WEBINAR LIVE CAPTIONING TRANSCRIPT: ABLE Proposed Regulations – July 14, 2015

>> In bringing their own bill passing them through the legislatures and get them enacted. 27 state haves enacted their own version of the act. The list is there for you but you'll see it's very geographically averse. These states have enacted their able programs are in their fifth discussions. I'm sure many of them have representatives on this call today

So they move very quickly to pass the bills and now they are in the nuts and bolts of actually setting up the program. Most of them have set up the ABLE programs through the state treasures in 529 department bus not all of them have but that seems to be the general structure. Next slide, please. In addition to the 27 that have already passed and been signed there's actually four other states that have already passed through the legislature the major hurtles and there are eight active bills still going through their legislative sessions.

So, you know, we anticipate that these bills, most of them, if not all will also go through to passage and enactment. So, again, you know the key is that states have moved very, very quickly but the ultimate goal for everyone is to establish the ABLE programs and make the accounts available for Bill ‑‑ people with disabilities. We are here to provide guidance and council. We have spoken to NDSS regularly or have had conversations with some of the state treasurers and I invite you to contact us as well if you would like to speak about some of the nuances on how to set up an ABLE program.
>> Heather, thank you. I just will add to what you've said as people are reading along on the slide both states and the district of Columbia where the legislation is still pending. If you live in one of those states if you are in DC you can get involved with your state legislative representative to put that extra bit of pressure onto make sure they pass their bills before their session ends.

And that is in California, Maine, Massachusetts which is revising its legislation, its law that passed before the federal law took place. Michigan, New Jersey, North Carolina, and Pennsylvania. So those are very much alive and then of course there is that much longer list where they have already passed their laws, signed by their governor and they are well into the process of, okay, we need to operationalize the law. We need to put our infrastructure in ‑‑ in place but very active, active sessions of legislatures all across the country and really a tribute to the level of grassroots involvement across multiple disability organizeizations, parents, service provider agencies working together. A lot of disability councils involved as well. So let me go from that.
>> Absolutely and I want to direct people our ‑‑ the NDSS website, we actually have a page devoted to state ABLE, you know, where you can actually get the text of the bills. We post action alerts. Where you can get the latest updates and the URL for that is WWW.NDSS.ORG/state ABLE.
>> Great. Thank you, Heather. Okay, I'm going to quickly turn now to Chris Rodriguez who is going to start the discussion with Stewart and Marty as well on the June 19th is proposed rules for the ABLE Act were published in the federal register and let me turn it to Chris Rodriguez.
>> Thank you. As Michael said on June 19th the IRS and Social Security released a notice of proposed rule making or NPRM regarding the achieving better life experience act. The NPRM, what it does and it's also referred to as the proposed regs or rules. These are going to assist states and program administrators and better understanding the guidelines on how to develop and maintain an ABLE program. They're going to give additional clarification to parts of the law which may benefit from further explanation and/or guidance and they also allow for the 90 day period for the public and this is going to include individuals with disabilities and their families. Disability related advocacy group state administrators and other stakeholders to provide input on the NPRM. So now I want to go into what is in the proposed regs rules. So what we did is we read through the NPRM and divide the sections into seven different areas that we thought were most pertinent to families with disabilities ‑‑ for individuals and their families so this is going to direct our presentation. So number one, establishing an account and signature authority. Number two, eligibility and recertification. Number three, transfers, roll overs, residency requirements, contributions, distributions, six, qualified disability expenses and number seven, community development financial institutions. So establishing the account and signature authority. So the proposed regulations provide that the eligible individual is responsible for establishing the account and that the designate beneficiary is the owner of the account. This is something that was taken from the statute and something that was reiterate ed about a couple months ago through a notice established through the IRS now while those two things remain true there is the opportunity if an eligible individual is unable to establish an ABLE account on his or her behalf the ABLE account may be established by the eligible individual's agent by an attorney or a parent under that individual. So that talk to establishing the account. In addition if the designated beneficiary is not able to exercise signature authority over his or her account or choose to establish an ABLE account but not exercise signature authority the designated beneficiary's agent under power of opportunity they be given signature of authority. This is one of the questions I know we heard a lot from various family members of individuals with disabilities and certainly a concern for advocacy based organizations. So I want to turn it over now to Marty who is going to talk ‑‑ I'm sorry, to Michael, again, who is going to talk a little bit to the eligibility and recertification criteria and the proposed rules.
>> Before we get to that could I just add, you know, there's a reason we put out these proposed regs subject to public comment. We want these regs to be as helpful as they possibly can be and that does mean we need public input. On the issue of who can have signature authority obviously if there are concerns there we want to hear about them in the comments. The reason that it's drafted the way it was is that as you know each disabled person can only have one account. We didn't want it to be a race to the bank to determine who was going to have signature authority over that account and that was our thinking. So we're certainly open to comment and we'd love to hear from people who have different suggestions.
>> Great. Thanks, Katherine. So let's tackle the major components. If your state has created an ABLE account program the obvious question you would ask is am I eligible to open an account. The proposed regulations very much follow the law and we want to bring several of the points and the regulation to your attention. First is eligibility is going to be determined for each taxable year and that determination applies for the entire year. A qualified ABLE program may impose different periodic recertification requirement for different types of disabilities or impairment. And third qualified ABLE program must specify the documentation that must be provided both with the time the ABLE account is established and then subsequent to that in terms of any conditions of recertification to ensure that the designated beneficiary is and continues to be an eligible individual. So when I say a qualified ABLE program just to make sure everyone understands that is the program that the state legislature has passed a law. The law has been signed by the governor. The COMBOV governor following what's in that state statute.

