Excess income transferred to an ABLE account:** An eligible individual receiving SSI or SSD benefits, and also earning income if he or she is working, can save any excess unspent money over \$2,000 at the end of a month into an ABLE account. In addition, the individual can have up to \$2,000 in his or her checking account. This will allow the eligible individual to save money to be able to take a trip or purchase a higher priced item that he or she wants or needs.

### **3. Powers to Insert in Durable Power of Attorney and Trust Documents**

At a minimum, attorneys should consider adding language to durable power of attorney and trust documents that provides authority to establish and/or transfer assets to ABLE accounts.

**A. Durable Power of Attorney:** Consider adding clauses to financial durable power of attorney documents that (i) authorize the establishment of an ABLE account, and (ii) if appropriate, authorize gifts to an ABLE account established for a person to whom the

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<sup>38</sup> POMS SI 01120.205.D.3.b.

principal of the durable power of attorney would want to make gifts, such as spouse, children, or grandchildren.

**B. Trusts:** Consider adding authority in trusts that allow the trustee to distribute to an ABLE account established for the beneficiary. An example of language that may be used is set forth below.

“If not prohibited by law or regulation, the Trustee may distribute to an ABLE Account established for the Beneficiary, if the Trustee, in the Trustee's discretion deems such action to be appropriate under the circumstances.”

#### **4. More Information on ABLE Accounts**

**A. States offering ABLE accounts:** At the time these materials were prepared twenty-five states plus the District of Columbia have their ABLE program up and running. More states are expected to follow. Some states limit participants to residents of that state, while others are open to residents of other states. As of early August 2017, when these materials were prepared, these states are:

##### **States Allowing Non-Residents to Open ABLE Accounts**

Alabama

Alaska

District of Columbia

Illinois

Indiana

Iowa

Kansas



Massachusetts

Michigan

Minnesota

Montana

Nebraska

Nevada

North Carolina

Ohio

Oregon ABLE - Oregon has two programs; one National (Oregon ABLE for All) and the other for Oregon residents only (Oregon ABLE)

Pennsylvania

Rhode Island

Tennessee

Virginia

**States Only Allowing Residents to Participate in the ABLE Program**

Florida

Georgia

Kentucky

Louisiana

Missouri

Oregon ABLE for All

Vermont

**B. Choosing an ABLE program:** It is not necessary to utilize the ABLE program offered by the state the beneficiary resides in, so choosing the appropriate ABLE program

can be challenging. The following may be helpful if comparing different state's ABLE programs is needed.

1) **The Arc** has a website that lists the current status of each state. See <http://www.thearc.org/what-we-do/public-policy/issues/able-program-implementation>

2) The **ABLE National Resource Center** has a website that allows you to compare three states ABLE programs at a time.

See <http://www.ablenrc.org/state-review>

**C. See Accompanying Excel Spreadsheet:** In addition to the above websites, accompanying these materials is an Excel spreadsheet that combines, summarizes, and supplements much of the information contained in the two above-referenced websites. This may also be helpful in comparing the various programs. It is current as of August 6, 2017.

## **5. Pending Legislation Regarding ABLE Accounts**

There are changes that advocates want to make to the ABLE Act. Among those are raising the eligible age so an individual does not have to be disabled prior to age 26, allowing 529 tuition plans to be rolled into an ABLE account without any limit on the amount, and allowing higher contributions to an ABLE account if from the designated beneficiary's employment earnings. Currently, there are bills pending in Congress addressing these concerns. These bills are summarized below. Most of the summary explanation is drawn from the Congress.gov website. This website is where progress of these bills can be tracked, and is hyperlinked in the materials that follow.

## A. 529 and ABLE Account Improvement Act of 2017

This bill amends the Internal Revenue Code to modify the tax treatment of qualified tuition programs (known as 529 plans) and ABLE accounts. (Tax-favored ABLE [Achieving a Better Life Experience] accounts are designed to enable individuals with disabilities to save for and pay for disability-related expenses.)

The bill excludes from gross income a fringe benefit consisting of up to \$100 per year (adjusted for inflation after 2017) of employer contributions to an employee's 529 or ABLE account. The employer contribution must be made: (1) to an account for which the designated beneficiary is the employee or a member of the employee's family, and (2) in connection with a payroll deduction contribution program established by the employer.

The bill also: (1) expands the tax credit for small employer pension plan startup costs to include the costs of establishing a payroll deduction contribution program for 529 plans and ABLE accounts, (2) permits 529 funds to be used for education loan payments or charitable contributions without being subject to the additional tax for distributions that are not used for qualified higher education expenses, and **(3) permits tax-free rollovers of funds between 529 and ABLE accounts for the benefit of the same beneficiary or a family member of the beneficiary.** (Emphasis added)

For the purpose of current law restrictions on the frequency of investment directions that a beneficiary or contributor may provide for a 529 or ABLE account, rebalancing investments among broad-based investment strategies established under the

program is not an investment direction unless the beneficiary or contributor directs the specific investments within the strategies. (Summary from Congress.gov)

## **House Bill H.R.529 – 529 and ABLE Account Improvement Act of 2017**

Introduced 1/13/2017

Referred to House Committee on Ways and Means

Go [HERE](#) for the latest on this bill.

### **B. The ABLE Financial Planning Act**

The ABLE Financial Planning Act would allow families to rollover savings in a 529 college savings plan into an ABLE account. Many families save for a child's college education by opening a 529 account, sometimes before their child is even born, only to learn later that their child has a severe disability like autism. In other cases, a child is in a tragic accident and becomes severely disabled. In such instances, these families have funds trapped in a 529 that they could use to help cover their child's lifelong expenses. If they withdraw the funds for anything other than college expenses, they face taxes on their withdrawals. The ABLE Financial Planning Act would help these families by allowing them to rollover the funds in their 529 account into an ABLE account for their disabled child. (summary from cosponsor Senator Van Hollen's website)

This bill amends the Internal Revenue Code to allow tax-free rollovers of amounts in qualified tuition programs (529 plans) to qualified ABLE programs. (Tax-favored ABLE [Achieving a Better Life Experience] accounts are designed to enable individuals with disabilities to save for and pay for disability-related expenses.)(Summary from Congress.gov)

## **S.816**

Introduced 4/4/2017

Read twice and referred to Committee on Finance

Go [HERE](#) for the latest on this bill.

## **H.R.1897**

Introduced 4/4/2017

Referred to House Committee on Ways and Means

Go [HERE](#) for the latest on this bill.

Text of the ABLE Financial Planning Act is available [HERE](#)

### **C. The ABLE Age Adjustment Act**

The ABLE Age Adjustment Act will raise the age limit for ABLE accounts to age 46. Currently, individuals with a severe disability prior to the age of 26 are eligible to open an ABLE account. Many debilitating diseases and conditions can strike later in life, including multiple sclerosis, Lou Gehrig's disease, or paralysis due to an accident. Increasing the age limit for ABLE accounts will allow more individuals to save in these accounts to help cover the costs of short, medium and long-term care. (summary from cosponsor Senator Van Hollen's website)

This bill amends the Internal Revenue Code, with respect to qualified ABLE programs, to increase the age threshold for eligibility for such programs from 26 to 46. (Tax-favored ABLE [Achieving a Better Life Experience] accounts are designed to enable individuals with disabilities to save for and pay for disability-related expenses.)(Summary from Congress.gov)

## **S.817**

Introduced 4/4/2017

Read twice and referred to Committee on Finance

Go [HERE](#) for the latest on this bill.

## **H.R.1874**

Introduced 4/4/2017

Referred to House Committee on Ways and Means

Go [HERE](#) for the latest on this bill.

Text of the ABLE Age Adjustment Act available [HERE](#).

### **D. The ABLE to Work Act of 2017**

The ABLE to Work Act expands on the goals of the ABLE Act by encouraging work and self-sufficiency. The legislation allows individuals and their families to save more money in an ABLE account if the beneficiary works and earns income. Specifically, an ABLE beneficiary who earns income from a job could save up to the Federal Poverty Level, which is currently at \$11,770. The bill will also allow ABLE beneficiaries to qualify for the existing Saver's Credit when they put savings in (summary from cosponsor Senator Van Hollen's website)

This bill amends the Internal Revenue Code, with respect to ABLE accounts (tax-exempt savings accounts for persons with a disability), to allow: (1) an ABLE account beneficiary to make additional contributions to an ABLE account equal to the lesser of such beneficiary's compensation or an amount equal to the federal

poverty line for a one-person household, and (2) a retirement savings tax credit for contributions to an ABLE account. (Summary from Congress.gov)

### **S.818**

Introduced 4/4/2017

Read twice and referred to the Committee on Finance

Go [HERE](#) for latest on this bill.

### **H.R.1896**

Introduced 4/4/2017 - 27 cosponsors

Referred to House Committee on Ways and Means

Go [HERE](#) for latest on this bill.

Text of the ABLE to Work Act is available [HERE](#)

# Appendix A



Stephen Beck,  
Jr., Achieving a  
Better Life  
Experience  
Act of 2014.

## DIVISION B—ACHIEVING A BETTER LIFE EXPERIENCE ACT OF 2014

### SEC. 1. SHORT TITLE; ETC.

26 USC 1 note.

(a) **SHORT TITLE.**—This division may be cited as the “Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014” or the “Stephen Beck, Jr., ABLE Act of 2014”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

## TITLE I—QUALIFIED ABLE PROGRAMS

26 USC 529A  
note.

### SEC. 101. PURPOSES.

The purposes of this title are as follows:

(1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

(2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the supplemental security income program under title XVI of such Act, the beneficiary’s employment, and other sources.

### SEC. 102. QUALIFIED ABLE PROGRAMS.

(a) **IN GENERAL.**—Subchapter F of chapter 1 is amended by inserting after section 529 the following new section:

26 USC 529A.

#### “SEC. 529A. QUALIFIED ABLE PROGRAMS.

“(a) **GENERAL RULE.**—A qualified ABLE program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

Definition.

“(b) **QUALIFIED ABLE PROGRAM.**—For purposes of this section—  
“(1) **IN GENERAL.**—The term ‘qualified ABLE program’ means a program established and maintained by a State, or agency or instrumentality thereof—

“(A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,

“(B) which limits a designated beneficiary to 1 ABLE account for purposes of this section,

“(C) which allows for the establishment of an ABLE account only for a designated beneficiary who is a resident of such State or a resident of a contracting State, and

“(D) which meets the other requirements of this section.

“(2) CASH CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted—

“(A) unless it is in cash, or

“(B) except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.

For purposes of this paragraph, rules similar to the rules of section 408(d)(4) (determined without regard to subparagraph (B) thereof) shall apply. Applicability.

“(3) SEPARATE ACCOUNTING.—A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.

“(4) LIMITED INVESTMENT DIRECTION.—A program shall not be treated as a qualified ABLE program unless it provides that any designated beneficiary under such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

“(5) NO PLEDGING OF INTEREST AS SECURITY.—A program shall not be treated as a qualified ABLE program if it allows any interest in the program or any portion thereof to be used as security for a loan.

“(6) PROHIBITION ON EXCESS CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions under any prior qualified ABLE program of any State or agency or instrumentality thereof.

“(c) TAX TREATMENT.—

“(1) DISTRIBUTIONS.—

“(A) IN GENERAL.—Any distribution under a qualified ABLE program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

“(B) DISTRIBUTIONS FOR QUALIFIED DISABILITY EXPENSES.—For purposes of this paragraph, if distributions from a qualified ABLE program—

“(i) do not exceed the qualified disability expenses of the designated beneficiary, no amount shall be includible in gross income, and

“(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

“(C) CHANGE IN DESIGNATED BENEFICIARIES OR PROGRAMS.—

Deadline.

“(i) ROLLOVERS FROM ABLE ACCOUNTS.—Subparagraph (A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLE account for the benefit of the same designated beneficiary or an eligible individual who is a family member of the designated beneficiary.

“(ii) CHANGE IN DESIGNATED BENEFICIARIES.—Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

“(iii) LIMITATION ON CERTAIN ROLLOVERS.—Clause (i) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified ABLE program for the benefit of the designated beneficiary.

“(D) OPERATING RULES.—For purposes of applying section 72—

“(i) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

“(ii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

“(2) GIFT TAX RULES.—For purposes of chapters 12 and 13—

“(A) CONTRIBUTIONS.—Any contribution to a qualified ABLE program on behalf of any designated beneficiary—

“(i) shall be treated as a completed gift to such designated beneficiary which is not a future interest in property, and

“(ii) shall not be treated as a qualified transfer under section 2503(e).

“(B) TREATMENT OF DISTRIBUTIONS.—In no event shall a distribution from an ABLE account to such account’s designated beneficiary be treated as a taxable gift.

“(C) TREATMENT OF TRANSFER TO NEW DESIGNATED BENEFICIARY.—The taxes imposed by chapters 12 and 13 shall not apply to a transfer by reason of a change in the designated beneficiary under subsection (c)(1)(C).

“(3) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR DISABILITY EXPENSES.—

“(A) IN GENERAL.—The tax imposed by this chapter for any taxable year on any taxpayer who receives a distribution from a qualified ABLE program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

“(B) EXCEPTION.—Subparagraph (A) shall not apply if the payment or distribution is made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary.

“(C) CONTRIBUTIONS RETURNED BEFORE CERTAIN DATE.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

“(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such designated beneficiary’s return for such taxable year, and

“(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

“(4) LOSS OF ABLE ACCOUNT TREATMENT.—If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an account established for purposes of a rollover described in paragraph (1)(C)(i) of this section if the transferor account is closed as of the end of the 60th day referred to in paragraph (1)(C)(i).

“(d) REPORTS.—

“(1) IN GENERAL.—Each officer or employee having control of the qualified ABLE program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

“(2) CERTAIN AGGREGATED INFORMATION.—For research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual.

Public  
information.

“(3) NOTICE OF ESTABLISHMENT OF ABLE ACCOUNT.—A qualified ABLE program shall submit a notice to the Secretary upon the establishment of an ABLE account. Such notice shall contain the name and State of residence of the designated beneficiary and such other information as the Secretary may require.

“(4) ELECTRONIC DISTRIBUTION STATEMENTS.—For purposes of section 4 of the Achieving a Better Life Experience Act of 2014, States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.

“(5) REQUIREMENTS.—The reports and notices required by paragraphs (1), (2), and (3) shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) ELIGIBLE INDIVIDUAL.—An individual is an eligible individual for a taxable year if during such taxable year—

“(A) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26, or

“(B) a disability certification with respect to such individual is filed with the Secretary for such taxable year.

“(2) DISABILITY CERTIFICATION.—

“(A) IN GENERAL.—The term ‘disability certification’ means, with respect to an individual, a certification to the satisfaction of the Secretary by the individual or the parent or guardian of the individual that—

“(i) certifies that—

“(I) the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind (within the meaning of section 1614(a)(2) of the Social Security Act), and

“(II) such blindness or disability occurred before the date on which the individual attained age 26, and

“(ii) includes a copy of the individual’s diagnosis relating to the individual’s relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

“(B) RESTRICTION ON USE OF CERTIFICATION.—No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

“(3) DESIGNATED BENEFICIARY.—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.

“(4) MEMBER OF FAMILY.—The term ‘member of the family’ means, with respect to any designated beneficiary, an individual who bears a relationship to such beneficiary which is described in subparagraph section 152(d)(2)(B). For purposes of the preceding sentence, a rule similar to the rule of section 152(f)(1)(B) shall apply.

“(5) QUALIFIED DISABILITY EXPENSES.—The term ‘qualified disability expenses’ means any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.

“(6) ABLE ACCOUNT.—The term ‘ABLE account’ means an account established by an eligible individual, owned by such

eligible individual, and maintained under a qualified ABLE program.

“(7) CONTRACTING STATE.—The term ‘contracting State’ means a State without a qualified ABLE program which has entered into a contract with a State with a qualified ABLE program to provide residents of the contracting State access to a qualified ABLE program.

“(f) TRANSFER TO STATE.—Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations—

“(1) to enforce the 1 ABLE account per eligible individual limit,

“(2) providing for the information required to be presented to open an ABLE account,

“(3) to generally define qualified disability expenses,

“(4) developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability, including those conditions deemed to meet the requirements of subsection (e)(1)(B),

“(5) to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses,

“(6) under chapters 11, 12, and 13 of this title, and

“(7) to allow for transfers from one ABLE account to another ABLE account.”.

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking “or” at the end of paragraph (4), by inserting “or” at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph: 26 USC 4973.

“(6) an ABLE account (within the meaning of section 529A).”.

(2) EXCESS CONTRIBUTION.—Section 4973 is amended by adding at the end the following new subsection:

“(h) EXCESS CONTRIBUTIONS TO ABLE ACCOUNT.—For purposes of this section—

“(1) IN GENERAL.—In the case of an ABLE account (within the meaning of section 529A), the term ‘excess contributions’ means the amount by which the amount contributed for the taxable year to such account (other than contributions under section 529A(c)(1)(C)) exceeds the contribution limit under section 529A(b)(2)(B).

Applicability.

“(2) SPECIAL RULE.—For purposes of this subsection, any contribution which is distributed out of the ABLE account in a distribution to which the last sentence of section 529A(b)(2) applies shall be treated as an amount not contributed.”.

26 USC 6693.

(c) PENALTY FOR FAILURE TO FILE REPORTS.—Section 6693(a)(2) is amended by striking “and” at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following:

“(E) section 529A(d) (relating to qualified ABLE programs), and”.

(d) RECORDS.—Section 552a(a)(8)(B) of title 5, United States Code, is amended—

(1) in clause (viii), by striking “or” at the end;

(2) in clause (ix), by adding “or” at the end; and

(3) by adding at the end the following new clause:

“(x) matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014;”.

(e) OTHER CONFORMING AMENDMENTS.—

(1) Section 26(b)(2) is amended by striking “and” at the end of subparagraph (W), by striking the period at the end of subparagraph (X) and inserting “, and”, and by inserting after subparagraph (X) the following:

“(Y) section 529A(c)(3)(A) (relating to additional tax on ABLE account distributions not used for qualified disability expenses).”.

(2) Section 877A is amended—

(A) in subsection (e)(2) by inserting “a qualified ABLE program (as defined in section 529A),” after “529),”, and

(B) in subsection (g)(6) by inserting “529A(c)(3),” after “529(c)(6),”.

(3) Section 4965(c) is amended by striking “or” at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting “, or”, and by inserting after paragraph (7) the following new paragraph:

“(8) a program described in section 529A.”.

26 USC  
prec. 529.

(4) The heading for part VIII of subchapter F of chapter 1 is amended by striking “HIGHER EDUCATION” and inserting “CERTAIN”.

26 USC  
prec. 501.

(5) The item in the table of parts for subchapter F of chapter 1 relating to part VIII is amended to read as follows:

“PART VIII. CERTAIN SAVINGS ENTITIES.”.

26 USC  
prec. 529.

(6) The table of sections for part VIII of subchapter F of chapter 1 is amended by inserting after the item relating to section 529 the following new item:

“Sec. 529A. Qualified ABLE programs.”.

(7) Paragraph (4) of section 1027(g) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5517(g)(4)) is amended by inserting “, 529A” after “529”.

5 USC 552a note.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

26 USC 529A  
note.

(2) REGULATIONS.—The Secretary of the Treasury (or the Secretary’s designee) shall promulgate the regulations or other

guidance required under section 529A(g) of the Internal Revenue Code of 1986, as added by subsection (a), not later than 6 months after the date of the enactment of this Act.

