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NATIONAL RESOURCE CENTER
ACHIEVING A BETTER LIFE EXPERIENCE ACT



“Understanding ABLE Program Disclosure Documents”

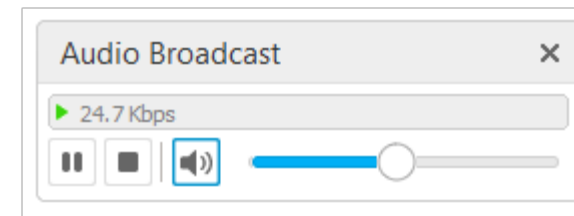
Presented by

**Chris Rodriguez, Director, ABLE National Resource
Center**



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Presenters and Guests

- Presenter
 - Christopher J. Rodriguez, Director, ABLE National Resource Center
 - Saliha Olgun, Assistant General Counsel, Municipal Securities Rulemaking Board(MSRB)
- Guest Panelists
 - Michael Morris, Executive Director, National Disability Institute
 - Juliana Crist, Director, Ohio STABLE Accounts
 - Daniel Elkus, ABLE Account Owner

Agenda

- ABLE History and Basics
- ABLE Disclosure Documents
 - What is a disclosure document and why are they important?
 - Where can I find a State's ABLE Program Disclosure document?
 - What type of information should I be looking for when reading an ABLE Program Disclosure document?
 - How might one ABLE Program Disclosure document be different from another, and why?
- Introduction to the MSRB
 - What is the MSRB
 - What is the MSRB's Role Related to ABLE
- Questions and Answers

History of 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, 32 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)*

Who is eligible to be an ABLER account beneficiary?

To be eligible, individuals must meet two requirements:

- 1) Age requirement: must be disabled before age 26; AND
 - 2) Severity of disability:
 - Have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits (Title XVI or Title II of the Social Security Act) and are receiving those benefits,
- OR**
- Submit a “disability certification” assuring that the individual holds documentation of a physician’s diagnosis and signature, and confirming that the individual meets the functional disability criteria in the ABLER Act (related to the severity of disability described in Title XVI or Title II of the Social Security Act).

What may funds from an ABLE account be used for?

- Distributions from an ABLE account may be made for “**qualified disability expenses**”.
- “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.
- 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 .

Qualified disability expenses may include the following:

- Education, housing, transportation, employment training and support, assistive technology, personal support services, health, prevention & wellness, financial management and administrative services, legal fees, funeral and burial expenses and basic living expenses
- Distributions for non-qualified expenditures will be subject to tax penalties and consequences and may affect eligibility for federal means-tested benefits.

How do ABLÉ account assets impact eligibility for federal benefits?

ABLE assets will be disregarded or receive favorable treatment when determining eligibility for *most* federal means -tested benefits:

- ***Supplemental Security Income (SSI)***: For SSI, only the first \$100,000 in ABLÉ account assets will be disregarded.
 - SSI payments (monthly cash benefit) will be ***suspended*** (not terminated) if the beneficiary's account balance exceeds \$100,000, but SSI benefits (eligibility) will not be terminated. *Funds above \$100,000 will be treated as resources.*

Impact on Federal Benefits (cont.)

- **Medicaid:** ABLER assets are disregarded in determining Medicaid eligibility
 - Medicaid benefits are NOT suspended if the ABLER account balance exceeds \$100,000 (that is only applicable to the SSI monthly cash benefit)
 - **Medicaid Payback:** Any assets remaining in the ABLER account when a beneficiary dies, subject to outstanding qualified disability expenses, can be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLER account (the state would have to file a claim for those funds)

ABLE programs that have launched

- **32 states (plus DC) and counting!**

- ***Nationwide programs:*** Alabama, Alaska, Colorado, Kansas, Indiana, Illinois, Iowa, Massachusetts, Michigan, Maryland, Minnesota, Montana, Nebraska, Nevada, North Carolina, Ohio, Oregon (nationwide option for nonresidents), Rhode Island, Pennsylvania, Tennessee, Virginia, Washington, D.C.
- ***In-state programs*** (limited to in -state residents only): Georgia, Florida, Kentucky, Louisiana, Missouri, New York, Oregon (option for state residents), Vermont, New Mexico, West Virginia, South Carolina

Understanding ABLE Disclosure Documents



What is a Disclosure Document and why are They Important?

