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NATIONAL RESOURCE CENTER
ACHIEVING A BETTER LIFE EXPERIENCE ACT



Social Security's Updated ABLE Guidance **“A Deeper Dive”**

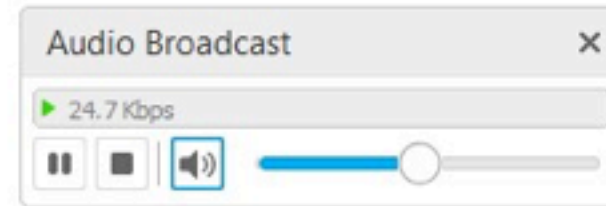
Presented by

Chris Rodriguez, Director, ABLE National Resource Center



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Presenters and Guests

- Presenter:
 - Christopher J. Rodriguez, Director, ABLE National Resource Center
- Guests:
 - Marlene Ulisky, Social Security Benefits Expert, National Disability Institute
 - James R. Sheldon, Jr, Supervising Attorney, National Assistive Technology Advocacy Project
 - Rob Percival, Sr. Vice President, Strategic Products, Ascensus College Savings
 - Katy Oliver, ABLE Account Owner and ANRC ABLE Advisor

Agenda

- Introduction to ABLE
- ABLE Basics
- SSA POMS
 - What is an ABLE Account?
 - Definition of ABLE terms
 - When to exclude ABLE account contributions, balances, earnings and distributions
 - When to count ABLE account balances and distributions
 - How to verify, document and record ABLE account balances
 - How to verify, document and record ABLE account distributions
 - Handling and recording ABLE prepaid debit card information
- **ABLE Case Summary Series**
- **ABLE National Resource Center**
- **Question and Answer**

Introduction to ABLE



What is ABLE ?

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act (PL 113-295) amends the federal tax code to add Section 529A in order to:

- create a new option for eligible people with disabilities*
- to save money in a tax-exempt account*
- that may be used for qualified disability expenses*
- while still keeping their eligibility for federal public benefits.*

ABLE Becomes Law - December 2014

- **One of most bipartisan bills in history**
 - **85% of the entire US Congress supported the ABLE Act**
 - 381 out of 435 in the US House of Representatives
 - 78 out of 100 in the US Senate
- Authorized (did not require) states to establish ABLE programs
- States acted very quickly to pass state ABLE laws and set up ABLE programs
 - June 2016: First ABLE account available
 - To date, 35 states (plus DC) have launched ABLE programs (most available for nationwide enrollment)

ABLE Basics



Basic Characteristics

- There are eligibility requirements related to opening an ABLE account that speak to the age in which the individual first experienced his/her disability and related to the severity of such disability.
- An eligible individual is not obligated to enroll in their state of residence
- The “Designated beneficiary” is the account owner (although another person such as a parent, guardian, or person with power of attorney may be allowed signature authority over the account).
- Funds in the account may be used for “qualified disability related expenses”
- Assets in, and distributions for qualified disability related expenses, will be disregarded or given special treatment when determining eligibility for *most* federal means -tested benefits (including Social Security and Medicaid)
- Multiple individuals may contribute to an individual’s ABLE account
- There is a **\$15,000** annual contribution limit (all contributors combined)*

Newly Updated SSA POMS



What are POMS?

- “POMS” stands for “Program Operations Manual Systems” and are based upon the law and is an operational policy reference used by the Social Security Administration (SSA) internal staff to conduct SSA business.



ABLE SSA POMS

PROGRAM OPERATIONS MANUAL
SYSTEM

Part 05 - Supplemental Security
Income

Chapter 011 – Resources

Subchapter 30 - Resources
Exclusions

Transmittal No. 74, 03/2018

- SSA recently published an updated version of their ABLE POMS titled “Resources Exclusions” and focuses on Title XVI (Supplemental Security Income).