**SEC. 103. TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS.**

26 USC 529A  
note.

(a) **ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN OTHER MEANS-TESTED FEDERAL PROGRAMS.**—Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of such individual, any contributions to the ABLE account of the individual, and any distribution for qualified disability expenses (as defined in subsection (e)(5) of such section) shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act—

(1) a distribution for housing expenses (within the meaning of such subsection) shall not be so disregarded, and

(2) in the case of such program, any amount (including such earnings) in such ABLE account shall be considered a resource of the designated beneficiary to the extent that such amount exceeds \$100,000.

(b) **SUSPENSION OF SSI BENEFITS DURING PERIODS OF EXCESSIVE ACCOUNT FUNDS.**—

(1) **IN GENERAL.**—The benefits of an individual under the supplemental security income program under title XVI of the Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the individual attributable to an amount in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of the individual not disregarded under subsection (a) of this section.

(2) **NO IMPACT ON MEDICAID ELIGIBILITY.**—An individual who would be receiving payment of such supplemental security income benefits but for the application of paragraph (1) shall be treated for purposes of title XIX of the Social Security Act as if the individual continued to be receiving payment of such benefits.

(c) **EFFECTIVE DATE.**—This section shall take effect on the date of the enactment of this Act.

**SEC. 104. TREATMENT OF ABLE ACCOUNTS IN BANKRUPTCY.**

(a) **EXCLUSION FROM PROPERTY OF THE ESTATE.**—Section 541(b) of the title 11, United States Code, is amended—

(1) in paragraph (8), by striking “or” at the end;

(2) in paragraph (9), by striking the period at the end and inserting a semicolon and “or”; and

(3) by inserting after paragraph (9) the following:

“(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

Deadline.



“(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

“(B) only to the extent that such funds—

“(i) are not pledged or promised to any entity in connection with any extension of credit; and

“(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

Deadlines.

“(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$6,225.”.

(b) **DEBTOR’S MONTHLY EXPENSES.**—Section 707(b)(2)(A)(ii)(II) of title 11, United States Code, is amended by adding at the end “Such monthly expenses may include, if applicable, contributions to an account of a qualified ABLE program to the extent such contributions are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986) and if the designated beneficiary of such account is a child, stepchild, grandchild, or stepgrandchild of the debtor.”.

(c) **RECORD OF DEBTOR’S INTEREST.**—Section 521(c) of title 11, United States Code, is amended by inserting “, an interest in an account in a qualified ABLE program (as defined in section 529A(b) of such Code,” after “Internal Revenue Code of 1986”).

11 USC 521 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

#### **SEC. 105. INVESTMENT DIRECTION RULE FOR 529 PLANS.**

(a) **AMENDMENTS RELATING TO INVESTMENT DIRECTION RULE FOR 529 PLANS.**—

26 USC 529.

(1) Paragraph (4) of section 529(b) is amended by striking “may not directly or indirectly” and all that follows and inserting “may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.”.

(2) The heading of paragraph (4) of section 529(b) is amended by striking “NO” and inserting “LIMITED”.

26 USC 529 note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

## **TITLE II—OFFSETS**

#### **SEC. 201. CORRECTION TO WORKERS COMPENSATION OFFSET AGE.**

(a) **RETIREMENT AGE.**—Section 224(a) of the Social Security Act (42 U.S.C. 424a(a)) is amended, in the matter preceding paragraph (1), by striking “the age of 65” and inserting “retirement age (as defined in section 216(l)(1))”.

26 USC 424a note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to any individual who attains 65 years of age on or after the date that is 12 months after the date of the enactment of this Act.

# Appendix B

**26 USC 529A: Qualified ABLE programs**

Text contains those laws in effect on August 6, 2017

**From Title 26-INTERNAL REVENUE CODE**

Subtitle A-Income Taxes

CHAPTER 1-NORMAL TAXES AND SURTAXES

Subchapter F-Exempt Organizations

PART VIII-CERTAIN SAVINGS ENTITIES

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**§529A. Qualified ABLE programs****(a) General rule**

A qualified ABLE program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

**(b) Qualified ABLE program**

For purposes of this section-

**(1) In general**

The term "qualified ABLE program" means a program established and maintained by a State, or agency or instrumentality thereof-

- (A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,
- (B) which limits a designated beneficiary to 1 ABLE account for purposes of this section, and
- (C) which meets the other requirements of this section.

**(2) Cash contributions**

A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted-

- (A) unless it is in cash, or
- (B) except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.

For purposes of this paragraph, rules similar to the rules of section 408(d)(4) (determined without regard to subparagraph (B) thereof) shall apply.

**(3) Separate accounting**

A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.

**(4) Limited investment direction**

A program shall not be treated as a qualified ABLE program unless it provides that any designated beneficiary under such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

**(5) No pledging of interest as security**

A program shall not be treated as a qualified ABLE program if it allows any interest in the program or any portion thereof to be used as security for a loan.

**(6) Prohibition on excess contributions**

A program shall not be treated as a qualified ABLE program unless it provides adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions under any prior qualified ABLE program of any State or agency or instrumentality thereof.

### **(c) Tax treatment**

#### **(1) Distributions**

##### **(A) In general**

Any distribution under a qualified ABLE program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

##### **(B) Distributions for qualified disability expenses**

For purposes of this paragraph, if distributions from a qualified ABLE program-

- (i) do not exceed the qualified disability expenses of the designated beneficiary, no amount shall be includible in gross income, and
- (ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

#### **(C) Change in designated beneficiaries or programs**

##### **(i) Rollovers from able accounts**

Subparagraph (A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLE account for the benefit of the same designated beneficiary or an eligible individual who is a member of the family of the designated beneficiary.

##### **(ii) Change in designated beneficiaries**

Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

##### **(iii) Limitation on certain rollovers**

Clause (i) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified ABLE program for the benefit of the designated beneficiary.

#### **(D) Operating rules**

For purposes of applying section 72-

- (i) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and
- (ii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

### **(2) Gift tax rules**

For purposes of chapters 12 and 13-

#### **(A) Contributions**

Any contribution to a qualified ABLE program on behalf of any designated beneficiary-

- (i) shall be treated as a completed gift to such designated beneficiary which is not a future interest in property, and
- (ii) shall not be treated as a qualified transfer under section 2503(e).

#### **(B) Treatment of distributions**

In no event shall a distribution from an ABLE account to such account's designated beneficiary be treated as a taxable gift.

#### **(C) Treatment of transfer to new designated beneficiary**

The taxes imposed by chapters 12 and 13 shall not apply to a transfer by reason of a change in the designated beneficiary under subsection (c)(1)(C).

### **(3) Additional tax for distributions not used for disability expenses**

#### **(A) In general**

The tax imposed by this chapter for any taxable year on any taxpayer who receives a distribution from a qualified ABLE program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

**(B) Exception**

Subparagraph (A) shall not apply if the payment or distribution is made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary.

**(C) Contributions returned before certain date**

Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if-

- (i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such designated beneficiary's return for such taxable year, and
- (ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

**(4) Loss of ABLE account treatment**

If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an account established for purposes of a rollover described in paragraph (1)(C)(i) of this section if the transferor account is closed as of the end of the 60th day referred to in paragraph (1)(C)(i).

**(d) Reports**

**(1) In general**

Each officer or employee having control of the qualified ABLE program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

**(2) Certain aggregated information**

For research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual.

**(3) Notice of establishment of able account**

A qualified ABLE program shall submit a notice to the Secretary upon the establishment of an ABLE account. Such notice shall contain the name of the designated beneficiary and such other information as the Secretary may require.

**(4) Electronic distribution statements**

For purposes of section 103 of the Achieving a Better Life Experience Act of 2014,<sup>1</sup> States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.

**(5) Requirements**

The reports and notices required by paragraphs (1), (2), and (3) shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

**(e) Other definitions and special rules**

For purposes of this section-

**(1) Eligible individual**

An individual is an eligible individual for a taxable year if during such taxable year-

- (A) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26, or
- (B) a disability certification with respect to such individual is filed with the Secretary for such taxable year.

**(2) Disability certification**

**(A) In general**

The term "disability certification" means, with respect to an individual, a certification to the satisfaction of the Secretary by the individual or the parent or guardian of the individual that-

(i) certifies that-

(I) the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind (within the meaning of section 1614(a)(2) of the Social Security Act), and

(II) such blindness or disability occurred before the date on which the individual attained age 26, and

(ii) includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

**(B) Restriction on use of certification**

No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

**(3) Designated beneficiary**

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.

**(4) Member of family**

The term "member of the family" means, with respect to any designated beneficiary, an individual who bears a relationship to such beneficiary which is described in subparagraph <sup>2</sup> section 152(d)(2)(B). For purposes of the preceding sentence, a rule similar to the rule of section 152(f)(1)(B) shall apply.

**(5) Qualified disability expenses**

The term "qualified disability expenses" means any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.

**(6) ABLE account**

The term "ABLE account" means an account established by an eligible individual, owned by such eligible individual, and maintained under a qualified ABLE program.

**(f) Transfer to State**

Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

**(g) Regulations**

The Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations-

- (1) to enforce the 1 ABLE account per eligible individual limit,
- (2) providing for the information required to be presented to open an ABLE account,
- (3) to generally define qualified disability expenses,
- (4) developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability, including those conditions deemed to meet the requirements of subsection (e)(1)(B),
- (5) to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses,
- (6) under chapters 11, 12, and 13 of this title, and
- (7) to allow for transfers from one ABLE account to another ABLE account.

(Added Pub. L. 113–295, div. B, title I, §102(a), Dec. 19, 2014, 128 Stat. 4056 ; amended Pub. L. 114–113, div. Q, title III, §303(a)–(c), Dec. 18, 2015, 129 Stat. 3087 .)

**REFERENCES IN TEXT**

The Achieving a Better Life Experience Act of 2014, referred to in subsec. (d)(4), probably means div. B of Pub. L. 113–295, Dec. 19, 2014, 128 Stat. 4056 , known as the "Stephen Beck, Jr., Achieving a Better Life

Experience Act of 2014" and also as the "Stephen Beck, Jr., ABLE Act of 2014". Section 103 of div. B of Pub. L. 113–295 is set out as a note under this section.

The Social Security Act, referred to in subsecs. (e)(1)(A), (2) and (f), is act [Aug. 14, 1935, ch. 531](#), 49 Stat. 620 . Titles II, XVI, and XIX of the Act are classified generally to subchapters II (§401 et seq.), XVI (§1381 et seq.), and XIX (§1396 et seq.) respectively, of chapter 7 of Title 42, The Public Health and Welfare. Sections 1614 and 1861 of the Act are classified to sections 1382c and 1395x, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

### AMENDMENTS

**2015**–Subsec. (b)(1)(B) to (D). Pub. L. 114–113, §303(a), inserted "and" at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: "which allows for the establishment of an ABLE account only for a designated beneficiary who is a resident of such State or a resident of a contracting State, and".

Subsec. (c)(1)(C)(i). Pub. L. 114–113, §303(c)(2), substituted "member of the family" for "family member".

Subsec. (d)(3). Pub. L. 114–113, §303(b)(1), struck out "and State of residence" after "the name".

Subsec. (d)(4). Pub. L. 114–113, §303(c)(1), substituted "section 103" for "section 4".

Subsec. (e)(7). Pub. L. 114–113, §303(b)(2), struck out par. (7). Text read as follows: "The term 'contracting State' means a State without a qualified ABLE program which has entered into a contract with a State with a qualified ABLE program to provide residents of the contracting State access to a qualified ABLE program."

### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, [div. Q, title III, §303\(d\), Dec. 18, 2015](#), 129 Stat. 3087 , provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2014."

### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113–295, set out as an Effective Date of 2014 Amendment note under section 552a of Title 5, Government Organization and Employees.

### REGULATIONS

Pub. L. 113–295, [div. B, title I, §102\(f\)\(2\), Dec. 19, 2014](#), 128 Stat. 4062 , provided that: "The Secretary of the Treasury (or the Secretary's designee) shall promulgate the regulations or other guidance required under section 529A(g) of the Internal Revenue Code of 1986, as added by subsection (a), not later than 6 months after the date of the enactment of this Act [Dec. 19, 2014]."

### PURPOSES

Pub. L. 113–295, [div. B, title I, §101, Dec. 19, 2014](#), 128 Stat. 4056 , provided that: "The purposes of this title [title I of div. B of Pub. L. 113–295, enacting this section, amending sections 26, 529, 877A, 4965, 4973, and 6693, of this title, section 552a of Title 5, Government Organization and Employees, sections 521, 541, and 707 of Title 11, Bankruptcy, and section 5517 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section, section 529 of this title, section 552a of Title 5, and section 521 of Title 11] are as follows:

"(1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

"(2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the supplemental security income program under title XVI of such Act [42 U.S.C. 1381 et seq.], the beneficiary's employment, and other sources."

### TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS

Pub. L. 113–295, [div. B, title I, §103, Dec. 19, 2014](#), 128 Stat. 4063 , provided that:

"(a) ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN OTHER MEANS-TESTED FEDERAL PROGRAMS.–

Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any

assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of such individual, any contributions to the ABLE account of the individual, and any distribution for qualified disability expenses (as defined in subsection (e)(5) of such section) shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.]—

"(1) a distribution for housing expenses (within the meaning of such subsection) shall not be so disregarded, and

"(2) in the case of such program, any amount (including such earnings) in such ABLE account shall be considered a resource of the designated beneficiary to the extent that such amount exceeds \$100,000.

"(b) SUSPENSION OF SSI BENEFITS DURING PERIODS OF EXCESSIVE ACCOUNT FUNDS.—

"(1) IN GENERAL.—The benefits of an individual under the supplemental security income program under title XVI of the Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the individual attributable to an amount in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of the individual not disregarded under subsection (a) of this section.

"(2) NO IMPACT ON MEDICAID ELIGIBILITY.—An individual who would be receiving payment of such supplemental security income benefits but for the application of paragraph (1) shall be treated for purposes of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] as if the individual continued to be receiving payment of such benefits.

"(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Dec. 19, 2014]."

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. The word "subparagraph" probably should not appear.



# Appendix C

# Social Security

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## Program Operations Manual System (POMS)

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**TN 73 (03-16)**

# **SI 01130.740 Achieving a Better Life Experience (ABLE) Accounts**

### **Citations:**

Public Law 113–295 The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) – Enacted December 19, 2014

## **A. What is an ABLE Account?**

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses of the account's designated beneficiary, who must be blind or disabled by a condition that began before the individual's 26th birthday.

An ABLE program can be established and maintained by a State or a State agency directly or by contracting with a private company (an instrumentality of the State). An eligible individual can open an ABLE account through the ABLE program in any State.

An eligible individual can be the designated beneficiary of only one ABLE account, which must be administered by a qualified ABLE program.

Upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of any outstanding, qualified disability expenses, reimburse the State(s) for certain Medical Assistance (Medicaid) benefits that the designated beneficiary received.

## **B. Definition of terms**

### **1. Designated beneficiary**

The designated beneficiary is the eligible individual who established and owns the ABLE account. To be an eligible individual, he or she must be:

- a. eligible for Supplemental Security Income (SSI) based on disability or blindness that began before age 26;
- b. entitled to disability insurance benefits (DIB), childhood disability benefits (CDB), or disabled widow's or widower's benefits (DWB) based on disability or blindness that began before age 26;

or

- c. someone who has certified, or whose parent or guardian has certified, that he or she:
- has a medically determinable impairment meeting certain statutorily specified criteria; or,
  - is blind; and,
  - the disability or blindness occurred before age 26.

**NOTE:** You may not draw an inference regarding disability under the Social Security Act from a disability certification.

## 2. Contributions

A contribution is the deposit of funds into an ABLE account. Any person can contribute to an ABLE account. ("Person," as defined by the Internal Revenue Code, includes an individual, trust, estate, partnership, association, company, or corporation.) However, the Internal Revenue Service (IRS) limits the total annual contributions that any ABLE account can receive from all sources to the amount of the per-donee gift-tax exclusion in effect for a given calendar year. For 2016, that limit is \$14,000.

## 3. Distributions

A distribution is the withdrawal or issuance of funds from an ABLE account. The designated beneficiary or the person with signature authority determines when he or she makes distributions. Distributions are only to or for the benefit of the designated beneficiary.

## 4. Person with signature authority

A person with signature authority can establish and control an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. The person with signature authority must be the designated beneficiary's parent, legal guardian, or agent acting under power of attorney. For SSI purposes, we always consider the designated beneficiary to be the owner of an ABLE account, regardless of whether someone else has signature authority over it.

## 5. Qualified disability expenses

Qualified disability expenses (QDE) are expenses related to the blindness or disability of the designated beneficiary and for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, the following types of expenses:

- Education;
- Housing;
- Transportation;
- Employment training and support;

- Assistive technology and related services;
- Health;
- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for ABLE account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses.

## **6. Rollover**

A rollover is the distribution of all or some of the funds from one ABLE account to the ABLE account of a member of the original designated beneficiary's family. For the purposes of a rollover, a member of the designated beneficiary's family means siblings, stepsiblings and half-siblings, by blood or by adoption.

## **7. ABLE Program**

An ABLE program is the program established and maintained by a State (or agency or instrumentality thereof) through which eligible individuals can open ABLE accounts.

## **8. Qualified disability expense (QDE) for housing**

Housing expenses for purposes of an ABLE account are the same as they are for in-kind support and maintenance purposes, except for food. QDEs for housing are payments for:

- Mortgage (including property insurance required by the mortgage holder);
- Real property taxes;
- Rent;
- Heating fuel;
- Gas;
- Electricity;
- Water;
- Sewer; or
- Garbage removal.

## **C. When to exclude ABLE account contributions, balances, earnings, and distributions**

### **1. Exclude contributions**

Exclude contributions to an ABLE account from the income of the designated beneficiary. Excluded contributions include rollovers from a family member's ABLE account to an SSI recipient's ABLE account.

**NOTE:** Do not deduct contributions from the countable income of the person who makes the contribution. The fact that a person uses his or her income to contribute to an ABLE account does not mean that his or her income is not countable for SSI purposes. For example, a recipient or deemor can have contributions automatically deducted from his or her paycheck and deposited into an ABLE account. In this case, include the income used to make the ABLE-account contribution in the recipient or deemor's gross wages.

### **2. Exclude ABLE account earnings**

The funds in an ABLE account can accrue interest, earn dividends, and otherwise appreciate in value. Earnings increase the account's balance. Exclude any earnings an ABLE account receives from the income of the designated beneficiary.

### **3. Exclude up to and including \$100,000 of balance**

Exclude up to and including \$100,000 of the balance of funds in an ABLE account from the resources of the designated beneficiary.

### **4. Do not count ABLE account distributions as income**

A distribution from an ABLE account is not income but is a conversion of a resource from one form to another, see SI 01110.600B.4.

Do not count distributions from an ABLE account as income of the designated beneficiary, regardless of whether the distributions are for non-housing QDEs, housing QDEs, or non-qualified expenses.

### **5. Exclude retained distributions for non-housing related qualified disability expenses (QDE)**

#### **a. Distribution for a non-housing related QDE**

Exclude from the designated beneficiary's countable resources a distribution for a QDE other than housing if he or she retains it beyond the month received.

