



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

December 8, 2017

Dear Conference Committee Members, Senators and Representatives:

The Consortium for Citizens with Disabilities (CCD) is the largest and longest standing coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

The CCD Financial Security Taskforce (the Taskforce) is a subgroup of the larger coalition that works specifically to promote responsible public policy aimed at increasing the financial security of all individuals with disabilities and their families.

Background:

The Achieving a Better Life Experience Act of 2014:

The ABLE Act, signed into law in December 2014, allows certain individuals with disabilities the opportunity to save resources in a tax advantaged savings account (an ABLE account) for the purposes of covering disability related expenses. The resources saved in an ABLE account are not taken into consideration when determining the individual's eligibility for federally funded means tested benefits, including Supplemental Security Income (SSI) and Medicaid. The opportunity provided through the ABLE Act to assist in securing more financial stability for individuals with disabilities and their families is profound; however, it is limited to those individuals whose disability had an onset prior to their 26th birthday. Thirty states have established ABLE programs so far, and ABLE accounts are available nationwide to qualified individuals with disabilities.

ABLE to Work Act:

The ABLE to Work Act (S. 818/HR 1896) is pending legislation, that has been attached, and amended, to the recently passed Senator version of the "Tax Cuts and Jobs Act" (Sec. 11024). The legislation's intent is to allow individuals and their families to save more money in an ABLE account if the beneficiary works and earns income. Specifically, in addition to the current \$14,000 annual contribution cap, an ABLE beneficiary who earns income from a job could contribute additional funds from his/her compensation up to the amount equal to the Federal Poverty Level, which is currently at \$11,770 (potentially increasing allowable annual contributions to \$25,770). These additional funds into the ABLE account would only be allowed if the beneficiary was not participating in his/her employer's retirement plan (ex: 401k). The bill will also allow ABLE beneficiaries to qualify for the existing Saver's Credit when they contribute savings to their ABLE account.

It is important to note that beneficiaries (who can contribute to their own ABLE account under current law) would still be subject to the caps related to earned income and substantial gainful employment (SGA). This bill would not allow individuals with disabilities the ability to disregard earned income (even

if it is contributed to their ABLE account) for purposes of eligibility for SSI and Medicaid. We want to make this point very clear because there appears to have been significant misunderstanding regarding this portion of the legislation. There is an impression that earned income of the account owner that is directly deposited into their ABLE account will not be counted against the account owner's eligibility for benefits (such as Supplemental Security Income (SSI) or Medicaid). This is simply not the case, both the Social Security Administration (SSA) by way of their Program Operations Manual Systems (POMS) SI 01130.740 and by the Centers for Medicare and Medicaid Services (CMS) through recently published guidance explicitly do not allow for disregard of earned income of the account owner. If passed, the ABLE to Work legislation would still not allow for disregard of earned income with respect to eligibility for means tested benefits.

Concern:

The Taskforce is writing today to express significant concern regarding an ABLE related amendment to the Senate's recently passed tax proposal, especially in its most recent form, which can be found in *Sec. 11024. INCREASED CONTRIBUTIONS TO ABLE ACCOUNTS*. After much consideration and consultation with other ABLE related stakeholders, it is our opinion that this provision would result in additional administrative burden on both program administrators and people with disabilities and create unnecessary complexities. Additionally, and of most concern to the Taskforce, we believe that the current language, if passed, would leave individuals with disabilities, who are ABLE account owners, in a much more vulnerable position with respect to the loss of vital supports and services provided by various means tested programs. This is in complete contrast to the very intent of the ABLE Act.

Therefore we oppose the bill in its current form and respectfully ask that passage of the ABLE to Work Act be deferred until such time as stakeholders can be convened in an effort to make recommendations on how to fulfill the spirit of the ABLE to Work Act while not increasing administrative burden and while not leaving the account owner in a more vulnerable position.

Increased Vulnerability of Account Owner Regarding Losing Public Benefits

As stated previously, and reinforced by guidance from the Department of Treasury (*Notice 2015-81 SECTION 529A INTERIM GUIDANCE REGARDING CERTAIN PROVISIONS OF PROPOSED REGULATIONS RELATING TO QUALIFIED ABLE PROGRAMS*), the ABLE program administrator is responsible for implementing safeguards that would prohibit annual contributions limits from being exceeded. This obligation is currently being met by all ABLE program administrators by way of electronically disallowing any excess contributions from being deposited into an ABLE account. Treasury also specified in its Interim Guidance that ABLE program administrators are not required to collect the Tax Identification Number (TIN) of every contributor to an ABLE account, making it more difficult to return funds if an excess contribution was made.