What is a disclosure document and why are they important?

- A disclosure document shares information about each individual state ABLE Program.
- It helps ABLE account owners and potential account owners understand the purpose of each state ABLE program, the program's eligibility requirements, their benefits, information about investment choices, plan terms and conditions, costs, risks, and important legal information.
- Disclosure Documents are important so account owners understand eligibility, benefits, costs and risks associated with opening an ABLE account and using account funds.
- Information in these documents can help ABLE owners choose the program which best helps them achieve their goals, maximize Program benefits and avoid penalties & consequences such as loss of government benefits or increased tax liability for improperly using funds.

What types of information should I expect in an ABLÉ disclosure document?



What types of information should I expect in an ABLÉ disclosure document?

○ Readers can find:

- introductory information about the structure and purpose of ABLÉ accounts in the disclosure document.
- information outlining eligibility requirements for eligible SSA beneficiaries and those seeking eligibility via a Disability Certification signed by a doctor is in a disclosure document.
- how to open an account, the range of investment options available, and federal and, state tax benefits that ABLÉ provides.
- information about how and when to contribute to an ABLÉ account, and annual and lifetime contribution limits are found in the ABLÉ disclosure document.
- explanations related to qualified and non-qualified withdrawals from an account and the penalties for misuse, rollovers from one state ABLÉ Program to another state ABLÉ Program, sibling to sibling transfers, rollovers from a 529 college savings program to a 529A ABLÉ account and state-specific account features like a debit card option.
- how the account effects eligibility for federal and state means-tested benefits such as Social Security and Medicaid and the Medicaid recovery provision.

What types of information should I expect in an ABLE disclosure document? (Continued)

- These documents may also address the range of investment options offered, and show past performance, and costs and restrictions on switching investments.
- Also, ABL disclosure documents outline risks associated with an ABL account such as contributions possible impact on benefits eligibility, changes in law and investment risk- including the loss of dollars invested.
- These disclosures also provide information about tax treatment of qualified and non-qualified withdrawals, possible gift tax, generation-skipping tax (GST), and estate tax liability and state-specific tax treatment.
- Additionally, they discuss reporting ABL account information, legal disclosures, further investment information, a participation agreement and state-specific disclosures.
- Also, you can expect to find tables showing the components of each of the different investment options and the associated fees. Individuals can choose to allocate portions of their account among the different investment options.

Where can I find an ABLÉ disclosure document?



Where can I find a disclosure document?

A disclosure document is typically located on the website of the state ABLE Program on the bottom of the homepage by clicking on the *Plan Disclosures* or *Plan Disclosure Document link*.

Each program may offer different features, fees, investment options and eligibility requirements so it is important to read this document carefully before choosing an ABLE program.

If you are having difficulty finding a State's ABLE Disclosure document, you can refer to the ABLE National Resource Center website. Each state page does include a link to that program's document.

Additionally, MSRB may be able to provide State ABLE disclosure documents through their EMMA Platform.

What type of information should I be looking for when reading an ABLE Program's Disclosure document?



What are the top 10 things to look for in an ABLE disclosure document?

1. Eligibility standards
2. State income tax credits or deductions
3. Annual and aggregate contribution limits
4. How an ABLE account may interact with Federal & state benefits (“the SSI \$100,000 resource cap”)
5. Account fees and whether they vary by state of residency
6. Investment options and fees and whether they vary by state
7. If the state ABLE program has a checking account or debit card option & any card fees
8. Information about how ABLE funds can be used to pay for Qualified Disability Expenses (QDE) and the tax treatment of Qualified Disability Expenses and Non-Qualified Expenses.
9. Information about account rollovers
10. Information about the applicability of the Medicaid Recovery Provision

Eligibility Standards in an ABLER Disclosure document

- **SSA Benefits Eligibility:** There are two pathways to become an eligible ABLER account owner. Either, an individual must have a disability which occurred before their 26th birthday and receive SSA benefits OR
- **Disability Certification Eligibility:** An individual must have a disability which occurred before their 26th birthday and have a disability certification by the individual stating that the individual has a medically determinable impairment which causes marked and severe functional limitations and is expected to either: be permanent by lasting for 12 months or longer or result in death, or the individual is blind. The Disability Certification must include the individual's diagnosis and show how it impairs their functional limitations as well as be signed by a licensed physician under penalty of perjury.
- **State Residency-** Some state ABLER programs only allow state residents to open an ABLER account in their program, while others permit nationwide enrollment.