This exclusion applies while:

- the designated beneficiary maintains, makes contributions to, or receives distributions from the ABLE account;
- the distribution is unspent;
- the distribution is identifiable. (**NOTE:** Excludable funds commingled with non-excludable funds must be identifiable. See SI 01130.700A.); and
- the individual still intends to use the distribution for a non-housing related QDE.

**NOTE:** Apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account.

**b. Previously excluded distribution used for non-qualified expense or housing-related QDE**

If a designated beneficiary uses a distribution previously excluded per SI 01130.740C.5.a., for a non-qualified purpose or a housing-related QDE, or the individual's intent to use it for a qualified disability expense changes, see SI 01130.740D.3.

**c. Example of an excluded distribution**

Eric takes a distribution of \$500 from his ABLE account in June 2016 to pay for a health-related QDE. His health-related expense is not due until September, so Eric deposits the distribution into his checking account in June. The distribution is not income in June. Eric maintains his ABLE account at all relevant times, and the distribution is both unspent and identifiable until Eric pays his health-related expense in September. We therefore exclude the \$500 from Eric's countable resources in July, August, and September. For instructions on identifying commingled excluded and non-excluded funds, see SI 01130.700.

**d. Example of an excluded QDE purchase**

Fred takes a distribution of \$1,500 from his ABLE account in September 2016 to buy a QDE - a wheelchair. The wheelchair is an excluded resource in October and continuing, because it is an individual's personal property required for a medical condition. For instructions on household goods, personal effects, and other personal property, see SI 01130.430.

## **D. When to count ABLE account balances and distributions**

### **1. Count ABLE account balance amounts over \$100,000**

Count the amount by which an ABLE account balance exceeds \$100,000 as a countable resource of the designated beneficiary.

#### **a. Rule for indefinite benefit suspension and continuing eligibility for Medicaid during periods of excess resources attributable to an ABLE account**

A special rule applies when the balance of an SSI recipient's ABLE account exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit--whether alone or with other resources. When this situation happens, place the recipient into a special SSI suspension period where:

- we suspend the recipient's SSI benefits without time limit (as long as he or she remains otherwise eligible);
- the recipient retains continued eligibility for Medical Assistance (Medicaid); and
- the individual's eligibility does not terminate after 12 continuous months of suspension.

Reinstate the recipient's regular SSI eligibility for any month in which the individual's ABLE account balance no longer causes the recipient to exceed the resource limit and he or she is otherwise eligible.

**NOTE:** There will be no SSI recipients in this suspension status for several years (until ABLE account balance exceeds more than \$100,000, due to the limitation on contributions described in SI 01130.740B.2).

**EXAMPLE: Excess resources — recipient is suspended but retains eligibility for Medicaid**

Paul is the designated beneficiary of an ABLE account with a balance as of \$101,000 on the first of the month. Paul's only other countable resource is a checking account with a balance of \$1,500. Paul's countable resources are \$2,500 and therefore exceed the SSI resource limit. However, since Paul's ABLE account balance is causing him to exceed the resource limit (i.e., his countable resources other than the ABLE account are less than \$2,000), we suspend Paul's SSI eligibility and stop his cash benefits, but he retains eligibility for Medicaid.

**b. Ineligibility due to excess resources other than an ABLE account**

The special suspension rule does not apply when:

- the balance of an SSI recipient's ABLE account exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit;
- but the resources other than the ABLE account alone would make the individual ineligible for SSI, due to excess resources

When this situation happens, suspend the recipient's SSI benefits using the payment status code N04. While in N04, the recipient loses eligibility for Medical Assistance (Medicaid) and the individual's SSI eligibility terminates 12 months later if the suspension continues during this period. Reinstate the recipient's regular SSI eligibility and Medicaid benefits for any month in which the individual's resources no longer cause the recipient to exceed the resource limit.

**EXAMPLE Combination of resources — recipient loses SSI eligibility**

Christine is the designated beneficiary of an ABLE account with a balance as of the \$101,000 on the first of the month. Christine's only other countable resource is a checking account with a balance of \$3,000. Christine's countable resources are \$4,000 and therefore exceed the SSI resource limit. However, because her ABLE account balance is not the cause of her excess resources (i.e., her countable resources other than the ABLE account are more than \$2,000), the special rule does not

apply, and Christine is not eligible for SSI because of excess resources. We suspend Christine's SSI benefits using payment status N04, and her Medicaid benefits stop.

### **c. Ineligibility for other reasons**

If an individual is ineligible for any reason other than excess resources in an ABLE account, the special suspension status does not apply. Suspend the individual's SSI eligibility using normal procedures.

#### **EXAMPLE: Ineligibility for a reason other than excess resources in an ABLE account**

In April, Sam's ABLE account resource balance is \$102,500 on the first of the month. However, Sam also has excess deemed income in April and is N01 despite the excess funds in his ABLE account. Before the end of April, Sam leaves the U.S. and does not return until July 1. Sam is N03 for May, June, and July. If Sam still has excess resources in his ABLE account effective August 1 and is otherwise SSI eligible, we place him in the special ABLE resource suspension status. He is eligible for Medicaid.

## **2. Count as a resource retained distributions for housing-related QDEs or expenses that are not QDEs**

A distribution from an ABLE account is not income, but is a conversion of a resource from one form to another. For more information see SI 01110.600B.4.

Count a distribution for a housing-related QDE or for an expense that is not a QDE as a resource, if the beneficiary retains the distribution into the month following the month of receipt. If the beneficiary spends the distribution within the month of receipt, there is no effect on eligibility. However, apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account

#### **EXAMPLE: Retained housing QDE is a resource**

Amy takes a distribution of \$500 from her ABLE account in May to pay her rent for June. She deposits the \$500 into her checking account in May, withdraws \$500 in cash on June 3, and pays her landlord. This distribution is a housing-related QDE and part of her checking account balance June 1, which makes it a countable resource for the month of June.

## **3. Count previously excluded distributions used for a non-qualified purpose or housing-related QDE**

If we excluded a retained distribution for a non-housing-related QDE, per SI 01130.740C.5.a. and the individual uses the excluded distribution for a non-qualified purpose or a housing-related QDE, count the amount of funds used for a non-qualified expense or housing-related QDE as a resource as of the first moment of the month in which the funds were spent. Presume that the individual's intent to use the funds for a QDE changed as of the first of the month he or she spent the funds.

If an individual's intent to use the funds for a QDE changes at any other time, but he or she has not spent the funds, count the retained funds as a resource as of the first of the following month.



**a. Example of a previously excluded distribution used for a non-QDE**

Sam takes a distribution of \$25,000 from his ABLE account to modify a specially equipped van in May. He pays a \$10,000 deposit. While waiting for delivery of the van, Sam takes a trip to a local casino in July where he loses \$1,000 of his ABLE distribution gambling. The \$1,000 he lost gambling is a countable resource in July. The other \$14,000 Sam retains is an excluded resource while it meets the requirements of SI 01130.740C.5.a. in this section.

**b. Example of a previously excluded distribution used for a housing-related QDE**

In June, Jennifer takes a \$7,000 distribution from her ABLE account to pay her college tuition - a QDE. Her tuition payment is due in September. However, she has to make a \$750 advance rent payment to her landlord for her college apartment in August. She uses some of the distribution she took in June to make the rent payment – a housing-related QDE. The \$750 is a countable resource in August. We exclude the remaining \$6,250 of the retained distribution while it continues to meet the requirements of SI 01130.740C.5.a. in this section.

**c. Example of a change of intent on the use of a distribution**

In June, Jennifer takes a \$7,000 distribution from her ABLE account to pay her college tuition - a QDE. Her tuition payment is due in September. In August, Jennifer gets a job offer and decides not to return to school. Since she no longer intends to use it for tuition, the \$7,000 becomes a countable resource in September unless Jennifer redesignates it for another QDE or returns the funds to her ABLE account prior to September.

**E. How to verify, document, and record ABLE account balances****1. Obtain evidence of the ABLE account**

Whenever a recipient or deeming alleges being the designated beneficiary of an ABLE account, obtain evidence that provides the following information:

- the name of the designated beneficiary;
- the State ABLE program administering the account;
- the name of the person who has signature authority (if different from the designated beneficiary);
- the unique account number assigned by the State to the ABLE account;
- the account opened date;
- the first-of-the-month account balance or information sufficient to derive a first-of-the-month balance.

If the available evidence does not provide the necessary information, contact the appropriate ABLE program to obtain it.

## **2. Document the evidence**

Fax the evidence into the electronic folder (EF) or Non-disability Repository for Evidentiary Documents (NDRd). If you contact the ABLE program directly, document the information you received on a Report of Contact (DROC) in MSSICS or on a Report of Contact (SSA-5002) in non-MSSICS claims.

## **3. Record the account on a MSSICS "Other Resource" page**

Record the account information and balance on a MSSICS Other Resource (ROTH) page. There is an ABLE account drop down under "Type." See MS INTRANETSSI 013.032 for instructions on completing this screen.

**NOTE:** The designated beneficiary of an ABLE account is always the owner of the account for SSI purposes.

# **F. How to verify, document, and record ABLE account distributions**

## **1. When to develop**

Only verify a distribution when a recipient or deemor alleges retaining, or other evidence indicates he or she retained, all or part of a distribution into months following the month of receipt. Since distributions do not count as income, the distribution is only material in determining whether the recipient's countable resources exceed the limit.

## **2. Verify the distribution**

Obtain evidence showing the amount of any distributions, the distribution dates, and who received the distributions (for example, the beneficiary paid the distribution directly to a vendor). Obtain and accept the recipient or deemor's allegation that he or she used or intends to use the distribution for:

- a QDE other than housing;
- a housing QDE; or
- an expense that is not a QDE.

## **3. Exclude retained distributions for QDEs other than housing**

Exclude any retained distribution, or part of a distribution, for a QDE other than housing, from the designated beneficiary's countable resources per SI 01130.740C.5. in this section.

**Example of a retained QDE other than housing**

Elizabeth takes a distribution of \$500 from her ABLE account in May to pay for a health-related QDE she expects to pay in September. She deposits the distribution into her checking account in May and withdraws it in September to pay the health-related QDE. We exclude the \$500 from Elizabeth's countable resources from June through September. Starting in June, we document the deposit on the Financial Institution Account (RFIA) page inputting \$500 as the "excluded amount." Select "Other" as the exclusion reason and input "ABLE QDE distribution" as the "other reason."

**4. Count retained distributions for housing QDEs and expenses that are not QDEs**

Count, as a resource, any distribution or part of a distribution for a housing QDE or an expense that is not a QDE if it is retained into the month following the month of receipt.

**Example of a retained QDE for housing**

Amy takes a distribution of \$500 from her ABLE account in May to pay her rent for June. She deposits the \$500 into her checking account in May, withdraws \$500 in cash on June 3, and pays her landlord. This distribution, which is a housing-related QDE, is part of her checking account balance as of the first of the month in June, which makes it a countable resource for the month of June.

**5. Count previously excluded distributions used for a non-qualified purpose or housing-related QDE**

If we excluded a retained distribution for a non-housing-related QDE, per SI 01130.740C.5.a. and the individual uses the excluded distribution for a non-qualified purpose or a housing-related QDE, count the amount of funds used for the non-qualified expense or housing-related QDE as a resource, as of the first moment of the month in which the individual spent the funds. Presume that the individual's intent to use the funds for a QDE changed as of the first of the month he or she spent the funds.

If an individual's intent to use the funds for a QDE changes at any other time, but he or she still retains the funds, count the retained funds as a resource as of the first of the month following the month of change of intent. Document the individual's change of intent on a Report of Contact (DROC) in MSSICS or on a Report of Contact (SSA-5002) in non-MSSICS claims.

For examples, see SI 01130.740D.3.

**6. Record the amount excluded on the appropriate resource page**

ABLE account distributions are the conversion of a resource from one form to another. Accordingly, they continue to be a resource if retained into the month following the month of receipt. Exclude a retained QDE distribution from resources per SI 01130.740C.5.a.

Depending on how and where the individual retains distributions, record the amount in the "amount excluded" field of the appropriate resource page in MSSICS with a reason of "ABLE QDE distribution."

# Appendix D

*airtraffic/air\_traffic/publications/airspace\_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory circular No. 11-2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

#### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Poplarville-Pearl River County Airport, Poplarville, MS., providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Poplarville-Pearl River County Airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

#### Lists of Subjects in 14 CFR Part 71:

Airspace, Incorporation by reference, Navigation (Air).

#### The Proposed Amendment:

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

- 1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### **§ 71.1 [Amended]**

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

*Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth*

\* \* \* \* \*

#### **ASO MS E5 Poplarville, MS [Amended]**

Poplarville-Pearl River County Airport (lat. 30°47'13" N., long. 89°30'16" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Poplarville-Pearl River County Airport.

Issued in College Park, Georgia, on June 10, 2015.

**Gerald E. Lynch,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2015-15133 Filed 6-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 25, 26, and 301

[REG-102837-15]

RIN 1545-BM68

#### **Guidance Under Section 529A: Qualified ABLE Programs**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations under section 529A of the Internal Revenue Code that provide guidance regarding programs under The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. Section 529A provides rules under which States or State agencies or instrumentalities may establish and maintain a new type of tax-favored savings program through which contributions may be made to the account of an eligible disabled individual to meet qualified disability expenses. These accounts also receive favorable treatment for purposes of certain means-tested Federal programs. In addition, these proposed regulations provide corresponding amendments to regulations under sections 511 and 513, with respect to unrelated business taxable income, sections 2501, 2503, 2511, 2642 and 2652, with respect to gift and generation-skipping transfer taxes, and section 6011, with respect to reporting requirements. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Comments must be received by September 21, 2015. Outlines of topics to be discussed at the public hearing scheduled for October 14, 2015, at 10 a.m., must be received by September 21, 2015.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-102837-15), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-102837-

15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102837-15). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations under section 529A, Taina Edlund or Terri Harris, (202) 317-4541, or Sean Barnett, (202) 317-5800; concerning the proposed estate and gift tax regulations, Theresa Melchiorre, (202) 317-4643; concerning the reporting provisions under section 529A, Mark Bond, (202) 317-6844; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, call Regina Johnson, (202) 317-6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 21, 2015.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in the proposed regulations is in §§ 1.529A-2,

1.529A-5, 1.529A-6 and 1.529A-7. The collection of information flows from sections 529A(d)(1), (d)(2), (d)(3), (e)(1) and (e)(2) of the Internal Revenue Code (Code). Section 529A(d)(1) requires qualified ABLE programs to provide reports to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require. Section 529(d)(2) provides that the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. Section 529(d)(3) requires qualified ABLE programs to provide notice to the Secretary upon the establishment of an ABLE account, containing the name and State of residence of the designated beneficiary and such other information as the Secretary may require. Section 529A(e)(1) requires that a disability certification with respect to certain individuals be filed with the Secretary. Section 529A(e)(2) provides that the disability certification include a certification to the satisfaction of the Secretary that the individual has a medically determinable physical or mental impairment that occurred before the date on which the individual attained age 26 and also include a copy of a physician's diagnosis. The burden under §§ 1.529A-5 and 1.529A-6 is reflected in the burden under the new Form 5498-QA, "ABLE Account Contribution Information," and the new Form 1099-QA, "Distributions from ABLE Accounts," respectively.

The expected recordkeepers are programs described in section 529A, established and maintained by a State or a State agency or instrumentality and individuals with ABLE accounts.

*Estimated number of recordkeepers:* 10,050.

*Estimated average annual burden hours per recordkeeper:* 1.6 hours.

*Estimated total annual recordkeeping burden:* 16,080.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

**Background**

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113-295), added section 529A to the Internal Revenue Code. Congress recognized the special financial burdens borne by families raising children with disabilities and the fact that increased financial needs generally continue throughout the disabled person's lifetime. Section 101 of the ABLE Act confirms that one of the purposes of the Act is to "provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits" otherwise available to those individuals, whether through private sources, employment, public programs, or otherwise. Prior to the enactment of the ABLE Act, various types of tax-advantaged savings arrangements existed, but none adequately served the goal of promoting saving for these financial needs. Section 529A allows the creation of a qualified ABLE program by a State (or agency or instrumentality thereof) under which a separate ABLE account may be established for a disabled individual who is the designated beneficiary and owner of that account. Generally, contributions to that account are subject to both an annual and a cumulative limit, and, when made by a person other than the designated beneficiary, are treated as non-taxable gifts to the designated beneficiary. Distributions made from an ABLE account for qualified disability expenses of the designated beneficiary are not included in the designated beneficiary's gross income. The earnings portion of distributions from the ABLE account in excess of the qualified disability expenses is includible in the gross income of the designated beneficiary. An ABLE account may be used for the long-term benefit and/or short-term needs of the designated beneficiary.

Section 103 of the ABLE Act, while not a tax provision, is critical to achieving the goal of the ABLE Act of providing financial resources for the benefit of disabled individuals. Because so many of the programs that provide essential financial, occupational, and other resources and services to disabled individuals are available only to persons whose resources and income do not exceed relatively low dollar limits, section 103 generally provides that a designated beneficiary's ABLE account (specifically, its account balance, contributions to the account, and

distributions from the account) is disregarded for purposes of determining the designated beneficiary's eligibility for and the amount of any assistance or benefit provided under certain means-tested Federal programs. However, in the case of the Supplemental Security Income program under title XVI of the Social Security Act, distributions for certain housing expenses are not disregarded, and the balance (including earnings) in an ABLE account is considered a resource of the designated beneficiary to the extent that balance exceeds \$100,000. Section 103 also addresses the impact of an excess balance in an ABLE account on the designated beneficiary's eligibility under the Supplemental Security Income program and Medicaid.

Finally, section 104 of the ABLE Act addresses the treatment of ABLE accounts in bankruptcy proceedings.

Notice 2015–18, 2015–12 IRB 765 (March 23, 2015), provides that the 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. The Notice further provides that, in the event that state legislation creating ABLE programs enacted in accordance with section 529A prior to issuance of guidance does not fully comport with the guidance when issued, the Treasury Department and the IRS intend to provide transition relief to provide sufficient time to allow States to implement the changes necessary to avoid the disqualification of the program and of the ABLE accounts already established under the program.

The Treasury Department and the IRS reiterate that States that enact legislation creating an ABLE program in accordance with section 529A, and those individuals establishing ABLE accounts in accordance with such legislation, will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the final regulations when they are issued. The Treasury Department and the IRS intend to provide transition relief to enable those State programs and accounts to be brought into compliance with the requirements in the final regulations, including providing sufficient time after issuance of the final regulations in order for changes to be implemented.

## Explanation of Provisions

### *Qualification as an ABLE program*

The proposed regulations provide guidance on the requirements a program must satisfy in order to be a qualified ABLE program described in section 529A. Specifically, in addition to other requirements, the program must: Be established and maintained by a State or a State's agency or instrumentality; permit the establishment of an ABLE account only for a designated beneficiary who is a resident of that State, or a State contracting with that State for purposes of the ABLE program; permit the establishment of an ABLE account only for a designated beneficiary who is an eligible individual; limit a designated beneficiary to only one ABLE account, wherever located; permit contributions to an ABLE account established to meet the qualified disability expenses of the account's designated beneficiary; limit the nature and amount of contributions that can be made to an ABLE account; require a separate accounting for the ABLE account of each designated beneficiary with an ABLE account in the program; limit the designated beneficiary to no more than two opportunities in any calendar year to provide investment direction, whether directly or indirectly, for the ABLE account; and prohibit the pledging of an interest in an ABLE account as security for a loan.