Sections of the POMS

1. What is an ABLE Account?
2. Definition of ABLE terms
3. When to exclude ABLE account contributions, balances, earnings and distributions
4. When to count ABLE account balances and distributions
5. How to verify, document and record ABLE account balances
6. How to verify, document and record ABLE account distributions
7. Handling and recording ABLE prepaid debit card information

What is an ABLÉ Account?



What is an ABLE Account?

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses.

- The eligible individual is the owner and designated beneficiary of the ABLE account.
- An eligible individual may establish an ABLE account provided that the individual is blind or disabled by a condition that began before the individual's 26th birthday.

State ABLE Program Models

Some States formed partnerships to improve access for eligible individuals to enroll in ABLE programs. You may see different types of arrangements between States administering ABLE programs.

- Some States have formed a consortium where the States have their own ABLE program, but join together to provide lower administrative costs and better investment options than they could on their own.
- Some States established their own ABLE program, but contracted with private companies to manage their ABLE program for them.
- Some States established their own ABLE program, but contracted with other States to manage their ABLE program for them.
- Some States do not operate their own ABLE program, but partnered with another State to offer the other State's ABLE program to their residents.

One ABLE Account

- A designated beneficiary is limited to one ABLE account, which a qualified ABLE program administers. Except in the case of a rollover or program-to-program transfer, if a designated beneficiary has an additional account, it generally will not be treated as an ABLE account, and will be subject to normal resource counting rules.
 - **EXCEPTION:** If an additional account is closed within 90 days from the account open date, the account will not be a countable resource for any period the additional account was open.

Medicaid Reimbursement

- Upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of all outstanding qualified disability expenses, must be used to reimburse the State(s) for Medical Assistance (Medicaid) benefits that the designated beneficiary received, if the State(s) files(s) a claim for reimbursement.



Definition Of ABLE Terms



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.



Contributions

- A contribution is the payment of funds into an ABLE account. Contributions must be in cash and may be made in the form of cash or a check, money order, credit card, electronic transfer, or a similar method.
- 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 total annual contributions that an ABLE account can receive from all sources is limited to the amount of the per-donee gift-tax exclusion in effect for a given calendar year. For 2018, that limit is \$15,000.

Designated Beneficiary

- The designated beneficiary is the individual who owns the ABLE account and who was an eligible individual when the account was established or who succeeded the former designated beneficiary in that capacity.
- To be an eligible individual, he or she must:
 - Be eligible for Supplemental Security Income (SSI) based on disability or blindness that began before age 26;
 - Be 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
 - Certify (or an agent under a power of attorney or, if none, a parent or guardian must certify) that the individual:
 - has a medically determinable impairment meeting statutorily specified criteria or is blind; and,
 - the disability or blindness occurred before age 26.
- **NOTE:** Do not draw an inference regarding disability under the Social Security Act from a disability certification.



Distributions

- A distribution is any payment from an ABLE account. (A program-to-program transfer is not a distribution.)
- The designated beneficiary or person with signature authority determines when a distribution is made.
- Distributions (other than rollovers and returns of contributions) may be made only to or for the benefit of the designated beneficiary.



Member of the Family

- A member of the designated beneficiary's family means a sibling whether by blood or adoption, and includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.



Person with Signature Authority

A person with signature authority can establish and administer an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account.

- Signature authority is not the equivalent of ownership. The person with signature authority must be the designated beneficiary's agent acting under power of attorney, or if none, a parent or legal guardian of the designated beneficiary.
- For SSI purposes, always consider the designated beneficiary to be the owner of the ABLE account, regardless of whether someone else has signature authority over it.

Program to Program Transfer

- A program-to-program transfer means the direct transfer of:
 - The entire balance of an ABLE account into an ABLE account of the same designated beneficiary in which the first ABLE account is closed upon the transfer of the funds; or
 - Part or all of the balance to an ABLE account of an eligible individual who is a **member of the family** of the designated beneficiary.