State Income Tax credits or deductions

- **State Tax deductions or credits:** Some states provide incentives for individuals to contribute to ABLE accounts via a state tax credit or deduction for contributions to ABLE accounts. Whether a credit or deduction is offered and the amount of a credit or deduction varies by state.
- **Federal or State Tax Treatment:** On the Federal and State levels, any investment gain is not taxed as income if the funds are used for Qualified Disability Expenses. For more information about state tax incentives and tax treatment, please check the state Disclosure document.
- **Tax Treatment of Non-Qualified Distributions:** However, funds that are used for non-qualified expenses are subject to a 10% penalty in addition to Federal and State income tax (if any).

How an ABLE account may interact with Federal & State Benefits (“the \$100,000 resource cap”)

- **Asset Test:** The disclosure document addresses how ABLE Accounts may impact eligibility for federally means tested benefits. Individuals may have up to \$100,000 in an ABLE account without any funds in an ABLE account being counted for the resource test for the monthly cash benefit associated with the SSI program.
 - Funds in excess of \$100,000 are a countable resource for Social Security, but not Medicaid.
 - Funds in an ABLE account are not countable for *most* other Federal means-tested public benefits.
- **Income Test:** It is important to note that while funds contributed to, and held in, an ABLE account are disregarded with respect to various *asset tests*, they may be counted in terms of earned income if part of the beneficiaries earning or compensation as a result of employment (even when deposited in their ABLE account). ABLE does not help people get around eligibility criteria related to Substantial Gainful Activity (SGA).



Account fees & do they vary by state residency?

- Some ABLE programs provide lower fees to residents of certain states.
 - It is important to check the fees listed in the Disclosure Document as they may vary from one program to another.
 - This document outlines the fees to open, close, maintain and manage an ABLE account.

If The State ABLE Program Has a Checking Account or Debit Card option & Any Card Fees

- The Disclosure document will also show whether an ABLE program offers a debit card option that can be used to purchase items and whether there are any fees associated with the card.

Information About How ABLE Funds Can be Used to Pay for Qualified Disability Expenses (QDE) and The Tax Treatment of QDE and Non-Qualified Expenses

- **Qualified Disability Expenses:** The disclosure document will explain what Qualified Disability Expenses are and consequences for using an ABLE account for non-qualified expenses.
- **QDE Categories:** Qualified Disability Expenses (QDE) are expenses which help to “improve or maintain the health, independence, or quality of life” of the account owner with a disability because of their disability and are for their benefit.
 - QDE include but are not limited to: 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.
 - The definition of QDE was written to be broadly construed to include basic living expenses

Information About Account Rollovers

- **Qualified Rollovers:** The Disclosure Document addresses qualified rollovers from one state ABLE program to another, from one sibling to another, and rollovers from a 529 college savings plan to a 529A ABLE account.
- **Non-Qualified Rollovers:** The disclosure document also covers the consequences of non-qualified deposits and withdrawals of funds.

Information About the Applicability of the Medicaid Recovery Provision

- **What Is Medicaid Recovery?** The Disclosure document addresses the status of the Medicaid recovery provision for a particular state ABLÉ program.
 - Under Medicaid Recovery, a state Medicaid Program has the option to file a claim against any funds remaining in an ABLÉ account after the beneficiary's death following the payment of all Qualified Disability Expenses, for Medicaid services provided from the date the account opened until the beneficiary's death.
 - Any funds remaining in the account will transfer to the Beneficiary's estate.
- **Legislative Status of Medicaid Recovery** The state is not required to file a claim and some states have specifically exempted ABLÉ from Medicaid Recovery.
 - To determine if your state has done so, please consult the state Medicaid Program.

Who should I contact if I have questions about a particular disclosure document?

- If you have questions about a specific disclosure document, please contact the individual state ABLE Program.
- Toll-free phone, email and postal contact information for each Program is provided in its disclosure document.