Because each qualified ABLE program will have significant administrative obligations beyond what is required for the administration of qualified tuition programs under section 529 (on which section 529A was loosely modeled), and because the frequency of distributions from the ABLE accounts is likely to be far greater than those made from qualified tuition accounts, the proposed regulations expressly allow a qualified ABLE program or any of its contractors to contract with one or more Community Development Financial Institutions (CDFIs) that commonly serve disabled individuals and their families to provide one or more required services. For example, a CDFI could provide screening and verification of disabilities, certification of the qualified purpose of distributions, debit card services to facilitate distributions, and social data collection and reporting. A CDFI also may be able to obtain grants to defray the cost of administering the program. In general, if certified by the Treasury Department, a CDFI may receive a financial assistance award from the CDFI Fund that was established within the Treasury Department in 1994 to promote

community development in economically distressed communities through investments in CDFIs across the country.

### *Established and Maintained*

The proposed regulations provide that a program is established by a State, or its agency or instrumentality, if the program is initiated by State statute or regulation, or by an act of a State official or agency with the authority to act on behalf of the State. A program is maintained by a State or its agency or instrumentality if: All the terms and conditions of the program are set by the State or its agency or instrumentality, and the State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising all decisions relating to the investment of assets contributed to the program. The proposed regulations set forth factors that are relevant in determining whether a State, or its agency or instrumentality, is actively involved in the administration of the program. Included in the factors is the manner and extent to which it is permissible for the program to contract out for professional and financial services.

### *Establishment of an ABLE Account*

The proposed regulations provide that, consistent with the definition of a designated beneficiary in section 529A(e)(3), the designated beneficiary of an ABLE account is the eligible individual who establishes the account or an eligible individual who succeeded the original designated beneficiary. The proposed regulations also provide that the designated beneficiary is the owner of that account.

The Treasury Department and the IRS recognize, however, that certain eligible individuals may be unable to establish an account themselves. Therefore, the proposed regulations clarify that, if the eligible individual cannot establish the account, the eligible individual's agent under a power of attorney or, if none, his or her parent or legal guardian may establish the ABLE account for that eligible individual. For purposes of these proposed regulations, because each of these individuals would be acting on behalf of the designated beneficiary, references to actions of the designated beneficiary, such as opening or managing the ABLE account, are deemed to include the actions of any other such individual with signature authority over the ABLE account. The proposed regulations also provide that, consistent with Notice 2015–18, a person other than the designated beneficiary with signature authority

over the account of the designated beneficiary may neither have, nor acquire, any beneficial interest in the account during the designated beneficiary's lifetime and must administer the account for the benefit of the designated beneficiary.

At the time an ABLÉ account is created for a designated beneficiary, the designated beneficiary must provide evidence that the designated beneficiary is an eligible individual as defined in section 529A(e)(1). Section 529A(e)(1) provides that an individual is an eligible individual for a taxable year if, during that year, either the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, or a disability certification meeting specified requirements is filed with the Secretary. If an individual is asserting he or she is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, the proposed regulations provide that each qualified ABLÉ program may determine the evidence required to establish the individual's eligibility. For example, a qualified ABLÉ program could require the individual to provide a copy of a benefit verification letter from the Social Security Administration and allow the individual to certify, under penalties of perjury, that the blindness or disability occurred before the date on which the individual attained age 26.

Alternatively, the designated beneficiary must submit the disability certification when opening the ABLÉ account. Consistent with section 529A(e)(2), the proposed regulations provide that a disability certification is a certification by the designated beneficiary that he or she: (1) Has a medically determinable physical or mental impairment, which results in marked or severe functional limitations, and which (i) can be expected to result in death or (ii) has lasted or can be expected to last for a continuous period of not less than 12 months; or (2) is blind (within the meaning of section 1614(a)(2) of the Social Security Act) and that such blindness or disability occurred before the date on which the individual attained age 26. The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a licensed physician (as defined in section 1861(r) of the Social Security Act, 42 U.S.C. 1395x(r)). Consistent with other IRS

filing requirements, the proposed regulations also provide that the certification must be signed under penalties of perjury.

While evidence of an individual's eligibility based on entitlement to Social Security benefits should be objectively verifiable, the sufficiency of a disability certification that an individual is an eligible individual for purposes of section 529A might not be as easy to establish. Nevertheless, the Treasury Department and the IRS wish to facilitate an eligible individual's ability to establish an ABLÉ account without undue delay. Therefore, the proposed regulations provide that an eligible individual must present the disability certification, accompanied by the diagnosis, to the qualified ABLÉ program to demonstrate eligibility to establish an ABLÉ account. The proposed regulations further provide that the disability certification will be deemed to be filed with the Secretary once the qualified ABLÉ program has received the disability certification or a disability certification has been deemed to have been received under the rules of the qualified ABLÉ program, which information the qualified ABLÉ program, as discussed further below, will file with the IRS in accordance with the filing requirements under § 1.529A-5(c)(2)(iv).

#### *Disability Determination*

Consistent with section 529A(g)(4), the Treasury Department and the IRS have consulted with the Commissioner of Social Security regarding disability certifications and determinations of disability. For purposes of the disability certification, the proposed regulations provide that the phrase "marked and severe functional limitations" means the standard of disability in the Social Security Act for children claiming benefits under the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program based on disability, but without regard to the age of the individual. This phrase refers to a level of severity of an impairment that meets, medically equals, or functionally equals the listings in the Listing of Impairments (the listings) in appendix 1 of subpart P of 20 CFR part 404. (See 20 CFR 416.906, 416.924 and 416.926a). This listing developed and used by the Social Security Administration describes for each of the major body systems impairments that cause marked and severe functional limitations. Most body system sections are in two parts: an introduction, followed by the specific listings. The introduction contains information relevant to the use of the listings with respect to that body

system, such as examples of common impairments in the body system and definitions used in the listings for that body system. The introduction may also include specific criteria for establishing a diagnosis, confirming the existence of an impairment, or establishing that an impairment satisfies the criteria of a particular listing with respect to the body system. The specific listings that follow the introduction for each body system specify the objective medical and other findings needed to satisfy the criteria of that listing. Most of the listed impairments are permanent or expected to result in death, although some listings state a specific period of time for which an impairment will meet the listing.

An impairment is medically equivalent to a listing if it is at least equal in severity and duration to the severity and duration of any listing. An impairment that does not meet or medically equal any listing may result in limitations that functionally equal the listings if it results in marked limitations in two domains of functioning or an extreme limitation in one domain of functioning, as explained in 20 CFR 416.926a. In addition, the proposed regulations provide that certain conditions, specifically those listed in the Compassionate Allowances Conditions list maintained by the Social Security Administration, are deemed to meet the requirements of an impairment sufficient for a disability certification without a physician's diagnosis, provided that the condition was present before the date on which the individual attained age 26. The proposed regulations also provide the flexibility from time to time to identify additional impairments that will be deemed to meet these requirements. The Treasury Department and the IRS request comments on what other conditions should be deemed to meet the requirements of section 529A(e)(2)(A)(i).

#### *Change in Eligible Individual Status*

The Treasury Department and the IRS recognize that there may be circumstances in which a designated beneficiary ceases to be an eligible individual but subsequently regains that status. Consequently, the Treasury Department and the IRS believe that it is appropriate to permit continuation of the ABLÉ account (albeit with some changes in the applicable rules) during the period in which a designated beneficiary is not an eligible individual as long as the designated beneficiary was an eligible individual when the account was established. Therefore, if at any time a designated beneficiary no longer meets the definition of an eligible



individual, his or her ABLE account remains an ABLE account to which all of the provisions of the ABLE Act continue to apply, and no (taxable) distribution of the account balance is deemed to occur. However, the proposed regulations provide that, beginning on the first day of the taxable year following the taxable year in which the designated beneficiary ceased to be an eligible individual, no contributions to the ABLE account may be accepted. If the designated beneficiary subsequently again becomes an eligible individual, then additional contributions may be accepted subject to the applicable annual and cumulative limits. In this way, the Treasury Department and the IRS intend to prevent a deemed distribution of the ABLE account (and preserve the account's qualification as an ABLE account for all purposes) if, for example, the disease that caused the impairment goes into a temporary remission, and to preserve the ABLE account with its tax-free distributions for qualified disability expenses if the impairment resumes and once again qualifies the designated beneficiary as an eligible individual. Note that expenses will not be qualified disability expenses if they are incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of § 1.529A-1(b)(9)(A) or § 1.529A-2(e)(1)(i).

The proposed regulations provide flexibility regarding annual recertifications. A qualified ABLE program generally must require annual recertifications that the designated beneficiary continues to satisfy the definition of an eligible individual. However, a qualified ABLE program may deem an annual recertification to have been provided in appropriate circumstances. For example, a qualified ABLE program may permit certification by an individual that he or she has a permanent disability to be considered to meet the annual requirement to present a certification to the qualified ABLE program. In other cases, a program may require all of the same evidence needed for the initial disability certification when the account was established, may require a statement under penalties of perjury that nothing has changed that would change the original disability certification, or may incorporate some other method of ensuring that the designated beneficiary continuously qualifies as an eligible individual. Alternatively, a qualified ABLE program may identify certain impairments or categories of impairments for which recertifications will be deemed to have been made annually to the qualified

ABLE program unless and until the qualified ABLE program provides otherwise (for example, if a cure is discovered for a disease that causes an impairment). An initial certification or recertification that meets the requirements of the qualified ABLE program will be deemed to have met the requirement of section 529A(e)(1)(B). The Treasury Department and the IRS request comments regarding how a qualified ABLE program will be able to demonstrate eligibility in subsequent years if it allows deemed recertifications.

#### *Contributions to an ABLE Account*

The proposed regulations provide that, as a general rule, all contributions to an ABLE account must be made in cash. The proposed regulations provide that a qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment, or other similar method of payment. In addition, the proposed regulations provide that the total contributions to an ABLE account in the designated beneficiary's taxable year, other than amounts received in rollovers and program-to-program transfers, must not exceed the amount of the annual per-donee gift tax exclusion under section 2503(b) in effect for that calendar year (currently \$14,000) in which the designated beneficiary's taxable year begins. Finally, a qualified ABLE program must provide adequate safeguards to ensure that total contributions to an ABLE account (including the proceeds from a preexisting ABLE account) do not exceed that State's limit for aggregate contributions under its qualified tuition program.

To implement these requirements, the proposed regulations provide that a qualified ABLE program must return contributions in excess of the annual gift tax exclusion (excess contributions) to the contributor(s), along with all net income attributable to those excess contributions. Similarly, the proposed regulations also require the return of all contributions, along with all net income attributable to those contributions, that caused an ABLE account to exceed the limit established by the State for its qualified tuition program (excess aggregate contributions). If an excess contribution or excess aggregate contribution is returned to a contributor other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return. The proposed regulations further provide that such returns of excess contributions and excess aggregate contributions must

be received by the contributor(s) on or before the due date (including extensions) of the designated beneficiary's income tax return for the year in which the excess contributions were made or in the year the excess aggregate contributions caused amounts in the ABLE account to exceed the limit in effect under section 529A(b)(6), respectively. The proposed regulations provide rules for determining the net income attributable to a contribution made to an ABLE account, and also provide that these excess contributions and excess aggregate contributions must be returned to contributors on a last-in, first-out basis. In the case of contributions that exceed the annual gift tax exclusion, a failure to return such excess contributions within the time period discussed in this paragraph will result in the imposition on the designated beneficiary of a 6 percent excise tax under section 4973(a)(6) on the amount of excess contributions. As part of a planned revision of IRA regulations, the Treasury Department and the IRS intend to propose regulations under section 4973 to reflect that ABLE accounts are subject to section 4973.

#### *Application of Gift Tax to Contributions to an ABLE Account*

Gift tax consequences may arise from contributions to an ABLE account even though the aggregate amount of such contributions to an ABLE account from all contributors may not exceed the annual exclusion amount under section 2503(b) applicable to any single contributor. Specifically, if a contributor makes other gifts to a designated beneficiary in addition to the gift to the designated beneficiary's ABLE account, the contributor's total gifts made to the designated beneficiary in that year could give rise to a gift tax liability.

Contributions may be made by any person. The term *person* is defined in section 7701(a)(1) to include an individual, trust, estate, partnership, association, company, or corporation. Therefore, for purposes of section 529A(b)(1)(A), a person would include an individual and each of the entities described in section 7701(a)(1). Under section 2501(a)(1), the gift tax applies only to gifts by individuals, but it also applies to gifts made directly or indirectly. As a result, a gift made by a trust, estate, association, company, corporation, or partnership is treated as having been made by the owner(s) of that entity. For example, a gift from a corporation to a designated beneficiary is treated as a gift from the shareholders of the corporation to the designated beneficiary. *See Example (1) of*

§ 25.2511–1(h). Accordingly, the proposed regulations provide that, for purposes of sections 529A(b)(1)(A) and 529A(c)(1)(C), a contribution by a corporation is treated as a gift by its shareholders and a contribution by a partnership is treated as a gift by its partners. This rule also applies to trusts, estates, associations, and companies. See section 2511 and § 25.2511–1(c).

The legislative history of section 529A suggests that a “person” described in section 529A(b)(1)(A) includes the designated beneficiary of an ABE account. See 160 Cong. Rec. H7051, H8317, H8318, H8321, H8322 (2014). A person may transfer his or her property into an account, such as a bank account or a trust, for his or her benefit and retain dominion and control over the property transferred. Because an individual cannot make a transfer of property to himself or herself and a transfer of property is a fundamental requirement for a completed gift, this type of transfer from a person’s own property cannot be treated as a completed gift for tax purposes. See § 25.2511–2(b) and (c). Therefore, the proposed regulations provide that any contribution by a designated beneficiary to a qualified ABE program benefitting the designated beneficiary is not treated as a completed gift. Because the designated beneficiary remains the owner of the account for purposes of chapter 12, if the designated beneficiary transfers the funds in the account to another person as permitted under these proposed regulations, the designated beneficiary making the transfer is the donor for purposes of chapter 12 and the transferor for generation-skipping transfer tax purposes of chapter 13.

#### *Distributions*

If distributions from an ABE account do not exceed the designated beneficiary’s qualified disability expenses, no amount is includible in the designated beneficiary’s gross income. Otherwise, the earnings portion of the distributions from the ABE account as determined in the manner provided under section 72, reduced by the product of such earnings portion and the ratio of the amount of the distributions for qualified disability expenses to total distributions, is includible in the gross income of the designated beneficiary to the extent not otherwise excluded from gross income. As required by section 529A(c)(1)(D), the proposed regulations provide that, for purposes of applying section 72 to amounts distributed from an ABE account: (1) all distributions during a taxable year are treated as one distribution; and (2) the value of the

contract, income on the contract, and investment in the contract are computed as of the close of the calendar year in which the designated beneficiary’s taxable year begins.

The proposed regulations also provide that, in addition to the income tax on the portion of a distribution included in gross income, an additional tax of 10 percent of the amount includible in gross income is imposed. This additional tax does not apply, however, to distributions on or after the designated beneficiary’s death or to returns of excess contributions, excess aggregate contributions, or contributions to additional purported ABE accounts made by the due date (including extensions) of the designated beneficiary’s tax return for the year in which the relevant contributions were made.

Section 529A(c)(1)(C) addresses the tax consequences of the rollover of an ABE account to an ABE account for the same designated beneficiary maintained under a different State’s qualified ABE program, as well as a change of designated beneficiary. The proposed regulations describe with respect to these two situations the circumstances in which amounts will not be includible in income. The first is any change of designated beneficiary if the new designated beneficiary is both (1) an eligible individual for his or her taxable year in which the change is made and (2) a sibling of the former designated beneficiary. For purposes of these proposed regulations, a sibling also includes step-siblings and half-siblings, whether by blood or by adoption. The proposed regulations provide that a qualified ABE program must permit a change of designated beneficiary, as long as the change is made prior to the death of the former designated beneficiary and as long as the successor designated beneficiary is an eligible individual. Because the designated beneficiary will be subject to gift and/or generation-skipping transfer tax if the successor designated beneficiary is not a sibling of the designated beneficiary, the Treasury Department and the IRS request comments regarding whether the final regulations should permit States to require that a successor designated beneficiary also must be a sibling of the designated beneficiary.

The second situation in which a distribution is not included in gross income arises if a distribution to the designated beneficiary of the ABE account is paid, not later than the 60th day after the date of the distribution, to another (or the same) ABE account for the benefit of the designated beneficiary

or for the benefit of an eligible individual who is a sibling of the designated beneficiary. However, the preceding sentence does not apply to such a distribution that occurs within 12 months of a previous rollover to another ABE account for the same designated beneficiary.

The Treasury Department and the IRS have been asked whether a qualified tuition account under section 529 may be rolled into an ABE account for the same designated beneficiary free of tax. Because such a distribution to the ABE account would not constitute a qualified higher education expense under section 529, the Treasury Department and the IRS do not believe they have the authority to allow such a transfer on a tax-free basis.

In addition, the proposed regulations authorize a qualified ABE program to allow program-to-program transfers to effectuate a change of qualified ABE program or a change of designated beneficiary to another eligible individual. Such a direct transfer is neither a distribution taxed in accordance with section 72 nor an excess contribution. A program-to-program transfer also could be accomplished, if permitted by the qualified ABE program, through a check delivered to the designated beneficiary but negotiable only by the qualified State program under which the new ABE account is being established.

The Treasury Department and the IRS recognize that moving funds by use of a program-to-program transfer may be preferable to moving them by a rollover because a rollover, even if made within the permissible 60-day period, may jeopardize the designated beneficiary’s eligibility for certain benefits under various means-tested programs. Moreover, a direct program-to-program transfer could facilitate the efficient transfer of all relevant information regarding the application of contribution limits and the total amount of accumulated earnings that will also apply to the new account. The Treasury Department and the IRS request comments as to whether and to what extent a qualified ABE program should be permitted to require that funds from another State’s ABE program be accepted only through program-to-program transfers.

#### *Qualified Disability Expenses*

Section 529A(e)(5) defines a *qualified disability expense*. Consistent with that subsection, the proposed regulations provide that qualified disability expenses are expenses that relate to the designated beneficiary’s blindness or disability and are for the benefit of that

designated beneficiary in maintaining or improving his or her health, independence, or quality of life. Such expenses include, but are not limited to, expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. As previously stated, expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of the proposed regulations are not qualified disability expenses.

In order to implement the legislative purpose of assisting eligible individuals in maintaining or improving their health, independence, or quality of life, the Treasury Department and the IRS conclude that the term “qualified disability expenses” should be broadly construed to permit the inclusion of basic living expenses and should not be limited to expenses for items for which there is a medical necessity or which provide no benefits to others in addition to the benefit to the eligible individual. For example, expenses for common items such as smart phones could be considered qualified disability expenses if they are an effective and safe communication or navigation aid for a child with autism. The Treasury Department and the IRS request comments regarding what types of expenses should be considered qualified disability expenses and under what circumstances. The proposed regulations authorize the identification of additional types of qualified disability expenses in guidance published in the Internal Revenue Bulletin. *See* § 601.601(d)(2). A qualified ABL program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.