Qualified Disability Expenses

Qualified disability expenses (QDEs) 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, an expense for:

- 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 ABLER account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses.

Housing Expenses

Housing expenses for purposes of an ABLÉ account are similar to household costs for in-kind support and maintenance purposes, with the exception of food.

Housing expenses include expenses for:

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

Rollover

A rollover is the contribution to an ABLE account of a designated beneficiary (or a family member of the designated beneficiary), of all or a portion of an amount withdrawn from the designated beneficiary's ABLE account, provided that the contribution is made within 60 days of the date of the withdrawal.

In the case of a rollover to the designated beneficiary's ABLE account, no rollover should have been made to an ABLE account of the designated beneficiary within the prior 12 months.

When to Exclude ABLE Account Contributions, Balances, Earnings and Distributions



Exclude Contributions as Income

- A payment made into an ABLE account constitutes a contribution. Consider the contribution made by the person to whom the funds belong or are due. Exclude contributions to an ABLE account from the income of the designated beneficiary. Excluded contributions include rollovers from a member of the family's ABLE account to an SSI applicant, recipient, or deemor's ABLE account.
- **NOTE:** 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 as it normally would be. Income received by the designated beneficiary and then deposited into his or her ABLE account is income to the designated beneficiary.

First Party Contributions

- A contribution made by the designated beneficiary into his or her ABLE account is not income to the designated beneficiary. However, income received by the designated beneficiary and deposited into his or her ABLE account is income to the designated beneficiary. That is, the income is income in the first instance, but the contribution is not income.
 - An individual cannot use direct deposit to avoid income counting.
- Examples of payments that might be direct-deposited into an ABLE account, but still are counted as income as they otherwise would be, include:
 - Wages;
 - Benefit payments (Title II, Veterans Administration, pensions, etc.); and
 - Mandatory Support payments (child support or alimony).



Third Party Contributions

- Third party contributions are contributions made by persons other than the designated beneficiary. Further, third party contributions are made with funds that do not otherwise belong, or are not otherwise due, to the designated beneficiary; that is, they are made with the third party's funds. Accordingly, an ABLE contribution by a person other than the designated beneficiary is treated as a completed gift.
- **NOTE:** A transfer of funds from a trust, of which the designated beneficiary is the beneficiary and which is not considered a resource to him or her, to the designated beneficiary's ABLE account generally will be considered a third party contribution for ABLE purposes because the contribution is made by a person or entity other than the designated beneficiary (namely, the trustee) and because the designated beneficiary does not legally own the trust. You may seek guidance from your regional trust lead if you have questions regarding the trust transfer to an ABLE account.



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 earnings an ABLE account receives from the income of the designated beneficiary.



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.



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.
- Do not count distributions from an ABLE account as income of the designated beneficiary, regardless of whether the distributions are for a QDE not related to housing, for a housing expense, or for a non-qualified expense.



Exclude Retained Distributions for QDE Not Related to Housing

- Exclude a distribution for a QDE not related to housing from the designated beneficiary's countable resources 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:** Identify excludable funds commingled with non-excludable funds. See SI 01130.700A); and
 - The individual intends to use the distribution for a QDE not related to housing.
- **NOTE:** Apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account.



When to Count ABLER Account Balances and Distributions



Count ABLE Account Balance Amounts over \$100,000

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



Rule for Indefinite Benefit Suspension

- 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, we will place the recipient into a special SSI suspension during which:
 - We suspend the recipient's SSI benefits without time limit (as long as he or she remains otherwise eligible);
 - The recipient is SSI eligible for Medical Assistance (Medicaid) purposes; and
 - The individual's eligibility does not terminate after 12 continuous months of suspension.
- Reinstate the recipient's regular SSI eligibility for all months 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.



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 make the individual ineligible for SSI due to excess resources.

Ineligible 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.