Municipal Securities Rulemaking Board

ABLE Programs Municipal Fund Securities MSRB Rules

Saliha Olgun, Assistant General Counsel

ABLE National Resource Center Webinar
February 22, 2018

Overview of Presentation

- What is the MSRB?
- What is the MSRB's role in relation to ABLE programs?

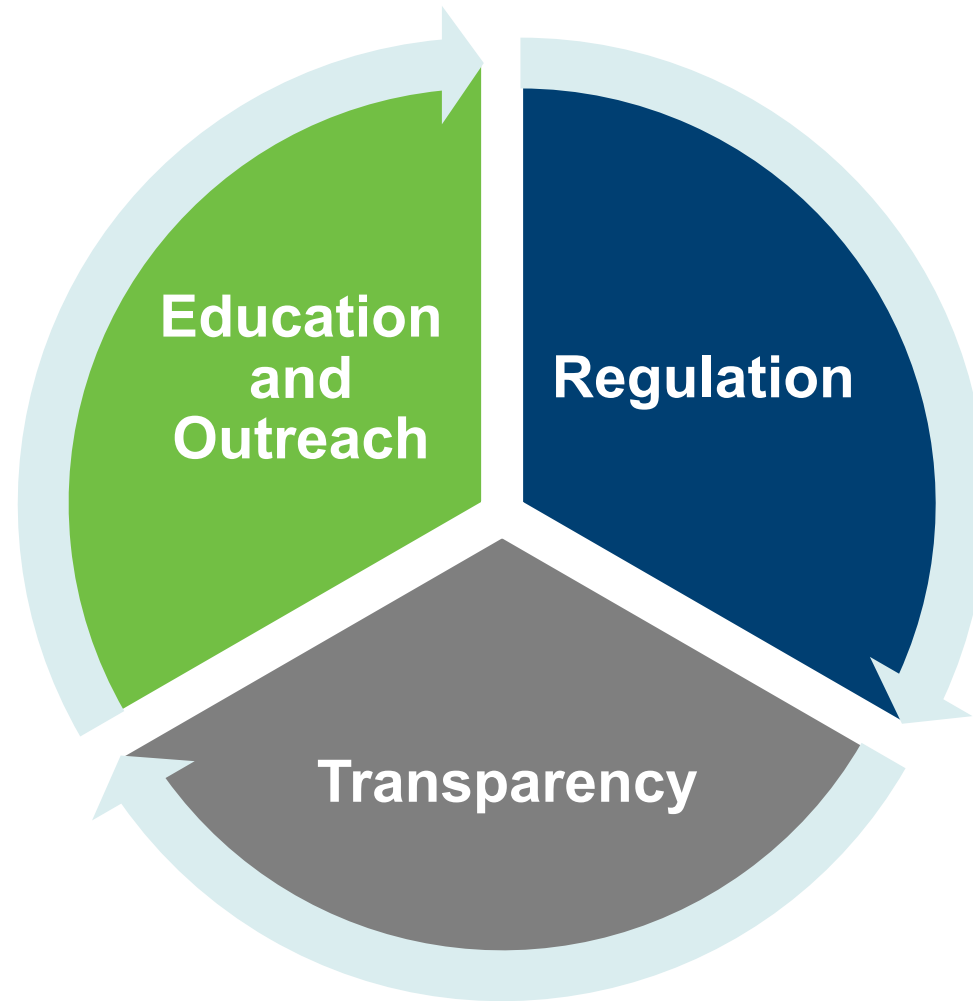


Municipal Securities Rulemaking Board

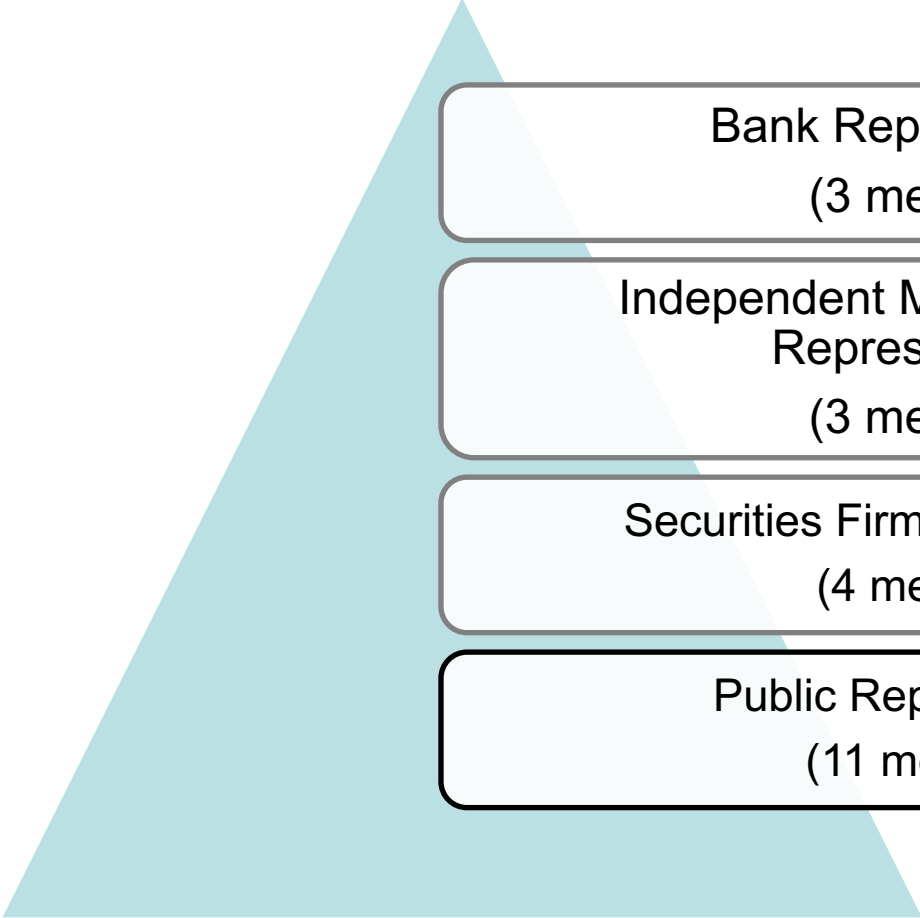
About the MSRB

About the MSRB

- Created by Congress in 1975
- Mission to promote a fair, transparent and efficient municipal market
- Protects investors, municipal entities and the public interest



About the MSRB - Governance



Bank Representatives
(3 members)

Independent Municipal Advisor
Representatives
(3 members)

Securities Firm Representatives
(4 members)

Public Representatives
(11 members)

About the MSRB – Activities

- **MSRB Rules**
 - For municipal securities dealers and municipal advisors
 - Not for issuers
- **EMMA®**
 - Municipal bond disclosure documents
 - 529 savings plans and ABLE program disclosure documents
 - Trade data
- **Education Center**
 - Objective, multimedia educational resources about municipal market



Regulation



Education



Municipal Securities Rulemaking Board

MSRB Role Related to ABLE Programs

About the MSRB – ABLÉ Programs

- Interests in ABLÉ programs are generally only offered by direct purchase from the issuer
- The Securities and Exchange Commission (SEC) views those interests as being sold in a “primary offering” as defined in its Rule 15c2-12 regarding disclosure