#### *Limitation on Number of ABL Accounts of a Designated Beneficiary*

Section 529A(c)(4) generally provides that, except with respect to certain rollovers, once an ABL account has been established for a designated beneficiary, no account subsequently established for that same designated

beneficiary may qualify as an ABL account. The proposed regulations provide that, except with respect to rollovers and program-to-program transfers, no designated beneficiary may have more than one ABL account in existence at the same time, but provides that a prior ABL account that has been closed does not prohibit the subsequent creation of another ABL account for the same designated beneficiary. A qualified ABL program must obtain a verification from the eligible individual, signed under penalties of perjury, that he or she has no other ABL account (except in the case of a rollover or program-to-program transfer). The proposed regulations provide that, in the event that any additional ABL account is opened for a designated beneficiary with an ABL account already in existence, only the first such account created for that designated beneficiary qualifies as an ABL account, and each other account is treated for all purposes as being an account of the designated beneficiary that is not an ABL account under a qualified ABL program. The proposed regulations also provide, however, that a return, in accordance with the rules that apply to returns of excess contributions and excess aggregate contributions under § 1.529A–2(g)(4), of the entire balance of a second or other subsequent account received by the contributor(s) on or before the due date (including extensions) for filing the designated beneficiary’s income tax return for the year in which the account was opened and contributions to the second or subsequent account were made will not be treated as a gift or distribution to the designated beneficiary for purposes of section 529A.

The prohibition of multiple ABL accounts, however, does not apply to prevent a timely rollover or program-to-program transfer of the designated beneficiary’s account to an ABL account under a different qualified ABL program.

#### *Residency Requirements*

Consistent with section 529A(b)(1)(C), the proposed regulations require that an ABL account for a designated beneficiary may be established only under the qualified ABL program of the State in which that designated beneficiary is a resident or with which the State of the designated beneficiary’s residence has contracted for the provision of ABL accounts. If a State does not establish and maintain a qualified ABL program, it may contract with another State to provide an ABL program for its residents. The statute is

silent as to whether a designated beneficiary must move his or her existing ABL account when the designated beneficiary changes his or her residence. The Treasury Department and the IRS are concerned about imposing undue administrative burdens and costs on designated beneficiaries who frequently change State residency, such as members of military families. Therefore, the proposed regulations provide that a qualified ABL program may permit a designated beneficiary to continue to maintain his or her ABL account that was created in that State, even after the designated beneficiary is no longer a resident of that State. However, in order to enforce the one ABL account limitation and in accordance with section 529A(g)(1), the proposed regulations provide that, other than in the case of a rollover or a program-to-program transfer of a designated beneficiary’s ABL account, a qualified ABL program must require the designated beneficiary to verify, under penalties of perjury, when creating an ABL account that the account being established is the designated beneficiary’s only ABL account. For example, the eligible individual could be required to check a box providing such verification on a form used to establish the account. The Treasury Department and the IRS are concerned that without such safeguards individuals could inadvertently establish two accounts with adverse tax consequences due to the loss of ABL account status for the second account and expect qualified ABL programs to establish safeguards to ensure that the required limit of one ABL account per designated beneficiary is not violated.

#### *Investment Direction*

Section 529A(b)(4) states that a program shall not be treated as a qualified ABL program unless it provides that the designated beneficiary may directly or indirectly direct the investment of any contributions to the program or any earnings thereon no more than two times in any calendar year. A program will not violate this requirement merely because it permits a designated beneficiary or a person with signature authority over a designated beneficiary’s account to serve as one of the program’s board members or employees, or as a board member or employee of a contractor that the program hires to perform administrative services.

#### *Cap on Contributions*

Section 529A(b)(6) provides that a qualified ABL program must provide adequate safeguards to prevent aggregate

contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6) relating to Qualified State Tuition Programs. The proposed regulations provide a safe harbor that permits a qualified ABLE program to satisfy this requirement regarding total cumulative contributions if the program prohibits any additional contributions to an account as soon as the account balance reaches the specified contribution limit under such State's program established under section 529. Once the account balance falls below the prescribed limit, contributions may resume, subject to the same limitation. The Treasury Department and the IRS believe that recommencement of contributions is appropriate based on the nature and purposes of the ABLE program.

#### *Gift and Generation-Skipping Transfer (GST) Taxes*

The proposed regulations provide that contributions to an ABLE account by a person other than the designated beneficiary are treated as completed gifts to the designated beneficiary of the account, and that such gifts are neither gifts of a future interest nor a qualified transfer under section 2503(e). Accordingly, no distribution from an ABLE account to the designated beneficiary of that account is treated as a taxable gift. Finally, neither gift nor GST taxes apply to the change of designated beneficiary of an ABLE account, as long as the new designated beneficiary is an eligible individual who is a sibling of the former designated beneficiary.

#### *Distribution on Death*

The proposed regulations provide that, upon the death of the designated beneficiary, all amounts remaining in the ABLE account are includible in the designated beneficiary's gross estate for purposes of the estate tax. See section 2031. Further, the proposed regulations cross-reference section 2053 for purposes of determining the deductibility by the designated beneficiary's estate of amounts payable from the ABLE account to satisfy claims by creditors such as a State and also cross-reference section 2652(a)(1) for treatment of the deceased designated beneficiary as the transferor of any property remaining in the ABLE account that may pass to a beneficiary.

Pursuant to section 529A(f), a qualified ABLE program must provide that, upon the designated beneficiary's death, any State may file a claim (either with the person with signature authority over the ABLE account or the executor

of the designated beneficiary's estate as defined in section 2203) for the amount of the total medical assistance paid for the designated beneficiary under the State's Medicaid plan after the establishment of the ABLE account. The amount paid in satisfaction of such a claim is not a taxable distribution from the ABLE account. Further, the amount is to be paid only after the payment of all outstanding payments due for the qualified disability expenses of the designated beneficiary and is to be reduced by the amount of all premiums paid by or on behalf of the designated beneficiary to a Medicaid Buy-In program under that State's Medicaid plan.

#### *Unrelated Business Taxable Income and Filing Requirements*

A qualified ABLE program generally is exempt from income taxation. A qualified ABLE program, however, is subject to the taxes imposed by section 511 relating to the imposition of tax on unrelated business taxable income ("UBTI"). For purposes of this tax, certain administrative and other fees do not constitute unrelated business income to the ABLE program. A qualified ABLE program is not required to file Form 990, "Return of Organization Exempt From Income Tax," but will be required to file Form 990-T, "Exempt Organization Business Income Tax Return," if a filing would be required under the rules of §§ 1.6012-2(e) and 1.6012-3(a)(5) if the ABLE program were an organization described in those sections.

#### *Reporting Requirements*

The proposed regulations set forth recordkeeping and reporting requirements. A qualified ABLE program must maintain records that enable the program to account to the Secretary with respect to all contributions, distributions, returns of excess contributions or additional accounts, income earned, and account balances for any designated beneficiary's ABLE account. In addition, a qualified ABLE program must report to the Secretary the establishment of each ABLE account, including the name and residence of the designated beneficiary, and other relevant information regarding the account that is included on the new Form 5498-QA, "ABLE Account Contribution Information." It is anticipated that the qualified ABLE program will report if the eligible individual has presented an adequate disability certification, accompanied by a diagnosis, to demonstrate eligibility to establish an account. Information regarding

distributions will be reported on the new Form 1099-QA, "Distributions from ABLE Accounts." The proposed regulations contain more detail on how the information must be reported.

In addition, section 529A(b)(3) requires that a qualified ABLE program provide separate accounting for each designated beneficiary. Separate accounting requires that contributions for the benefit of a designated beneficiary, as well as earnings attributable to those contributions, are allocated to that designated beneficiary's account. Whether or not a program ordinarily provides each designated beneficiary an annual account statement showing the income and transactions related to the account, the program must give this information to the designated beneficiary upon request.

Section 529A(d)(4) provides that States are required to submit electronically to the Commissioner of Social Security, on a monthly basis and in the manner specified by the Commissioner of Social Security, statements on relevant distributions and account balances from all ABLE accounts. The report of the Committee on Ways and Means (H.R. Rep. No. 113-614, pt. 1, at 15 (2014)) indicates that States should work with the Commissioner of Social Security to identify data elements for the monthly reports, including the type of qualified disability expenses.

#### *Effective Date/Applicability Date*

These regulations are proposed to be effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. These rules, when adopted as final regulations, will apply to taxable years beginning after December 31, 2014. The reporting requirements of §§ 1.529A-5 through 1.529A-7 will apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015. Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on these proposed regulations.

#### *Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and, because the regulation does not impose a collection of information on small

entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. This regulation, if adopted, would primarily affect states and individuals and therefore would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

A public hearing has been scheduled for October 14, 2015, beginning at 10:00 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by September 21, 2015, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 21, 2015. Submit a signed paper original and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the

agenda will be available free of charge at the hearing.

### Drafting Information

The principal authors of these regulations are Terri Harris and Sean Barnett, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 26 and 301 are proposed to be amended as follows:

### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Sections 1.529A-1 through 1.529A-7 also issued under 26 U.S.C. 529A(g). \* \* \*

■ **Par. 2.** Section 1.511-2 is amended by adding paragraph (e) to read as follows:

#### § 1.511-2 Organizations subject to tax.

\* \* \* \* \*

(e) *ABLE programs*—(1) *Unrelated business taxable income.* A qualified ABLE program described in section 529A generally is exempt from income taxation, but is subject to taxes imposed by section 511 relating to the imposition of tax on unrelated business income. A qualified ABLE program is required to file Form 990-T, "Exempt Organization Business Income Tax Return," if such filing would be required under the rules of §§ 1.6012-2(e) and 1.6012-3(a)(5) if the ABLE program were an organization described in those sections.

(2) *Effective/applicability dates.* This paragraph (e) applies to taxable years beginning after December 31, 2014.

■ **Par. 3.** Section 1.513-1 is amended by adding *Example 4* to paragraph (d)(4)(i) to read as follows:

#### § 1.513-1 Definition of unrelated trade or business.

\* \* \* \* \*

- (d) \* \* \*
- (4) \* \* \*
- (i) \* \* \*

*Example 4.* P is a qualified ABLE program described in section 529A. P receives amounts in order to open or maintain ABLE accounts, as administrative or maintenance fees and other similar fees including service charges. Because the payment of these amounts are essential to the operation of a qualified ABLE program, the income generated from the activity does not constitute gross income from an unrelated trade or business.

\* \* \* \* \*

■ **Par. 4.** An undesignated center heading is added immediately following § 1.528-10 and §§ 1.529A-0 through 1.529A-7 are added to read as follows: Sec.

\* \* \* \* \*

### Qualified Able Programs

1.529A-0 Table of contents.

1.529A-1 Exempt status of qualified ABLE program and definitions.

1.529A-2 Qualified ABLE program.

1.529A-3 Tax treatment.

1.529A-4 Gift, estate, and generation-skipping transfer taxes.

1.529A-5 Reporting of the establishment of and contributions to an ABLE account.

1.529A-6 Reporting of distributions from and termination of an ABLE account.

1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.

\* \* \* \* \*

#### § 1.529A-0 Table of contents.

This section lists the following captions contained in §§ 1.529A-1 through 1.529A-7.

#### § 1.529A-1 Exempt status of qualified ABLE program and definitions.

- (a) In general.
- (b) Definitions.
  - (1) ABLE account.
  - (2) Contracting State.
  - (3) Contribution.
  - (4) Designated beneficiary.
  - (5) Disability certification.
  - (6) Distribution.
  - (7) Earnings.
  - (8) Earnings ratio.
  - (9) Eligible individual.
  - (10) Excess contribution.
  - (11) Excess aggregate contribution.
  - (12) Investment in the account.
  - (13) Member of the family.
  - (14) Program-to-program transfer.
  - (15) Qualified ABLE program.
  - (16) Qualified disability expenses.
  - (17) Rollover.

(c) Effective/applicability date.

**§ 1.529A-2 Qualified ABLÉ program.**

- (a) In general.
- (b) Established and maintained by a State or agency or instrumentality of a State.
  - (1) Established.
  - (2) Maintained.
  - (3) Community Development Financial Institutions (CDFIs).
- (c) Establishment of an ABLÉ account.
  - (1) In general.
  - (2) Only one ABLÉ account.
  - (3) Beneficial interest.
  - (d) Eligible individual.
    - (1) In general.
    - (2) Frequency of recertification.
    - (3) Loss of qualification as an eligible individual.
      - (e) Disability certification.
        - (1) In general.
        - (2) Marked and severe functional limitations.
          - (3) Compassionate allowance list.
          - (4) Additional guidance.
          - (5) Restriction on use of certification.
          - (f) Change of designated beneficiary.
          - (g) Contributions.
            - (1) Permissible property.
            - (2) Annual contributions limit.
            - (3) Cumulative limit.
            - (4) Return of excess contributions and excess aggregate contributions.
            - (h) Qualified disability expenses.
              - (1) In general.
              - (2) Example.
              - (i) Separate accounting.
              - (j) Program-to-program transfers.
              - (k) Carryover of attributes.
              - (l) Investment direction.
              - (m) No pledging of interest as security.
                - (n) No sale or exchange.
                - (o) Change of residence.
                - (p) Post-death payments.
                - (q) Reporting requirements.
                - (r) Effective/applicability date.

**§ 1.529A-3 Tax treatment.**

- (a) Taxation of distributions.
- (b) Additional exclusions from gross income.
  - (1) Rollover.
  - (2) Program-to-program transfers.
  - (3) Change in designated beneficiary.
  - (4) Payments to creditors post-death.
  - (c) Computation of earnings.
  - (d) Additional tax on amounts includible in gross income.
    - (1) In general.
    - (2) Exceptions.
    - (e) Tax on excess contributions.
    - (f) Filing requirements.
    - (g) Effective/applicability date.

**§ 1.529A-4 Gift, estate, and generation-skipping transfer taxes.**

- (a) Contributions.

- (1) In general.
- (2) Generation-skipping transfer (GST) tax.
  - (3) Designated beneficiary as contributor.
    - (b) Distributions.
    - (c) Change of designated beneficiary.
    - (d) Transfer tax on death of designated beneficiary.
    - (e) Effective/applicability date.

**§ 1.529A-5 Reporting of the establishment of and contributions to an ABLÉ account.**

- (a) In general.
- (b) Additional definitions.
  - (1) Filer.
  - (2) TIN.
  - (c) Requirement to file return.
    - (1) Form of return.
    - (2) Information included on return.
    - (3) Time and manner of filing return.
    - (d) Requirement to furnish statement.
      - (1) In general.
      - (2) Time and manner of furnishing statement.
        - (3) Copy of Form 5498-QA.
        - (e) Request for TIN of designated beneficiary.
          - (f) Penalties.
            - (1) Failure to file return.
            - (2) Failure to furnish TIN.
            - (g) Effective/applicability date.

**§ 1.529A-6 Reporting of distributions from and termination of an ABLÉ account.**

- (a) In general.
- (b) Requirement to file return.
  - (1) Form of return.
  - (2) Information included on return.
  - (3) Time and manner of filing return.
  - (c) Requirement to furnish statement.
    - (1) In general.
    - (2) Time and manner of furnishing statement.
      - (3) Copy of Form 1099-QA.
      - (d) Request for TIN of contributor(s).
      - (e) Penalties.
        - (1) Failure to file return.
        - (2) Failure to furnish TIN.
        - (f) Effective/applicability date.

**§ 1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.**

- (a) Electronic furnishing of statements.
  - (1) In general.
  - (2) Consent.
  - (3) Required disclosures.
  - (4) Format.
  - (5) Notice.
  - (6) Access period.
  - (b) Effective/applicability date.

**§ 1.529A-1 Exempt status of qualified ABLÉ program and definitions.**

- (a) *In general.* A qualified ABLÉ program described in section 529A is exempt from income tax, except for the tax imposed under section 511 on the

unrelated business taxable income of that program.

(b) *Definitions.* For purposes of section 529A, this section and §§ 1.529A-2 through 1.529A-7—

(1) *ABLÉ account* means an account established under a qualified ABLÉ program and owned by the designated beneficiary of that account.

(2) *Contracting State* means a State without a qualified ABLÉ program of its own, which, in order to make ABLÉ accounts available to its residents who are eligible individuals, contracts with another State having such a program.

(3) *Contribution* means any payment directly allocated to an ABLÉ account for the benefit of a designated beneficiary.

(4) *Designated beneficiary* means the individual who is the owner of the ABLÉ account and who either established the account at a time when he or she was an eligible individual or who has succeeded the former designated beneficiary in that capacity (successor designated beneficiary). If the designated beneficiary is not able to exercise signature authority over his or her ABLÉ account or chooses to establish an ABLÉ account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary.

(5) *Disability certification* means a certification deemed sufficient by the Secretary to establish a certain level of physical or mental impairment that meets the requirements described in § 1.529A-2(e).

(6) *Distribution* means any payment from an ABLÉ account. A *program-to-program transfer* is not a distribution.

(7) *Earnings* attributable to an account are the excess of the total account balance on a particular date over the *investment in the account* as of that date.

(8) *Earnings ratio* means the amount of earnings attributable to the account as of the last day of the calendar year in which the designated beneficiary's taxable year begins, divided by the total account balance on that same date, after taking into account all distributions made during that calendar year and all contributions received during that same year other than those (if any) returned in accordance with § 1.529A-2(g)(4).

(9) *Eligible individual* for a taxable year means an individual who either:

- (i) Is entitled during that taxable year to benefits based on blindness or disability under title II or XVI of the Social Security Act, provided that such

blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); or

(ii) Is the subject of a disability certification filed with the Secretary for that taxable year.

(10) *Excess contribution* means the amount by which the amount contributed during the taxable year of the designated beneficiary to an ABLÉ account exceeds the limit in effect under section 2503(b) for the calendar year in which the taxable year of the designated beneficiary begins.

(11) *Excess aggregate contribution* means the amount contributed during the taxable year of the designated beneficiary that causes the total of amounts contributed since the establishment of the ABLÉ account (or of an ABLÉ account for the same designated beneficiary that was rolled into the current ABLÉ account) to exceed the limit in effect under section 529(b)(6). In the context of the safe harbor in § 1.529A-2(g)(3), however, excess aggregate contribution means a contribution that causes the account balance to exceed the limit in effect under section 529(b)(6).

(12) *Investment in the account* means the sum of all contributions made to the account, reduced by the aggregate amount of contributions included in distributions, if any, made from the account. In the case of a rollover into an ABLÉ account the amount included as investment in the recipient account is not the full amount of the rollover contribution, but instead is equal to the amount of the rollover contribution that constituted the investment in the account from which the rollover was made.

(13) *Member of the family* means a sibling, whether by blood or by adoption. Such term includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

(14) *Program-to-program transfer* means the direct transfer of the entire balance of an ABLÉ account into an ABLÉ account of the same designated beneficiary in which the transferor ABLÉ account is closed upon completion of the transfer, or of part or all of the balance to an ABLÉ account of another eligible individual who is a member of the family of the former designated beneficiary, without any intervening distribution or deemed distribution to the designated beneficiary.

(15) *Qualified ABLÉ program* means a program established and maintained by a State, or agency or instrumentality of a State, under which an ABLÉ account

may be established by and for the benefit of the account's designated beneficiary who is an eligible individual, and that meets the requirements described in § 1.529A-2.

(16) *Qualified disability expenses* means any expenses incurred at a time when the designated beneficiary is an eligible individual that relate to the blindness or disability of the designated beneficiary of an ABLÉ account, including expenses that are for the benefit of the designated beneficiary in maintaining or improving his or her health, independence, or quality of life. See § 1.529A-2(h). Any expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of § 1.529-1(b)(9)(A) or § 1.529-2(e)(1)(i) are not qualified disability expenses.