Count Retained Distributions for Housing Expenses or Expenses that are Not QDEs as a Resource

- Count a distribution for a housing expense or for an expense that is not a QDE as a resource, if the designated beneficiary retains the distribution into the month following the month of receipt.
- If the designated 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 items purchased with funds from an ABLE account.

Count Previously Excluded Distributions Used for a Non-Qualified Purpose or Housing Expense

- Count the amount of funds used for a non-qualified expense or housing expense as a resource as of the first moment of the month in which the funds were spent if the designated beneficiary uses the distribution for a non-qualified purpose or a housing expense.

How To Verify, Document, And Record ABLE Account Balances



Obtain Evidence of the ABLE Account

When an applicant, recipient, or deemor alleges being the designated beneficiary of an ABLE account, SSA will obtain evidence and enter the following information:

- Select yes to the ABLE account question;
- Select the program State where the ABLE account was established or indicate unknown;
- Enter the unique account number assigned by the State or indicate Unknown;
- Enter the account opened date or indicate unknown;
- If the account is closed, input the account closed date or indicate unknown, or leave the field blank;
- Enter the name of the person with signature authority (if different from the designated beneficiary); and
- Enter the account balance information in the values field.

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

Beginning October 1, 2017, States report the first-of-the-month account balances and the prior month's distribution information for all ABLE accounts in their program to us. Not all States began reporting in October 2017, but eventually all State ABLE programs will report. If you become aware of a new ABLE account via the monthly data exchange, see SI 01130.740E.4. in this section.

Document the Evidence

- Fax the evidence into the certified electronic folder (CEF) or Non-disability Repository for Evidentiary Documents (NDRED). If you contact the ABLÉ program directly, document the information you received on a Report of Contact (DROC) in the Supplemental Security Income (SSI) claims system or on an SSA-5002 (Report of Contact) in paper claims.



Record the account on the SSI claim system “Achieving a Better Life Experience (RABL)” page

- SSA will record the account information and balance on the SSI claim system Achieving a Better Life Experience (RABL) page. For instructions to complete RABL, see MS INTRANETSSI 013.038.
- **NOTE:** The designated beneficiary of an ABLE account is always the owner of the account for SSI purposes. They will review ABLE account balances during redeterminations and when potential ineligibility exists due to the ABLE account balance.

Determine Status of Mismatched Account Data

State ABLE programs notify SSA through a monthly data exchange when individuals establish new accounts. The pending Achieving a Better Life Experience (RAPN) page displays new account information. The following information will be included:

- Account Owner Name;
- Account Owner SSN;
- Account Owner Birth date;
- Program State;
- Account Number;
- Account Opened Date;
- Account Closed Date;
- Name of Signature Authority;
- Balance Month/Year; and
- Balance Amount.



How To Verify, Document, And Record ABLE Account Distributions



When to Develop

- SSA will verify a distribution only when an applicant, recipient, or deemor alleges retaining, or other evidence indicates that he or she retained, all or part of the distribution into months following the month of receipt.
- The distribution is material only to determine whether the applicant, recipient, or deemor's countable resources exceed the resource limit, since distributions do not count as income.

Verify a Distribution

SSA will obtain evidence that shows distribution amount(s), distribution date(s), and the distribution recipient(s) (for example, the designated beneficiary paid the distribution directly to a vendor). They will obtain and accept the applicant, recipient, or deemor's allegation that he or she used or intends to use the distribution for:

- a QDE not related to housing;
- a housing expense; or
- an expense that is not a QDE.



Exclude Retained Distributions for QDEs Not Related to Housing

- SSA will exclude any retained distribution, or part of a distribution, for a QDE not related to housing, from the designated beneficiary's countable resources



Count Retained Distributions for Housing Expenses and Expenses That Are Not QDEs

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



Count Previously Excluded Distributions Used for a Non-Qualified Purpose or Housing Expense

- SSA will count the amount of funds used for a non-qualified expense or housing expense as a resource as of the first moment of the month in which the funds were spent if the designated beneficiary uses the distribution



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. SSA will exclude from resources a distribution retained for a QDE not related to housing, per SI 01 130.740C.5.a. in this section. They will document ABLE account distributions on the appropriate SSI claim system resources page (e.g., cash, financial institution account).
- **NOTE:** Distribution information obtained from the State by data exchange is in the SSI claim system, but you cannot access it until additional system enhancements are completed.