- Dealers acting as underwriters in connection with that primary offering (i.e., sale of interests in ABLÉ programs) may be effecting transactions in municipal fund securities and subject to requirements of both SEC and MSRB rules

About the MSRB – ABLÉ Programs *(continued)*

- Interests in ABLÉ programs may be considered municipal securities under the federal securities laws, and may be considered municipal fund securities under MSRB rules
- MSRB rules apply to municipal securities dealers that act in the capacity of underwriters of ABLÉ programs, dealers that sell interests in ABLÉ programs and municipal advisors to these programs
- The MSRB also regulates municipal advisors that provide municipal advisory services to state and local governments, and other municipal entities, including ABLÉ programs

MSRB and ABLÉ Programs *(continued)*

- MSRB's jurisdiction is limited to the activities of municipal securities dealers and municipal advisors and does not extend to an issuer of an ABLÉ program:
 - Interests in ABLÉ programs that are sold by state officials or employees without a dealer are not subject to MSRB rules
 - Although exempt from registration under federal securities laws, interests in ABLÉ programs are subject to the anti-fraud provisions of those laws

MSRB and ABLÉ Programs (*continued*)

- An ABLÉ program manager or its affiliate or contractor, depending on the facts or circumstances, could be an underwriter
- An underwriter, as defined under SEC Rule 15c2-12(f)(8) pursuant to the Securities Exchange Act of 1934, in part, includes any person who:
 - “offers or sells for an issuer of municipal securities in connection with the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.”