(17) *Rollover* means a contribution to an ABLÉ account of a designated beneficiary (or of an eligible individual who is a member of the family of the designated beneficiary) of all or a portion of an amount withdrawn from the designated beneficiary's ABLÉ account, provided the contribution is made within 60 days of the date of the withdrawal and, in the case of a rollover to the designated beneficiary's ABLÉ account, no rollover has been made to an ABLÉ account of the designated beneficiary within the prior 12 months.

(c) *Effective/applicability date*. This section applies to taxable years beginning after December 31, 2014.

#### § 1.529A-2 Qualified ABLÉ program.

(a) *In general*. A qualified ABLÉ program is a program established and maintained by a State, or an agency or instrumentality of a State, that satisfies all of the requirements of this section and under which—

(1) An ABLÉ account may be established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;

(2) The designated beneficiary must be a resident of such State or a resident of a Contracting State (as residence is determined under the law of the State of the designated beneficiary's residence);

(3) A designated beneficiary is limited to only one ABLÉ account at a time except as otherwise provided with respect to program-to-program transfers and rollovers;

(4) Any person may make contributions to such an ABLÉ account, subject to the limitations described in paragraph (g) of this section; and

(5) Distributions (other than rollovers and returns of contributions as described in paragraph (g)(4) of this section) may be made only to or for the

benefit of the designated beneficiary of the ABLÉ account.

(b) *Established and maintained by a State or agency or instrumentality of a State—*(1) *Established*. A program is established by a State or its agency or instrumentality if the program is initiated by State statute or regulation or by an act of a State official or agency with the authority to act on behalf of the State.

(2) *Maintained*. A program is maintained by a State or an agency or instrumentality of a State if—

(i) The State or its agency or instrumentality sets all of the terms and conditions of the program, including but not limited to who may contribute to the program, who may be a designated beneficiary of the program, and what benefits the program may provide; and

(ii) The State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising the implementation of decisions relating to the investment of assets contributed under the program. Factors that are relevant in determining whether a State or its agency or instrumentality is actively involved in the administration of the program include, but are not limited to: Whether the State or its agency or instrumentality provides services to designated beneficiaries that are not provided to persons who are not designated beneficiaries; whether the State or its agency or instrumentality establishes detailed operating rules for administering the program; whether officials of the State or its agency or instrumentality play a substantial role in the operation of the program, including selecting, supervising, monitoring, auditing, and terminating the relationship with any private contractors that provide services under the program; whether the State or its agency or instrumentality holds the private contractors that provide services under the program to the same standards and requirements that apply when private contractors handle funds that belong to the State or its agency or instrumentality or provide services to the State or its agency or instrumentality; whether the State or its agency or instrumentality provides funding for the program; and whether the State or its agency or instrumentality acts as trustee or holds program assets directly or for the benefit of the designated beneficiaries. For example, if the State or its agency or instrumentality thereof exercises the same authority over the funds invested in the program as it does over the investments in or pool of funds of a State employees' defined benefit pension plan, then the



State or its agency or instrumentality will be considered actively involved on an ongoing basis in the administration of the program.

(3) *Community Development Financial Institutions (CDFIs)*. Some or all of the services described in paragraphs (b)(2)(i) and (ii) of this section may be performed by one or more Community Development Financial Institutions (CDFIs) with whom the State (or its agency or instrumentality) contracts for that purpose.

(c) *Establishment of an ABLÉ account*—(1) *In general*. Except as otherwise provided in this paragraph (c), a qualified ABLÉ program must provide that an ABLÉ account may be established only for an eligible individual under a qualified ABLÉ program of the State in which the eligible individual is a resident. The qualified ABLÉ program also may allow the establishment of an ABLÉ account for an eligible individual who is a resident of a *Contracting State* as defined in § 1.529A-1(b)(2). If an eligible individual is unable to establish an ABLÉ account on his or her own behalf, the ABLÉ account may be established on behalf of the eligible individual by the eligible individual's agent under a power of attorney or, if none, by a parent or legal guardian of the eligible individual.

(2) *Only one ABLÉ account*—(i) *In general*. Except in the case of rollovers or program-to-program transfers, a designated beneficiary is limited to one ABLÉ account at a time, regardless of where located. To ensure that this requirement is met, a qualified ABLÉ program must obtain a verification, signed under penalties of perjury, that the eligible individual has no other existing ABLÉ account (other than an ABLÉ account that will terminate with the rollover or program-to-program transfer into the new ABLÉ account) before that program can permit the establishment of an ABLÉ account for that eligible individual. In the case of a rollover, the ABLÉ account from which amounts were rolled must be closed as of the 60th day after the amount was distributed from the ABLÉ account in order for the account that received the rollover to be treated as an ABLÉ account.

(ii) *Treatment of additional accounts*. Except in the case of rollovers or program-to-program transfers, if an ABLÉ account is established for a designated beneficiary who already has an ABLÉ account in existence, an additional account will not be treated as an ABLÉ account. However, if all contributions made to that account are

returned in accordance with the rules that apply to excess contributions and excess aggregate contributions under paragraph (g)(4) of this section, the additional account will be treated as never having been established.

(3) *Beneficial interest*. The eligible individual for whose benefit an ABLÉ account is established is the designated beneficiary of the account. A person other than the designated beneficiary with signature authority over the account of the designated beneficiary may neither have nor acquire any beneficial interest in the account during the lifetime of the designated beneficiary and must administer the account for the benefit of the designated beneficiary of the account.

(d) *Eligible individual*—(1) *In general*. Whether an individual is an eligible individual (as defined in § 1.529A-1(b)(9)) is determined for each taxable year, and that determination applies for the entire year. A qualified ABLÉ program must specify the documentation that an individual must provide, both at the time an ABLÉ account is established for that individual and thereafter, in order to ensure that the designated beneficiary of the ABLÉ account is, and continues to be, an eligible individual. For purposes of determining whether an individual is an eligible individual, a disability certification will be deemed to be filed with the Secretary once the qualified ABLÉ program has received the disability certification (as described in paragraph (e) of this section) or a disability certification has been deemed to have been received under the rules of the qualified ABLÉ program, which information the qualified ABLÉ program will file in accordance with the filing requirements under § 1.529A-5(c)(2)(iv).

(2) *Frequency of recertification*—(i) *In general*. A qualified ABLÉ program may choose different methods of ensuring a designated beneficiary's status as an eligible individual and may impose different periodic recertification requirements for different types of impairments.

(ii) *Considerations*. In developing its rules on recertification, a qualified ABLÉ program may take into consideration whether an impairment is incurable and, if so, the likelihood that a cure may be found in the future. For example, a qualified ABLÉ program may provide that the initial certification will be deemed to be valid for a stated number of years, which may vary with the type of impairment. If the qualified ABLÉ program imposes an enforceable obligation on the designated beneficiary or other person with signature authority over the ABLÉ account to promptly

report changes in the designated beneficiary's condition that would result in the designated beneficiary's failing to satisfy the definition of eligible individual, the program also may provide that a certification is valid until the end of the taxable year in which the change in the designated beneficiary's condition occurred.

(3) *Loss of qualification as an eligible individual*. If the designated beneficiary of an ABLÉ account ceases to be an eligible individual, then for each taxable year in which the designated beneficiary is not an eligible individual, the account will continue to be an ABLÉ account, the designated beneficiary will continue to be the designated beneficiary of the ABLÉ account (and will be referred to as such), and the ABLÉ account will not be deemed to have been distributed. However, beginning on the first day of the designated beneficiary's first taxable year for which the designated beneficiary does not satisfy the definition of an eligible individual, additional contributions to the designated beneficiary's ABLÉ account must not be accepted by the qualified ABLÉ program. Additionally, no amounts incurred during that year and each subsequent year in which the designated beneficiary does not satisfy the definition of an eligible individual will be qualified disability expenses. If the designated beneficiary subsequently again becomes an eligible individual, contributions to the designated beneficiary's ABLÉ account again may be accepted subject to the contribution limits under section 529A, and expenses incurred that meet the definition of a qualified disability expense will be qualified disability expenses.

(e) *Disability certification*—(1) *In general*. Except as provided in paragraph (e)(3) of this section or additional guidance described in paragraph (e)(4) of this section, a disability certification with respect to an individual is a certification signed under penalties of perjury by the individual, or by the other individual establishing (or with signature authority over) the ABLÉ account for the individual, that—

(i) The individual—

(A) Has a medically determinable physical or mental impairment that results in marked and severe functional limitations (as defined in paragraph (e)(2) of this section), and that—

(1) Can be expected to result in death; or

(2) Has lasted or can be expected to last for a continuous period of not less than 12 months; or



(B) Is blind (within the meaning of section 1614(a)(2) of the Social Security Act);

(ii) Such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); and

(iii) Includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)).

(2) *Marked and severe functional limitations.* For purposes of paragraph (e)(1) of this section, the phrase "marked and severe functional limitations" means the standard of disability in the Social Security Act for children claiming Supplemental Security Income for the Aged, Blind, and Disabled (SSI) benefits based on disability (see 20 CFR 416.906). Specifically, this is a level of severity that meets, medically equals, or functionally equals the severity of any listing in appendix 1 of subpart P of 20 CFR part 404, but without regard to age. (See 20 CFR 416.906, 416.924 and 416.926a.) Such phrase also includes any impairment or standard of disability identified in future guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). Consistent with the regulations of the Social Security Administration, the level of severity is determined by taking into account the effect of the individual's prescribed treatment. (See 20 CFR 416.930.)

(3) *Compassionate allowance list.* Conditions listed in the "List of Compassionate Allowances Conditions" maintained by the Social Security Administration (at [www.socialsecurity.gov/compassionateallowances/conditions.htm](http://www.socialsecurity.gov/compassionateallowances/conditions.htm)) are deemed to meet the requirements of section 529A(e)(1)(B) regarding the filing of a disability certification, if the condition was present before the date on which the individual attained age 26. To establish that an individual with such a condition meets the definition of an eligible individual, the individual must identify the condition and certify to the qualified ABLE program both the presence of the condition and its onset prior to age 26, in a manner specified by the qualified ABLE program.

(4) *Additional guidance.* Additional guidance on conditions deemed to meet the requirements of section 529A(e)(1)(B) may be identified in future guidance published in the

Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(5) *Restriction on use of certification.* No inference may be drawn from a disability certification described in this paragraph (e) for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

(f) *Change of designated beneficiary.* A qualified ABLE program must permit a change in the designated beneficiary of an ABLE account, but only during the life of the designated beneficiary. At the time of the change, the successor designated beneficiary must be an eligible individual.

(g) *Contributions—(1) Permissible property.* Except in the case of program-to-program transfers, contributions to an ABLE account may only be made in cash. A qualified ABLE program may allow cash contributions to be made in the form of a check, money order, credit card, electronic transfer, or similar method.

(2) *Annual contributions limit.* A qualified ABLE program must provide that no contribution to an ABLE account will be accepted to the extent such contribution, when added to all other contributions (whether from the designated beneficiary or one or more other persons) to that ABLE account made during the designated beneficiary's taxable year causes the total of such contributions to exceed the amount in effect under section 2503(b) for the calendar year in which the designated beneficiary's taxable year begins. For this purpose, contributions do not include rollovers or program-to-program transfers.

(3) *Cumulative limit—(i) In general.* A qualified ABLE program maintained by a State or its agency or instrumentality must provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by that State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions to any prior ABLE account maintained by any State or its agency or instrumentality for the same designated beneficiary or any prior designated beneficiary.

(ii) *Safe harbor.* A qualified ABLE program maintained by a State or its agency or instrumentality satisfies the requirement in paragraph (g)(3)(i) of this section if it refuses to accept any additional contribution to an ABLE account once the balance in that account reaches the limit established by that State under section 529(b)(6). Once the account balance falls below such limit, additional contributions again

may be accepted, subject to the limits under this paragraph (g)(3)(i) of this section.

(4) *Return of excess contributions and excess aggregate contributions.* If an excess contribution as defined in § 1.529A-1(b)(10) or an excess aggregate contribution as defined in § 1.529A-1(b)(11) is allocated to or deposited into the ABLE account of a designated beneficiary, a qualified ABLE program must return that excess contribution or excess aggregate contribution, including all net income attributable to that excess contribution or excess aggregate contribution, as determined under the rules set forth in § 1.408-11 (treating an IRA as an ABLE account and returned contributions under section 408(d)(4) as excess contributions or excess aggregate contributions), to the person or persons who made that contribution. An excess contribution or excess aggregate contribution must be returned to its contributor(s) on a last-in-first-out basis until the entire excess contribution or excess aggregate contribution, along with all net income attributable to such contribution, has been returned. Returned contributions must be received by the contributor(s) on or before the due date (including extensions) for the Federal income tax return of the designated beneficiary for the taxable year in which the excess contribution or excess aggregate contribution was made. See § 1.529A-3(e) for income tax considerations for the contributor(s). If an excess contribution or excess aggregate contribution and the net income attributable to the excess contribution or excess aggregate contribution are returned to a contributor other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return.

(h) *Qualified disability expenses—(1) In general.* Qualified disability expenses, as defined in § 1.529A-1(b)(16), are expenses incurred that relate to the blindness or disability of the designated beneficiary of the ABLE account and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life. Such expenses include, but are not limited to, expenses related to the designated beneficiary's education, housing, transportation, employment training and support, assistive technology and related services, personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses, as well

as other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit a disabled individual. A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.

(2) *Example.* The following example illustrates this paragraph (h):

*Example.* B, an individual, has a medically determined mental impairment that causes marked and severe limitations on her ability to navigate and communicate. A smart phone would enable B to navigate and communicate more safely and effectively, thereby helping her to maintain her independence and to improve her quality of life. Therefore, the expense of buying, using, and maintaining a smart phone that is used by B would be considered a qualified disability expense.

(i) *Separate accounting.* A program will not be treated as a qualified ABLE program unless it provides separate accounting for each ABLE account. Separate accounting requires that contributions for the benefit of a designated beneficiary and any earnings attributable thereto must be allocated to that designated beneficiary's account. Whether or not a program provides each designated beneficiary an annual account statement showing the total account balance, the investment in the account, the accrued earnings, and the distributions from the account, the program must give this information to the designated beneficiary upon request.

(j) *Program-to-program transfers.* A qualified ABLE program may permit a change of qualified ABLE program or a change of designated beneficiary by means of a program-to-program transfer as defined in § 1.529A-1(b)(14). In that event, subject to any contrary provisions or limitations adopted by the qualified ABLE program, rules similar to the rules of § 1.401(a)(31)-1, Q&A-3 and 4 (which apply for purposes of a direct rollover from a qualified plan to an eligible retirement plan) apply for purposes of determining whether an amount is paid in the form of a program-to-program transfer.

(k) *Carryover of attributes.* Upon a rollover or program-to-program transfer, all of the attributes of the former ABLE account relevant for purposes of

calculating the investment in the account and applying the annual and cumulative limits on contributions are applicable to the recipient ABLE account. The portion of the rollover or transfer amount that constituted investment in the account from which the distribution or transfer was made is added to investment in the recipient ABLE account. Similarly, the portion of the rollover or transfer amount that constituted earnings of the account from which the distribution or transfer was made is added to the earnings of the recipient ABLE account.

(l) *Investment direction.* A program will not be treated as a qualified ABLE program unless it provides that the designated beneficiary of an ABLE account established under such program may direct, whether directly or indirectly, the investment of any contributions to the program (or any earnings thereon) no more than two times in any calendar year.

(m) *No pledging of interest as security.* A program will not be treated as a qualified ABLE program unless the terms of the program, or a state statute or regulation that governs the program, prohibit any interest in the program or any portion thereof from being used as security for a loan. This restriction includes, but is not limited to, a prohibition on the use of any interest in the ABLE program as security for a loan used to purchase such interest in the program.

(n) *No sale or exchange.* A qualified ABLE program must ensure that no interest in an ABLE account may be sold or exchanged.

(o) *Change of residence.* A qualified ABLE program may continue to maintain the ABLE account of a designated beneficiary after that designated beneficiary changes his or her residence to another State.

(p) *Post-death payments.* A qualified ABLE program must provide that a portion or all of the balance remaining in the ABLE account of a deceased designated beneficiary must be distributed to a State that files a claim against the designated beneficiary or the ABLE account itself with respect to benefits provided to the designated beneficiary under that State's Medicaid plan established under title XIX of the Social Security Act. The payment of such claim (if any) will be made only after providing for the payment from the designated beneficiary's ABLE account of all outstanding payments due for his or her qualified disability expenses, and will be limited to the amount of the total medical assistance paid for the designated beneficiary after the establishment of the ABLE account (the

date on which the ABLE account, or any ABLE account from which amounts were rolled or transferred to the ABLE account of the same designated beneficiary, was opened) over the amount of any premiums paid, whether from the ABLE account or otherwise by or on behalf of the designated beneficiary, to a Medicaid Buy-In program under any such State Medicaid plan.

(q) *Reporting requirements.* A qualified ABLE program must comply with all applicable reporting requirements, including without limitation those described in §§ 1.529A-5 through 1.529A-7.

(r) *Effective/applicability dates.* This section applies to taxable years beginning after December 31, 2014.

### § 1.529A-3 Tax treatment.

(a) *Taxation of distributions.* Each distribution from an ABLE account consists of earnings (computed in accordance with paragraph (c) of this section) and investment in the account. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year does not exceed the qualified disability expenses of the designated beneficiary for that year, no amount distributed is includible in the gross income of the designated beneficiary for that year. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year exceeds the qualified disability expenses of the designated beneficiary for that year, the distributions from the ABLE account, except to the extent excluded from gross income under this section or any other provision of chapter 1 of the Internal Revenue Code, must be included in the gross income of the designated beneficiary in the manner provided under this section and section 72. In such a case, the earnings portion of the distribution includible in gross income is equal to the earnings portion of the distribution reduced by an amount that bears the same ratio to the earnings portion as the amount of qualified disability expenses during the year bears to the total distributions during the year. For this purpose, all amounts relevant under section 72 are determined as of December 31 of the year in which the designated beneficiary's taxable year begins, and all amounts distributed from an ABLE account to or for the benefit of the designated beneficiary during his or her taxable year are treated as one distribution. If an excess contribution or excess aggregate contribution is

returned within the time period required in § 1.529A-2(g)(4), any net income distributed is includible in the gross income of the contributor(s) in the taxable year in which the excess contribution or excess aggregate contribution was made.

(b) *Additional exclusions from gross income*—(1) *Rollover*. A rollover as defined in § 1.529A-1(b)(17) is not includible in gross income under paragraph (a) of this section.

(2) *Program-to-program transfers*. A program-to-program transfer as defined in § 1.529A-1(b)(14) is not a distribution and is not includible in gross income under paragraph (a) of this section.

(3) *Change of designated beneficiary*—(i) *In general*. A change of designated beneficiary of an ABL account is not treated as a distribution for purposes of section 529A, and is not includible in gross income under paragraph (a) of this section, if the successor designated beneficiary is—

(A) An eligible individual for such calendar year; and

(B) A member of the family of the former designated beneficiary.

(ii) *Other designated beneficiary changes*. In the case of any change of designated beneficiary not described in paragraph (b)(3)(i) of this section, the former designated beneficiary of that ABL account will be treated as having received a distribution of the fair market value of the assets in that ABL account on the date on which the change is made to the new designated beneficiary.