The provision that currently exists in the Senate tax bill, specifically *529A(2) RESPONSIBILITY FOR CONTRIBUTION LIMITATION*, adds language that would abdicate the established obligation described above and place that responsibility squarely on the shoulders of the account owner with a disability. It is vitally important to note that funds contributed into an ABLE account that exceed annual limits/caps will not have the protection of the ABLE Act and thus will be taken into consideration with respect to the account owners eligibility for various means tested benefits, many of which provide essential supports and services related to that individual's disability. This new language, while it may alleviate administrative burden on the ABLE program managers, starkly contrasts with current policy and leaves

the account owner in a much more vulnerable position with respect to losing their benefits, especially when anybody at any time could make a contribution to their ABLE account.

Additionally, in an effort to remedy much of the concerns described in the “Increased Administrative Burden” section of this letter, suggestions have been made to allow anyone to contribute above the conventional annual cap as a result of the account owner having employment (as currently written, only the account owner would be able to contribute above the cap). Attributing such contributions to under the conventional cap or over the conventional cap could create even more administrative complexity. This would greatly exacerbate the already vulnerable position the account owner would be placed in under the currently proposed language. This is particularly troubling because, without a contributor’s TIN number (as explained above – ABLE programs are not required to collect this information), it will become even more difficult for the ABLE account owner to track from where the contribution came and to whom to return it if it exceeds the annual contribution cap.

Increased Administrative Burden

Currently anyone can contribute into a person’s ABLE account (including the account owner with a disability), so long as all contributions combined do not exceed the amount equal to that tax year’s gift tax exclusion amount (\$14,000 in 2017/\$15,000 in 2018). The only obligation that the ABLE program manager has is to ensure that the account does not accept contributions that would exceed the annual cap. Therefore, who the contributor is and/or from where the contributor gets those funds (compensation from employment or not) is irrelevant from an administrative standpoint.

It is our understanding, gathered from conversations with ABLE program administrators, that under the current language proposed in the recently passed Senate tax bill, the program manager would have to build into their systems the ability to track separately the contributions attributed to income of the account owner versus all other types of contributions. Furthermore, those funds would have to be monitored or accounted for separately, due to each having separate account limits/caps (contributions attributed to income of the account owner would be capped at the lesser of the account owner’s gross income for that taxable year or the amount equal to the Federal Poverty Level (of the previous year) and all others would be subject to the gift tax exclusion amount (\$14,000 in 2017/\$15,000 in 2018)).

It is our fear that by increasing this administrative burden, the bill would leave current and potential ABLE account owners more vulnerable to increases in fees and thus less likely to be able to participate in the ABLE program. This program prides itself in being financially accessible to people with disabilities and their families, we believe this could begin to put that into jeopardy. Furthermore, if the program administrator decides that the current language no longer requires them to place safeguards on the conventional annual cap, this would create even more vulnerability in terms of the account owner accidentally exceeding the caps, due to 3rd party contributors, and thus putting their vital supports and services in jeopardy.

Recommendation:

While we support the purpose of the ABLE to Work Act, we believe that this particular bill as written and amended will create additional administrative burden, undue complexities and places ABLE account owners who in a significantly more vulnerable position with respect to losing vital supports and services provided by various means tested programs.

Before this bill becomes law and has unintended negative consequences for our community, we would like the opportunity to sit down with all stakeholders - key legislators, ABLE account owners, ABLE program administrators and disability advocates – in an effort to flesh out more details on how the ABLE to Work Act can be marketed and administered in a way that will minimize rather than foment confusion and adverse outcomes. Therefore we oppose the bill in its current form and respectfully ask that passage of the ABLE to Work Act be deferred until such time that these discussions can take place and details be worked out.

If you have any questions, or if you would like to discuss this in further detail, please feel free to reach out to Chris Rodriguez at crodriguez@ndi-inc.org.

Sincerely,

Consortium for Citizens with Disabilities Financial Security Taskforce Co-Chairs

L. Dara Baldwin
Senior Public Policy Analyst
National Disability Rights Network

Marty Ford
Senior Executive Officer, Public Policy
The Arc of the United States

Susan Goodman
Senior Policy Advisor
National Down Syndrome Congress

Sarah Meek
Director of Legislative Affairs
ANCOR

Christopher J. Rodriguez
Director of Public Policy
National Disability Institute

CC:
Senator Burr
Senator Casey
Senator Roberts
Senator Van Hollen
Representative Cardenas
Representative McMorris Rodgers
Representative Sessions