Certain MSRB Rules Applicable to Municipal Securities Dealers for ABLÉ Programs

MSRB Rule G-7:	Information Concerning Associated Persons
MSRB Rule G-17:	Conduct of Municipal Securities and Municipal Advisory Activities
MSRB Rule G-19:	Suitability of Recommendations and Transactions
MSRB Rule G-20:	Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance
MSRB Rule G-21:	Advertising
MSRB Rule G-32:	Disclosures in Connection with Primary Offerings

Certain MSRB Rules Applicable to Municipal Advisors to ABLÉ Programs *(continued)*

MSRB Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business

MSRB Rule G-38: Solicitation of Municipal Securities Business

MSRB Rule G-45: Reporting of Information on Municipal Fund Securities

MSRB Rule G-42: Duties of Non-Solicitor Municipal Advisors

MSRB Rule G-44: Supervisory and Compliance Obligations of Municipal Advisors

- All interpretive guidance under MSRB rules applicable to the sale of interests in 529 savings plans is also applicable to the sale of interests in ABLÉ programs, as relevant

The EMMA[®] Website

- **The MSRB's Electronic Municipal Market Access (EMMA[®]) website**

- Official repository for trade data and disclosure information on virtually all municipal bonds
- Provides free public access to municipal market information, including ABLÉ program disclosure booklets

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Electronic Municipal Market Access
A service of the MSRB

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Home > 529 College Savings Plans and ABLÉ Programs