(4) *Payments to creditors post-death*. Distributions made after the death of the designated beneficiary in payment of outstanding obligations due for qualified disability expenses of the designated beneficiary are not includible in the gross income of the designated beneficiary or his or her estate. Included among these obligations is the post-death payment of any part of a claim filed against the designated beneficiary or the ABL account by a State under a State Medicaid plan.

(c) *Computation of earnings*. The earnings portion of a distribution is equal to the product of the amount of the distribution and the earnings ratio, as defined in § 1.529A-1(b)(8). The balance of the distribution (the amount of the distribution minus the earnings portion of that distribution) is the portion of that distribution that constitutes the return of investment in the account.

(d) *Additional tax on amounts includible in gross income*—(1) *In general*. If any amount of a distribution from an ABL account is includible in the gross income of a person for any taxable year under paragraph (a) of this

section (the “includible amount”), the tax imposed on that person by Chapter 1 of the Internal Revenue Code shall be increased by an amount equal to 10 percent of the includible amount.

(2) *Exceptions*—(i) *Distributions on or after the death of the designated beneficiary*. Paragraph (d)(1) of this section does not apply to any distribution made from the ABL account on or after the death of the designated beneficiary to the estate of the designated beneficiary, to an heir or legatee of the designated beneficiary, or to a creditor described in paragraph (b)(4) of this section.

(ii) *Returned excess contributions and additional accounts*. Paragraph (d)(1) of this section does not apply to any return made in accordance with § 1.529A-2(g)(4) of an excess contribution, excess aggregate contribution, or additional account.

(e) *Tax on excess contributions*. Under section 4973(h), a contribution to an ABL account in excess of the annual contributions limit described in § 1.529A-2(g)(2) is subject to an excise tax in an amount equal to 6 percent of the excess contribution. However, if the excess contribution is returned in accordance with the provisions of § 1.529A-2(g)(4), it is treated as an amount not contributed.

(f) *Filing requirements*. A qualified ABL program is not required to file Form 990, “Return of Organization Exempt From Income Tax,” Form 1041, “U.S. Income Tax Return for Estates and Trusts,” or Form 1120, “U.S. Corporation Income Tax Return.” However, a qualified ABL program is required to file Form 990-T, “Exempt Organization Business Income Tax Return,” if such filing would be required under the rules of §§ 1.6012-2(e) and 1.6012-3(a)(5) if the ABL program were an organization described in those sections.

(g) *Effective/applicability dates*. This section applies to taxable years beginning after December 31, 2014.

#### **§ 1.529A-4 Gift, estate, and generation-skipping transfer taxes.**

(a) *Contributions*—(1) *In general*. Each contribution by a person to an ABL account other than by the designated beneficiary of that account is treated as a completed gift to the designated beneficiary of the account for gift tax purposes. Under the applicable gift tax rules, a contribution from a corporation, partnership, trust, estate, or other entity is treated as a gift by the shareholders, partners, or other beneficial owners in proportion to their respective ownership interests in the entity. See § 25.2511-1(c) and (h). A gift into an ABL

account is not treated as either a gift of a future interest in property, or a qualified transfer under section 2503(e). To the extent a contributor's gifts to the designated beneficiary, including gifts paid into the designated beneficiary's ABL account, do not exceed the annual limit in section 2503(b), the contribution is not subject to gift tax. This provision, however, does not change any other provision applicable to the transfer. For example, a contribution by the employer of the designated beneficiary's parent continues to constitute earned income to the parent and then a gift by the parent to the designated beneficiary.

(2) *Generation-skipping transfer (GST) tax*. To the extent the contribution into an ABL account is a nontaxable gift for gift tax purposes, the inclusion ratio for purposes of the GST tax will be zero pursuant to section 2642(c)(1).

(3) *Designated beneficiary as contributor*. A designated beneficiary may make a contribution to fund his or her own ABL account. That contribution is not a gift. However, in the event of any change of designated beneficiary, the portion of the then fair market value of the ABL account attributable to that contribution and any earnings attributable to that contribution will constitute a gift by the designated beneficiary to the successor designated beneficiary, and the usual gift and GST tax rules will apply.

(b) *Distributions*. No distribution from an ABL account to or for the benefit of the designated beneficiary is treated as a taxable gift to that designated beneficiary.

(c) *Change of designated beneficiary*. Neither gift tax nor generation-skipping transfer tax applies to a change of designated beneficiary if the successor designated beneficiary is both an eligible individual and a member of the family (as described in § 1.529A-1(b)(13)) of the designated beneficiary. The previous sentence does not apply to any other change of designated beneficiary.

(d) *Transfer tax on death of designated beneficiary*. Upon the death of the designated beneficiary, the designated beneficiary's ABL account is includible in his or her gross estate for estate tax purposes under section 2031. The payment of outstanding qualified disability expenses and the payment of certain claims made by a State under its Medicaid plan may be deductible for estate tax purposes if the requirements of section 2053 are satisfied.

(e) *Effective/applicability date*. This section applies to taxable years beginning after December 31, 2014.

**§ 1.529A-5 Reporting of the establishment of and contributions to an ABLE account.**

(a) *In general.* A filer defined in paragraph (b)(1) of this section must, with respect to each ABLE account—

(1) File an annual information return, as described in paragraph (c) of this section, with the Internal Revenue Service; and

(2) Furnish an annual statement, as described in paragraph (d) of this section, to the designated beneficiary of the ABLE account.

(b) *Additional definitions.* In addition to the definitions in § 1.529A-1(b), the following definitions also apply for purposes of this section—

(1) *Filer* means the State or its agency or instrumentality that establishes and maintains the qualified ABLE program under which an ABLE account is established. The filing may be done by either an officer or employee of the State or its agency or instrumentality having control of the qualified ABLE program, or the officer's or employee's designee.

(2) *TIN* means taxpayer identification number as defined in section 7701(a)(41).

(c) *Requirement to file return*—(1) *Form of return.* For purposes of reporting the information described in paragraph (c)(2) of this section, the filer must file Form 5498-QA, “ABLE Account Contribution Information,” or any successor form, together with Form 1096, “Annual Summary and Transmittal of U.S. Information Returns.”

(2) *Information included on return.* With respect to each ABLE account, the filer must include on the return—

(i) The name, address, and TIN of the designated beneficiary of the ABLE account;

(ii) The name, address, and TIN of the filer;

(iii) Information regarding the establishment of the ABLE account, as required by the form and its instructions;

(iv) Information regarding the disability certification or other basis for eligibility of the designated beneficiary, as required by the form and its instructions. For further information regarding eligibility and disability certification, see § 1.529A-2(d) and (e), respectively;

(v) The total amount of any contributions made with respect to the ABLE account during the calendar year;

(vi) The fair market value of the ABLE account as of the last day of the calendar year; and

(vii) Any other information required by the form, its instructions, or published guidance. See §§ 601.601(d) and 601.602 of this chapter.

(3) *Time and manner of filing return*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, the information returns required under this paragraph must be filed on or before May 31 of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.

(ii) *Extensions of time.* See §§ 1.6081-1 and 1.6081-8 of this chapter for rules relating to extensions of time to file information returns required in this section.

(iii) *Electronic filing.* See § 301.6011-2 of this chapter for rules relating to electronic filing.

(iv) *Substitute forms.* The filer may file the returns required under this paragraph (c) on a substitute form. A substitute form must comply with applicable revenue procedures (see § 601.601(d)(2) of this chapter) or other guidance published by the IRS, including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(d) *Requirement to furnish statement*—(1) *In general.* The filer must furnish a statement to the designated beneficiary of the ABLE account for which it is required to file a Form 5498-QA (or any successor form). The statement must include—

(i) The information required under paragraph (c)(2) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service; and

(iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLE account to which the Form 5498-QA relates.

(2) *Time and manner of furnishing statement*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, the filer must furnish the statement described in paragraph (d)(1) of this section to the designated beneficiary on or before March 15 of the year following the calendar year with respect to which the statement is being furnished. If mailed, the statement must be sent to the designated beneficiary's last known address. The statement may be furnished electronically, as provided in § 1.529A-7.

(ii) *Extensions of time.* The Internal Revenue Service may grant an extension of time to furnish statements required in this section upon a showing of good cause. See the instructions to Form 5498-QA.

(3) *Copy of Form 5498-QA.* The filer may satisfy the requirement of this

paragraph (d) by furnishing either a copy of Form 5498-QA (or successor form) or another document that contains the information required by paragraph (d)(1) of this section, if the document complies with applicable revenue procedures (see § 601.601(d)(2) of this chapter) or other guidance published by the IRS relating to substitute statements, including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(e) *Request for TIN of designated beneficiary.* The filer must request the TIN of the designated beneficiary at the time the ABLE account is opened if the filer does not already have a record of the designated beneficiary's correct TIN. The filer must clearly notify the designated beneficiary that the law requires the designated beneficiary to furnish a TIN so that it may be included on an information return to be filed by the filer. The designated beneficiary may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W-9, “Request for Taxpayer Identification Number and Certification,” may be used, or the request may be incorporated into the forms related to the establishment of the ABLE account.

(f) *Penalties*—(1) *Failure to file return.* The section 6693 penalty may apply to the filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. See section 6693 and the regulations thereunder.

(2) *Failure to furnish TIN.* The section 6723 penalty may apply to any designated beneficiary who fails to furnish his or her TIN to the filer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(g) *Effective/applicability date.* The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015.

**§ 1.529A-6 Reporting of distributions from and termination of an ABLE account.**

(a) *In general.* The filer as defined in § 1.529A-5(b)(1) must, with respect to each ABLE account from which any distribution is made or which is terminated during the calendar year—

(1) File an annual information return, as described paragraph (b) of this section, with the Internal Revenue Service; and

(2) Furnish an annual statement, as described in paragraph (c) of this

section, to the designated beneficiary of the ABLÉ account and to each contributor who received a returned contribution in accordance with § 1.529A-2(g)(4) attributable to the calendar year.

(b) *Requirement to file return*—(1) *Form of return.* For purposes of reporting the information in paragraph (b)(2) of this section, the filer must file Form 1099-QA, “Distributions from ABLÉ Accounts,” or any successor form, together with Form 1096, “Annual Summary and Transmittal of U.S. Information Returns.”

(2) *Information included on return.* The filer must include on the return—

(i) The name, address, and TIN of the designated beneficiary of the ABLÉ account or of any contributor who received a returned contribution in accordance with § 1.529A-2(g)(4) attributable to the calendar year, as applicable;

(ii) The name, address, and TIN of the filer;

(iii) The aggregate amount of distributions from the ABLÉ account during the calendar year;

(iv) Information as to basis and earnings with respect to such distributions or returns of contributions;

(v) Information regarding termination (if any) of the ABLÉ account;

(vi) Information regarding each rollover and any program-to-program transfer to or from the ABLÉ account during the designated beneficiary's taxable year;

(vii) Whether the return is being furnished to the designated beneficiary or to a contributor; and

(viii) Any other information required by the form, its instructions, or published guidance. *See* §§ 601.601(d) and 601.602 of this chapter.

(3) *Time and manner of filing return*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, the Forms 1099-QA and 1096 must be filed on or before February 28 (March 31 if filing electronically) of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.

(ii) *Extensions of time.* *See* §§ 1.6081-1 and 1.6081-8 of this chapter for rules relating to extensions of time to file information returns required in this section.

(iii) *Electronic filing.* *See* § 301.6011-2 of this chapter for rules relating to electronic filing.

(iv) *Substitute forms.* The filer may file the return required under this paragraph (b) on a substitute form. A substitute form must comply with applicable revenue procedures (*see*

§ 601.601(d)(2) of this chapter) or other guidance published by the IRS, including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(c) *Requirement to furnish statement*—(1) *In general.* The filer must furnish a statement to the designated beneficiary and each contributor (if any) of the ABLÉ account for which it is required to file a Form 1099-QA (or any successor form). The statement must include—

(i) The information required under paragraph (b)(2) of this section.

(ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service;

(iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLÉ account to which the Form 1099-QA relates.

(2) *Time and manner of furnishing statement*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, a filer must furnish the statement described in paragraph (c)(1) of this section to the designated beneficiary on or before January 31 of the year following the calendar year with respect to which the statement is being furnished. If mailed, the statement must be sent to the recipient's last known address. The statement may be furnished electronically, as provided in § 1.529A-7.

(ii) *Extensions of time.* The Internal Revenue Service may grant an extension of time to furnish statements required in this section upon a showing of good cause. *See* the instructions to Form 1099-QA.

(3) *Copy of Form 1099-QA.* A filer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1099-QA (or successor form) or another document that contains the information required by paragraph (c)(1) of this section and that complies with applicable revenue procedures (*see* § 601.601(d)(2) of this chapter) or other guidance published by the IRS relating to substitute statements, including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(d) *Request for TIN of contributor(s).* A filer must request the TIN for each contributor to the ABLÉ account at the time a contribution is made, if the filer does not already have a record of that person's correct TIN. The filer must clearly notify each contributor to the account that the law requires that person to furnish a TIN so that it may

be included on an information return to be filed by the filer. The contributor may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W-9, “Request for Taxpayer Identification Number and Certification,” may be used, or the request may be incorporated into the forms related to the establishment of the ABLÉ account.

(e) *Penalties*—(1) *Failure to file return.* The section 6693 penalty may apply to a filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. *See* section 6693 and the regulations thereunder.

(2) *Failure to furnish TIN.* The section 6723 penalty may apply to any contributor who fails to furnish his or her TIN to the filer. *See* section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective/applicability date.* The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015.

#### **§ 1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.**

(a) *Electronic furnishing of statements*—(1) *In general.* A filer required under § 1.529A-5 or § 1.529A-6 of this chapter to furnish a written statement to a designated beneficiary of or contributor to an ABLÉ account may furnish the statement in an electronic format in lieu of a paper format. A filer who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent*—(i) *In general.* The recipient of the statement must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The filer may provide that a withdrawal of consent takes effect either on the date it is received by the filer or on another date

no more than 60 days later. The filer also may provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the filer must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the filer if the recipient does not want to withdraw the consent. After implementing the revised hardware and software, the filer must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* For purposes of the following examples that illustrate the rules of this paragraph (a)(2), assume that the requirements of § 1.529A-7(a)(3) have been met:

*Example 1.* Filer F sends Recipient R a letter stating that R may consent to receive statements required under § 1.529A-5 or § 1.529A-6 electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document, and emailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 2.* Filer F sends Recipient R an email stating that R may consent to receive statements required under § 1.529A-5 or § 1.529A-6 electronically instead of in a paper format. The email contains an attachment instructing R how to consent to receive the statements electronically. The email attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

*Example 3.* Filer F posts a notice on its Web site stating that Recipient R may receive statements required under § 1.529A-5 or § 1.529A-6 electronically instead of in a paper format. The Web site contains

instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the filer must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section, or only to the statement required to be furnished on or before the due date immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, and email address is provided in the disclosure statement;

(B) The filer will confirm, in writing (either electronically or on paper), the withdrawal and the date on which it takes effect; and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a filer will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the filer to contact the recipient. The filer must inform the

recipient of any change in the filer's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures or other guidance published by the IRS relating to substitute statements to recipients, including Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(5) *Notice*—(i) *In general.* If the statement is furnished on a Web site, the filer must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the filer's records or from the recipient, then the filer must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the filer has corrected a recipient's statement that was furnished electronically, the filer must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished though a Web site posting and the filer has corrected the statement, the filer must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new email address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the

calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday). The filer must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later. The rules in this paragraph (a)(6) do not replace the filer's obligation to keep records under section 6001 and § 1.6001-1(a) of this chapter.

(b) *Effective/applicability date.* This section applies to statements required to be furnished after December 31, 2015.

## PART 25—GIFT TAXES

■ **Par. 5.** The authority citation for part 25 continues to read in part as follows:

*Authority:* 26 U.S.C. 7805\* \* \*

■ **Par. 6.** Section 25.2501-1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

### § 25.2501-1 Imposition of Tax.

(a) \* \* \*

(1) \* \* \* For gift tax rules related to an ABE account established under section 529A, *see* regulations promulgated thereunder.

\* \* \* \* \*

■ **Par. 7.** Section 25.2503-3 is amended by adding a sentence at the end of paragraph (a) to read as follows:

### § 25.2503-3 Future interests in property.

(a) \* \* \* A contribution to an ABE account established under section 529A is not a future interest.

\* \* \* \* \*

■ **Par. 8.** Section 25.2503-6 is amended by adding a sentence at the end of paragraph (a) to read as follows:

### § 25.2503-6 Exclusion for certain qualified transfers to tuition or medical expenses.

(a) \* \* \* A contribution to an ABE account established under section 529A is not a qualified transfer.

\* \* \* \* \*

■ **Par. 9.** Section 25.2511-2 is amended by adding a sentence at the end of paragraph (a) to read as follows:

### § 25.2511-2 Cessation of donor's dominion and control.

(a) \* \* \* For gift tax rules related to an ABE account established under section 529A, *see* regulations promulgated thereunder.

\* \* \* \* \*

## PART 26—ESTATE TAXES

■ **Par. 10.** The authority citation for part 26 continues to read in part as follows:

*Authority:* 26 U.S.C. 7805\* \* \*

■ **Par. 11.** Section 26.2642-1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

### § 26.2642-1 Inclusion ratio.

(a) \* \* \* For generation-skipping transfer tax rules related to an ABE account established under section 529A, *see* regulations promulgated thereunder.

\* \* \* \* \*

■ **Par. 12.** Section 26.2652-1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

### § 26.2652-1 Transferor defined; other definitions.

(a) \* \* \*

(1) \* \* \* For generation-skipping transfer tax rules related to an ABE account established under section 529A, *see* regulations promulgated thereunder.

\* \* \* \* \*

## PART 301—REPORTING AND RECORDKEEPING REQUIREMENTS

■ **Par. 13.** The authority citation for part 301 continues to read in part as follows:

*Authority:* 26 U.S.C. 7805\* \* \*

### § 301.6011-2 [Amended]

■ **Par. 14.** Section 301.6011-2 is amended by adding the word “series” after “5498” in the first sentence of paragraph (b)(1).

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2015-15280 Filed 6-19-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### West Arm Behm Canal, Naval Surface Warfare Center, Ketchikan Alaska; Restricted Areas.

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed amendment and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is proposing to amend existing regulations for an existing restricted area near Ketchikan, Alaska to correct inaccuracies in regards to

flashing beacon light descriptions, point of contact changes, and restrictive area distances for small craft.

**DATES:** Written comments must be submitted on or before July 22, 2015.

**ADDRESSES:** You may submit comments, identified by docket number COE-2015-0009, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Email:* [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil). Include the docket number, COE-2015-0009, in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW., Washington, DC 20314-1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE-2015-0009. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in



# Appendix E



# Proposed Rules

Federal Register

Vol. 80, No. 152

Friday, August 7, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 312

RIN 3084-AB20

#### Children's Online Privacy Protection Rule Proposed Parental Consent Method; Jest8 Limited, Trading as Riyo, Application for Approval of Parental Consent Method

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Request for public comment.

**SUMMARY:** The Federal Trade Commission requests public comment concerning the proposed parental consent method submitted by Jest8 Limited, trading as Riyo ("Riyo"), under the Voluntary Commission Approval Processes provision of the Children's Online Privacy Protection Rule.