Handling And Recording ABLE Prepaid Debit Card Information



Handling ABLE Prepaid Debit Cards

- Some ABLE programs provide designated beneficiaries with a prepaid debit card, which may be used to control the issuance of distributions and provide designated beneficiaries with convenient access to their ABLE funds.
- SSA will receive information about distributions via a data exchange that indicates when monies are loaded onto the ABLE prepaid debit card.



Handling ABLE Debit Cards in the SSI Claim System

- If a designated beneficiary has an ABLE prepaid debit card, SSA will record the ABLE prepaid debit card on the Other Resource (ROTH) page in SSI claim system. SSA will need the program State and account number.
- Monies distributed onto an ABLE prepaid debit card are considered a qualified distribution unless they determine otherwise. SSA will enter the intended use of the funds in the Description field. Enter the alleged Value of the ABLE prepaid debit card. Enter the entire alleged value as an excluded amount and as qualified distributions when funds are added onto the debit card. Use the new exclusion reason of “Qualified Disability Expenses” on the ROTH page to exclude monies on a prepaid ABLE debit card.

ABLE Case Summary Series



Purpose of the Series

Help current and future ABLÉ account holders, their families, and service providers better understand:

- How ABLÉ account can complement selected public benefits and programs and/or use of special needs trusts.
- How the account and distributions will affect eligibility for SSI, Medicaid, and other federally-sponsored benefits.
- Using a range of case scenarios, show how individuals can use ABLÉ account and a range of other benefits to maximize independence and financial stability.

The ABLÉ Case Summaries will be released every other month throughout 2018.

Excerpts from Summary # 1

The Case of Wanda

Age 16, intellectual disability, in special education classes.

- Long-term goal work goal of supported employment.
- Lost SSI at age 11 due to parental income.

ABLE account established in October 2016

- As of February 2018, \$16,500 in account.
- Parent to put \$3,000 to \$4,000 per year in account.

Wanda will once again be eligible for SSI at age 18

- SSI will no longer count parental income.

Questions from Wanda and Her Parents

Must ABLE account be reduced below \$2,000 to be SSI eligible?

- No. Up to \$100,000 in ABLE account is an exempt resource.

Can ABLE account funds be used to pay for future apartment?

- Yes. Housing costs are a “qualified disability expense.”

If ABLE account pays for rent, will SSI payment be reduced?

- No. SSI program will not consider ABLE account distribution for rent as “in-kind support and maintenance.”
- SSI payment will remain the same.



Questions from Wanda and Her Parents

Can Wanda deposit part of summer wages into ABLER account?

- Yes. She can deposit her own earnings into account.

How will her deposit of earnings affect her SSI payment amount?

- Assume she earns \$600 per month and wants to deposit all of it into ABLER account.
- Ordinarily, the beneficiary's own income will count toward her SSI payment subject to any income exclusion rules.
- Wanda will benefit from SSI's "Student Earned Income Exclusion," allowing up to \$7,350 per month to not count.
- Her SSI payment will remain the same despite her earnings.

The ABLE National Resource Center



NATIONAL RESOURCE CENTER
ACHIEVING A BETTER LIFE EXPERIENCE ACT

ablenrc.org

The ABLER National Resource Center

The **ABLE National Resource Center** (ANRC) is a collaborative whose supporters share the goal of accelerating the design and availability of ABLER accounts for the benefit of individuals with disabilities and their families. We bring together the investment, support and resources of the country's largest and most influential national disability organizations .

www.ablenrc.org

Question and Answers

Contact us!

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