529 College Savings Plans and ABLÉ Programs

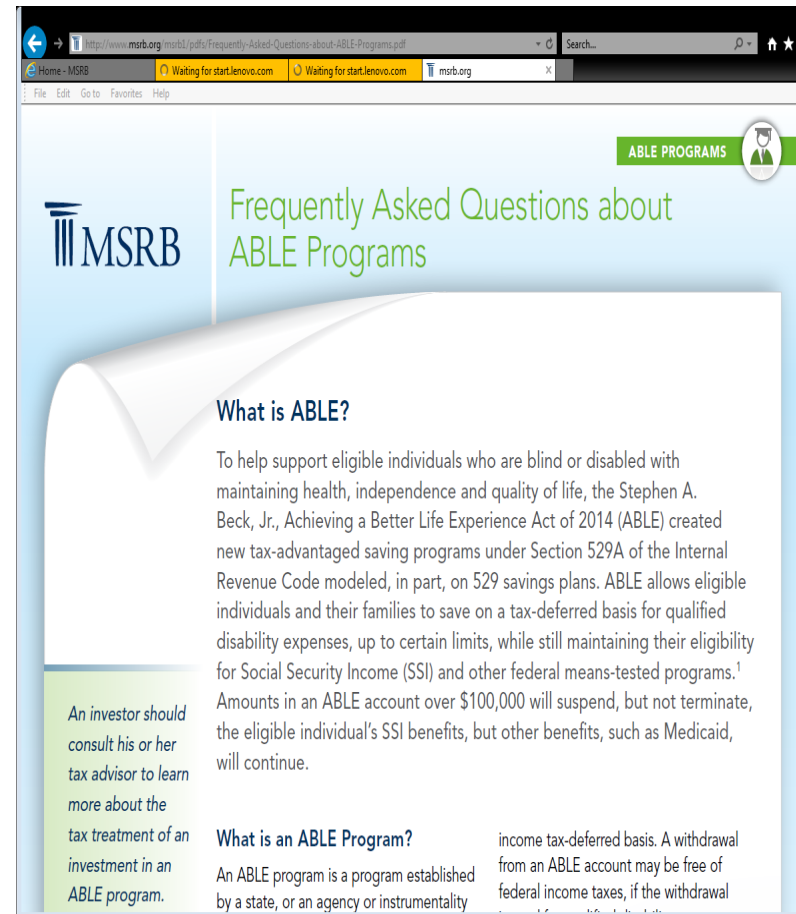
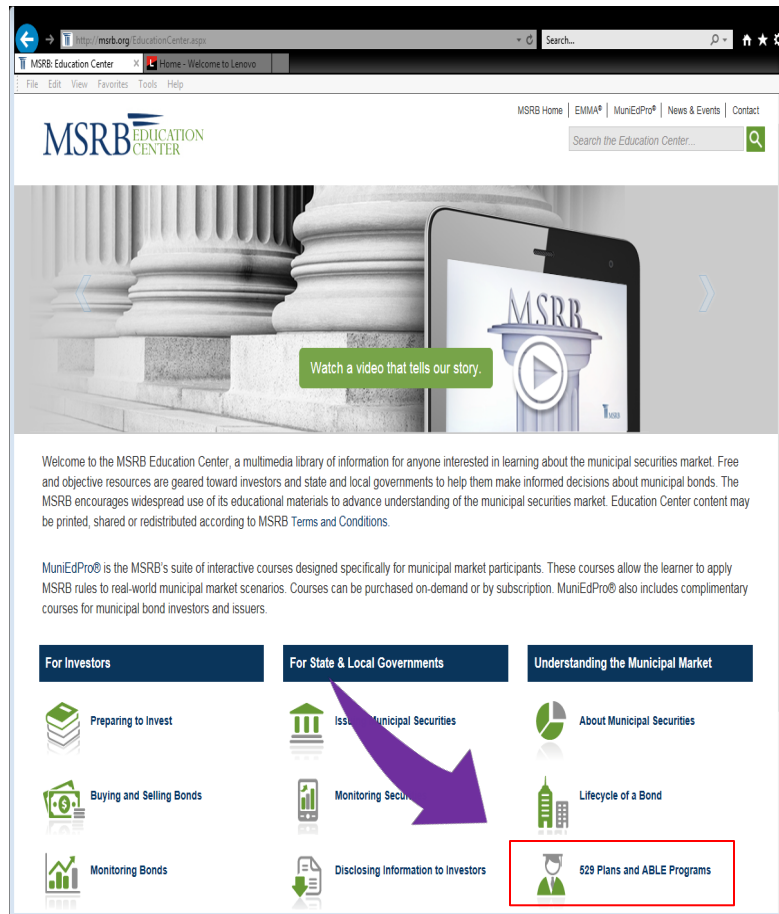
529 college savings plans and Achieving a Better Life Experience (ABLÉ) programs are established by states to provide opportunities for federally tax-advantaged savings. 529 college savings plans help encourage families and others to save for a child's future higher education expenses. ABLÉ programs help individuals with disabilities save for qualified disability expenses.

Click a state in the interactive map to find available information submitted to the MSRB about various plans or programs offered in that state.

Evaluate a Specific Plan or Program
Information on EMMA about 529 college savings plans and ABLÉ programs describes their essential terms, including investment options, fees and expenses, and any state tax benefits.
[Learn more](#)

emma.msrb.org

Visit the MSRB Education Center



MSRB and ABLA Programs – Investor Protections and Complaints

Annually, dealers must provide in writing to their customers certain information, including notice as to the availability of an investor brochure

The brochure provides information about the protections provided to investors under MSRB rules and also provides information about how to file a complaint

MSRB Investor Brochure:

<http://msrb.org/msrb1/pdfs/MSRB-Investor-Brochure.pdf>

Complaints about a financial professional relating to an ABLA account may be directed to the MSRB:

–Call or email MSRB at 202-838-1330 or complaints@msrb.org

–Be specific about the nature of the complaint and the individual and/or firm involved, and be sure to provide your contact information

Contact the MSRB

MSRB Online

msrb.org

emma.msrb.org

MSRB Support

202-838-1330

Hours of Operation:

7:30 a.m. - 6:30 p.m. ET

MSRBsupport@msrb.org

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Question and Answers



The ABLERational Resource Center

The ABLERational Resource Center (ANRC) is a collaborative whose supporters share the goal of accelerating the design and availability of ABLERaccounts 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

Contact us!

Christopher J. Rodriguez

Director

ABLE National Resource Center

crodriguez@ndi-inc.org