**DATES:** Written comments must be received on or before September 3, 2015.

**ADDRESSES:** Interested parties may file a comment at <http://ftcpbcommentworks.com/ftc/riyocoppaconsent> online or on paper, by following the instructions in the Request for Comment part of the

**SUPPLEMENTARY INFORMATION** section below. Write "Jest8 Limited (Trading as Riyo) Application for Parental Consent Method, Project No. P-155405" on your comment, and file your comment online at <http://ftcpbcommentworks.com/ftc/riyocoppaconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Jest8 Limited (Trading as Riyo) Application for Parental Consent Method, Project No. P-155405" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th

Street SW., 5th Floor, Suite 5610 (Annex E), Washington, DC 20024.

#### FOR FURTHER INFORMATION CONTACT:

Miry Kim, Attorney, (202) 326-3622, or Peder Magee, Attorney, (202) 326-3538, Division of Privacy and Identity Protection, Federal Trade Commission, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### Section A. Background

On October 20, 1999, the Commission issued its final Rule<sup>1</sup> pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq.*, which became effective on April 21, 2000.<sup>2</sup> On December 19, 2012, the Commission amended the Rule, and these amendments became effective on July 1, 2013.<sup>3</sup> The Rule requires certain Web site operators to post privacy policies and provide notice, and to obtain verifiable parental consent, prior to collecting, using, or disclosing personal information from children under the age of 13. The Rule enumerates methods for obtaining verifiable parental consent, while also allowing an interested party to file a written request for Commission approval of parental consent methods not currently enumerated.<sup>4</sup> To be considered, the party must submit a detailed description of the proposed parental consent method, together with an analysis of how the method meets the requirements for parental consent described in 16 CFR 312.5(b)(1).

Pursuant to Section 312.12(a) of the Rule, Riyo has submitted a proposed parental consent method to the Commission for approval. The full text of its application is available on the Commission's Web site at [www.ftc.gov](http://www.ftc.gov).

##### Section B. Questions on the Parental Consent Method

The Commission is seeking comment on the proposed parental consent method, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the Commission's consideration of the petition and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the number of the question being answered. For all comments

submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Is this method, both with respect to the process for obtaining consent for an initial operator and any subsequent operators, already covered by existing methods enumerated in Section 312.5(b)(2) of the Rule?

2. If this is a new method, provide comments on whether the proposed parental consent method, both with respect to an initial operator and any subsequent operators, meets the requirements for parental consent laid out in 16 CFR 312.5(b)(1). Specifically, the Commission is looking for comments on whether the proposed parental consent method is reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.

3. Does this proposed method pose a risk to consumers' personal information? If so, is that risk outweighed by the benefit to consumers and businesses of using this method?

##### Section C. Invitation to Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 3, 2015. Write "Jest8 Limited (Trading as Riyo") Application for Parental Consent Method, Project No. P-155405" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, including medical records or other individually identifiable health information. In addition, do not include

<sup>1</sup> 64 FR 59888 (1999).

<sup>2</sup> 16 CFR part 312.

<sup>3</sup> 78 FR 3972 (2013).

<sup>4</sup> 16 CFR 312.12(a); 78 FR at 3991-3992, 4013.

any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>5</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <http://ftcpublic.commentworks.com/ftc/riyocoppaconsent>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#/home>, you also may file a comment through that Web site.

If you file your comment on paper, write “Jest8 Limited (Trading as Riyo) Application for Parental Consent Method, Project No. P-155405” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex E), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive

public comments that it receives on or before September 3, 2015. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 2015-19425 Filed 8-6-15; 8:45 am]

**BILLING CODE 6750-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 25, 26, and 301

[REG-102837-15]

RIN 1545-BM68

#### Guidance Under Section 529A: Qualifies ABLE Programs; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG-102837-15) that was published in the *Federal Register* on Monday, June 22, 2015 (80 FR 35602). The proposed regulations under section 529A of the Internal Revenue Code that provide guidance regarding programs under The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014.

**DATES:** Written or electronic comments and request for a public hearing for the notice of proposed rulemaking at 80 FR 35602, June 22, 2015, are still being accepted and must be received by September 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** Taina Edlund or Terri Harris at (202) 317-4541, or Sean Barnett (202) 317-5800, or Theresa Melchiorre (202) 317-4643 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking that is subject of this document is under section 529A of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG-102837-15) contains errors that may prove to be misleading and are in need of clarification.

## Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG-102837-15) that are subject to FR Doc. 2015-15280 are corrected as follows:

1. On page 35603, in the preamble, second column, twelfth line, the language “Section 529(d)(2) provides that the” is corrected to read “Section 529A(d)(2) provides that the.”

2. On page 35603, in the preamble, second column, nineteenth line, the language “529(d)(3) requires qualified ABLE” is corrected to read “529A(d)(3) requires qualified ABLE.”

3. On page 35606, in the preamble, first column, second line from the bottom of the first paragraph, the language “meaning of § 1.529A-1(b)(9)(A) or” is corrected to read “meaning of § 1.529A-1 (b)(9)(i).”

#### § 1.529A-1 [Corrected]

4. On page 35612, second column, second and third line from the bottom of paragraph (b)(16), the language “within the meaning of § 1.529-1(b)(9)(A) or § 1.529-2(e)(1)(i) are not qualified” is corrected to read “within the meaning of § 1.529A-1(b)(9)(i) or § 1.529A-2(e)(1)(i) are not qualified.”

#### § 1.529A-7 [Corrected]

5. On page 35619, third column, paragraph (a)(5)(iii) the language “furnished though a Web site posting and” is corrected to read “furnished through a Web site posting and.”

**Martin V. Franks,**

*Chief, Publications and Regulations Branch,  
Legal Processing Division, Associate Chief  
Counsel (Procedure and Administration).*

[FR Doc. 2015-19369 Filed 8-6-15; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 123, 131, 233, 501

[EPA-HQ-OW-2014-0461; FRL-9930-57-OW]

#### Revised Interpretation of Clean Water Act Tribal Provision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed interpretive rule; request for comments.

**SUMMARY:** Waters on the majority of Indian reservations do not have water quality standards under the Clean Water Act to protect human health and the environment. Only 40 of over 300 federally recognized tribes with

<sup>5</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

# Appendix F

# SECTION 529A INTERIM GUIDANCE REGARDING CERTAIN PROVISIONS OF PROPOSED REGULATIONS RELATING TO QUALIFIED ABLE PROGRAMS

Notice 2015-81

## I. PURPOSE AND OVERVIEW

This notice advises how the Treasury Department and the Internal Revenue Service (IRS) intend to respond to comments by revising three provisions of the proposed regulations under § 529A of the Internal Revenue Code when those regulations are finalized. Specifically, commenters noted that the following three requirements for qualified Achieving Better Life Experience (ABLE) programs in the proposed regulations would create significant barriers to the establishment of such programs: (1) the requirement to establish safeguards to categorize distributions from ABLE accounts, (2) the requirement to request the taxpayer identification number (TIN) of each contributor to an ABLE account, and (3) the requirements for disability certifications, and in particular the requirement to process disability certifications with signed physicians' diagnoses.

## II. BACKGROUND

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (P.L. 113-295). The ABLE Act added § 529A to the Code. Section 529A allows a State (or State agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an account (an ABLE account) for the purpose of providing for the qualified disability expenses of the designated beneficiary of the account. The designated beneficiary generally must be a resident of that state who has a disability that commenced before the designated

beneficiary's 26<sup>th</sup> birthday and who meets the statutory eligibility requirements. In general, neither the ABLE account nor distributions from the account are treated as income or resources of a designated beneficiary who is an eligible individual in determining that designated beneficiary's qualification for federal benefits.<sup>1</sup> The undistributed income earned in an ABLE account is not taxable and distributions made from an ABLE account for qualified disability expenses of the designated beneficiary are not included in the designated beneficiary's gross income for federal income tax purposes. However, the earnings portion of distributions from an ABLE account in excess of qualified disability expenses generally is includible in the gross income of the designated beneficiary.

The Treasury Department and the IRS released proposed regulations concerning qualified ABLE programs on June 19, 2015, which were published in the Federal Register on June 22, 2015 (80 Fed. Reg. 35602). Although the comments received to date generally have been positive regarding most aspects of the proposed regulations, commenters raised concerns that the provisions in the proposed regulations requiring a qualified ABLE program to establish safeguards to categorize distributions, collect taxpayer identification numbers (TINs) from contributors, and process disability certifications with signed physicians' diagnoses, if unchanged in the final regulations, would impose substantial administrative and cost burdens on the States administering

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<sup>1</sup> While section 103 of the ABLE Act (not a tax provision) generally provides that a designated beneficiary's ABLE account is disregarded in determining the designated beneficiary's eligibility under certain federal means-tested programs, there are two exceptions. In the case of the Supplemental Security Income program under title XVI of the Social Security Act, distributions for certain housing expenses are not disregarded and the balance (including earnings) in an ABLE account is considered a resource of the designated beneficiary to the extent that balance exceeds \$100,000. Section 103 also addresses the impact of an excess balance on the designated beneficiary's eligibility under the Supplemental Security Income program and Medicaid.

qualified ABLE programs. States indicated that these burdens were sufficiently significant that they were encountering substantial hurdles in moving forward with creating their ABLE programs because they did not know if the final regulations would resolve their concerns regarding these requirements. Several commenters requested that the Treasury Department and the IRS issue interim guidance on these three requirements in order to facilitate the establishment of qualified ABLE programs by the States.

### III. DISTRIBUTIONS FOR QUALIFIED DISABILITY EXPENSES

Consistent with § 529A(e)(5), § 1.529A-1(b)(16) of the proposed regulations defines the term “qualified disability expenses” as expenses incurred that relate to the blindness or disability of the designated beneficiary of an ABLE account and that are for the benefit of the designated beneficiary in maintaining or improving his or her health, independence, or quality of life. As stated in the preamble to the proposed regulations, the Treasury Department and the IRS recognize that this term should be broadly construed to permit the inclusion of basic living expenses and should not be limited to expenses for items for which there is a medical necessity or which provide no benefit to others in addition to the benefit to the eligible individual. Section 1.529A-2(h)(1) of the proposed regulations provides that a qualified ABLE program must establish safeguards to allow the ABLE program to distinguish between distributions used to pay for qualified disability expenses and other distributions, and to permit the identification of amounts distributed for housing expenses as defined for purposes of the Supplemental Security Income program of the Social Security Administration.

Commenters noted that, because the identification of housing expenses is relevant only for purposes of determining eligibility for certain Social Security benefits and has no relevance for federal income tax purposes, any reference to classifying distributions as housing expenses should be eliminated from the regulations. The Treasury Department and the IRS agree, and the final regulations will not require a qualified ABLE program to identify or record whether distributions were made for housing expenses.

Commenters also expressed concerns regarding the requirement that a qualified ABLE program establish safeguards to distinguish between distributions for qualified disability expenses and other distributions. Commenters emphasized that requiring a qualified ABLE program to determine how a distribution will be used prior to making the distribution would be unduly burdensome for both the program and the designated beneficiary and explained that the particular use of a distribution might not be known when the distribution is made. The commenters recommended that any requirement or suggestion that qualified ABLE programs will have to classify distributions should be eliminated from the regulations.

Consistent with the reporting requirements in § 1.529A-6 of the proposed regulations, which require that qualified ABLE programs report only aggregate distributions and distinguish such distributions as basis, earnings, or returned contributions, the Treasury Department and the IRS confirm that the final regulations will not require, for any federal income tax purpose, a qualified ABLE program to establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions. The designated beneficiary,

however, will have to categorize distributions in order to properly determine the designated beneficiary's federal income tax obligations.

#### IV. REPORTING REQUIREMENTS REGARDING CONTRIBUTORS

Consistent with §§ 529A(b)(2)(B) and (b)(6), §§ 1.529A-2(g)(2) and (3) of the proposed regulations provide that a qualified ABLE program must provide that no contribution to an ABLE account will be accepted to the extent that such contribution exceeds certain stated limits. Specifically, the total contributions (whether from the designated beneficiary or one or more other persons) to the designated beneficiary's ABLE account made during the designated beneficiary's taxable year must not exceed the amount in effect under § 2503(b) (the annual gift tax exclusion amount) for the calendar year in which the designated beneficiary's taxable year begins. In addition, the aggregate amount of contributions to an ABLE account must not exceed the limit established by the State under § 529(b)(6) (the limit on contributions to a qualified tuition program). If an excess contribution under § 1.529A-2(g)(2) or an excess aggregate contribution under § 1.529A-2(g)(3) is allocated to or deposited into the ABLE account of a designated beneficiary, § 1.529A-2(g)(4) of the proposed regulations requires the qualified ABLE program to return that excess contribution or excess aggregate contribution (with any net income attributable to it, as determined under the applicable rules) to the person who made that contribution. Because the income earned on that excess contribution or excess aggregate contribution (if any) will be taxable to that contributor, § 1.529A-6(d) of the proposed regulations requires a qualified ABLE program to request the TIN for each contributor to the ABLE account at the time a



contribution is made if the program does not already have a record of that person's correct TIN.

One commenter suggested that excess contributions instead could be required to be paid to the designated beneficiary so there would be no need for a qualified ABLE program to procure a contributor's TIN. The Treasury Department and the IRS do not agree with this suggestion because the designated beneficiary's receipt of such an excess amount could put the designated beneficiary at risk of being disqualified for his or her federal benefits that are income or resource based, a result that would be inconsistent with the purposes of the statute.

Commenters are concerned about the substantial burdens imposed on qualified ABLE programs if they must request the TIN of every contributor (if the program does not already have a record of that person's correct TIN) at the time a contribution is made. Commenters explained that it is likely that contributions will come from multiple sources and will be made in a variety of ways (payroll deduction, check, debit, automated clearing house (ACH) transfers, or others), making it difficult as a practical matter to obtain the TIN of the contributor. Commenters also stated that some contributors, especially those making small gifts, may be reluctant to make a contribution if a TIN were required to be provided. Further, several commenters indicated that systems would be used that would ensure that qualified ABLE programs do not accept contributions that would exceed applicable limits.

As an alternative, commenters suggested that a contributor's TIN be required to be collected only by those qualified ABLE programs that do not have systems in place to prevent the acceptance and/or deposit to the ABLE account of a particular

designated beneficiary of an excess contribution or excess aggregate contribution. The commenters expect that most qualified ABLE programs will adopt the infrastructure currently utilized by state § 529 qualified tuition programs either to reject such excess contributions or to escrow and immediately refund the excess contributions. Other commenters recommend that the obligation to request a contributor's TIN should only arise in the unlikely circumstance in which an excess or excess aggregate contribution has been deposited into an individual's ABLE account and has accrued earnings or losses. One commenter suggested eliminating the TIN requirement altogether while another suggested the collection of TINs should be required only in the case of contributions over a specified dollar amount.

In consideration of these comments, the Treasury Department and the IRS believe that a modification to § 1.529A-6(d) of the proposed regulations is appropriate. Consequently, it is anticipated that the final regulations will eliminate the requirement to request the TINs of each contributor at the time a contribution is made (if the program does not already have a record of that person's correct TIN) if the qualified ABLE program has a system in place to identify and reject excess contributions and excess aggregate contributions before they are deposited into an ABLE account. However, in the event an excess contribution or excess aggregate contribution is deposited into an ABLE account, the qualified ABLE program will be required to request the TIN of the contributor making the excess contribution or excess aggregate contribution.

## V. ELIGIBLE INDIVIDUAL, FILING OF DISABILITY CERTIFICATION AND PHYSICIAN DIAGNOSIS

Consistent with § 529A(e)(1), § 1.529A-2(d)(1) of the proposed regulations provides that a qualified ABLE program must specify the documentation that an individual must furnish, both at the time an ABLE account is established for the designated beneficiary of that account and thereafter, to ensure that the designated beneficiary of the ABLE account is, and continues to be, an eligible individual. One way to qualify as an eligible individual under § 529A(e)(1) is to have a disability certification filed with the Secretary of the Treasury. Under the proposed regulations, a disability certification is deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification or a disability certification is deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program must file with the IRS in accordance with the filing requirements under § 1.529A-5(c)(2)(iv). Section 529A(e)(2)(A) defines a disability certification as “a certification to the satisfaction of the Secretary” by the individual or the parent or guardian of the individual that (i) certifies that the individual meets the disability standard and (ii) includes a copy of the individual's diagnosis signed by a licensed physician. Section 1.529A-2(e) defines the disability certification to include the required certifications and a copy of the signed diagnosis, but also provides for certain conditions to be deemed to meet the requirements of filing a disability certification.

States and potential qualified ABLE program administrators expressed concerns about their responsibilities and potential liabilities for receiving and safeguarding medical information contained in a signed diagnosis, particularly when they do not anticipate having any expertise or ability to evaluate that medical information. The commenters emphasized that qualified ABLE programs would incur unmanageable

costs and burdens in trying to comply with applicable laws imposing system and other requirements on those in possession of medical records, as well as in implementing systems to receive and store paper documentation. The commenters also expressed the concern that, if these costs and burdens cannot be minimized, some states may not proceed with the implementation of qualified ABLE programs for their residents. The commenters recommended that a qualified ABLE program be permitted to open an ABLE account on the basis of a certification by the person opening the ABLE account, signed under penalties of perjury, that the individual has a condition that meets all of the required elements to qualify as an eligible individual and that a diagnosis signed by a physician regarding the relevant impairment or impairments has been obtained.

After consideration of these comments, the Treasury Department and the IRS have concluded that a certification under penalties of perjury that the individual (or the individual's agent under a power of attorney or a parent or legal guardian of the individual) has the signed physician's diagnosis, and that the signed diagnosis will be retained and provided to the ABLE program or the IRS upon request, is adequate to satisfy the Secretary with regard to the requirements of §§ 529A(e)(1)(B) and 529(e)(2)(A) pertaining to the filing of a disability certification. Accordingly, the Treasury Department and the IRS intend, in the final regulations, to permit such a certification of eligibility for purposes of satisfying the requirement for filing a disability certification. The Treasury Department and the IRS anticipate that the final regulations will contain further details with regard to the information required to be included in the certification, annual recertifications, and annual reporting. Based on the comments received, the required information is likely to include the statutory basis for the individual's eligibility

(blindness or disability under title II or XVI of the Social Security Act, or a disability certification); confirmation that the blindness or disability occurred before age 26; the existence of an impairment that satisfies the required level of marked and severe functional limitations, if necessary for eligibility; and, if necessary for eligibility, confirmation of receipt of a written diagnosis relating to the disability, the name and address of the diagnosing physician, the date of the diagnosis, and identification of the applicable diagnostic code from those listed on Form 5498-QA. The final regulations may also provide that the certification may include information provided by the physician as to the categorization of the disability that could determine, under the particular State's program, the appropriate frequency of required recertifications.

#### VI. RELIANCE

The Treasury Department and the IRS intend that the final regulations, when issued, will address the three identified issues in the manner indicated in this notice. Pending the issuance of final regulations, taxpayers may rely on the guidance contained in this notice. In particular, if a certification used to open a qualified ABLE account before the issuance of final regulations is consistent with the discussion in section V of this notice but does not contain other information required by the final regulations, the account will not lose its qualification as an ABLE account solely for that reason. To the extent that additional information is required by the final regulations, the final regulations will provide a transition period to facilitate compliance with the additional requirements.

#### VII. DRAFTING INFORMATION

The principal authors of this notice are Terri Harris and Sean Barnett, Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further

information regarding this notice, contact Ms. Harris at (202) 317-4541, or Mr. Barnett at (202) 317-5800 (not toll-free numbers).