Typically becomes the infrastructure is the state treasurer's office but we have seen in the different state bills that have become law that is not always the case. But when the regs refer to a qualified ABLE program that ABLE program is the one that is responsible for determining the eligibility and for the rules related to recertification of eligibility. And I don't know, Katherine would you add anything.
>> These are state programs and the statute says one of the requirements of a state program is that the designated beneficiary must be an eligible individual. Our thinking in doing the regulations was to facilitate the opening of these accounts with the immediate availability of those funds as qualified disability expenses and a lot of the way we graphed these anticipates a lot of self certification so that the concept was whoever is sitting with that family opening the account can look at those statements and make sure that they on their face appear to be sufficient. And then things can move fairly smoothly from that point on.
>> If we go to the next slide we talk about the loss of qualification as an eligible beneficiary. The proposed regulations provide that if the qualified beneficiary ceases to be an eligible beneficiary what does that mean? That means that there was a change in their status in terms of the nature, type, serverty of disability. It is possible and on disability for ‑‑ depending on the nature and severity changes for some people and others it pretty much is lifelong.

But if there is a change the account will still remain, an ABLE account and the individual will continue to be a designated beneficiary. 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 contribution to that ABLE account are no longer allowed and distributions will not be considered qualified disability expenses. If the individual regains eligibility because that's a possibility too remembering for some people it's more of a dynamic change in conditions for others it's pretty much life long and permanent. But for those in a changing situation they can regain their eligibility and the moratorium will be lifted so new contributions can be Go coming into that account by family members, by anyone frankly.

And, second, people will be able to access that account in terms of dispersement for qualified disability expenses which we'll be talking about in a few minutes. Let's go from here and I'm going to turn it over to Marty as to transfer, roll overs and residency requirements.
>> Okay, thank you, Michael. Now I get to get into some interesting details about these accounts and I'll certainly welcome Katherine having any insights or any additional item to add to this. First of all the proposed regulations call for a qualified program after the designated beneficiary moves to another state. That was a question that many people had and this is ‑‑ an interesting provision and one that I think many people will welcome so that if you move you may be able to retain your account in the state that you left if the state program chooses to do that. Another question that has come up quite a lot is why are whether if you have money in a typical or regular 529 program can that ‑‑ can those dollars or funds be rolled over to an ABLE account and the proposed regulation would indicate that the answer to that is no. That funds that are qualified tuition account or a typical 529 will not be allowed to be rolled over to an ABLE account without bringing up tax consequences and penalties and the reason for that as I understand it is that's just not an authorized expense under the 529 program and the ABLE law did not change that and there's nothing in the regulation to change that. Another point is that a qualified ABLE program is allowed to make program to program transfers to iLou someone to change their qualified ABLE program let's say they're moving from one state to another so you can move your entire account to another state.

Or you can change the designated beneficiary and that's allowed under the law for certain people specifically siblings of the former beneficiary and as long as the transfer is made prior to the death of the transferring account owner. Next slide. The regulations also provide that the ABLE program may only accept cash contributions and those contributions can be in the form of a cash, check, money order, credit card payment or other similar forms of payment. But, for instance, it cannot be property. I mentioned earlier that the accounts can be rollovers from one state to another for instance program to program transfers or from one individual to another if it's a called beneficiary within the family. But except for that total annual contributions to an ABLE account must not exceed the individual gift tax exclusion in effect for that calendar year in which the designated beneficiary's taxable year begins Michael talked about this taxable year and currently that taxable ‑‑ that ‑‑ amount is 14,000 dollars for this year. A qualified ABLE program must also provide adequate safeguards to ensure that total contributions to an ABLE account does ‑‑ do not exceed that state's limit for ‑‑ aggregate contributions under its qualified tuition program. Now the states have different limits. Total limits on their qualified tuition programs and each state program would be responsible for ensuring that the aggregate limit or the total amount whether that's 250,000 dollars 300,000 dollars or whatever that state's limit is that the the ABLE account does not exceed that limit.

That is something different from the annual limit of currently 14,000 dollars a year.
>> It's interesting that that provision is the same in 529 and 529A with regard to the contribution limit and it's couched in both of the same parts of the statute limit. There's a safe harbor that was created that has never been finalized and we use the same safe harbor in these regulations so that what we are suggesting that if the states choose to apply this particular limitation by referring to the account balance never exceeding that state limit you would not be deemed to have violated the statute. That would allow you, for example, if you put in the whole 250,000 and the investment decrease you can put in more under the state harbor, under the technical language of the statute you wouldn't be able to, ever.
>> Okay, that's very helpful. Thank you very much. So on to the next slide. Thank you. Just a few more details. A qualified ABLE program must return contributions that are in excess of the annual gift tax exclusion including net income that's attributable to those excess contributions. And it must return all contributions along with the net income attributable to them for its qualified tuition plan. For anything that it sees the aggregate contribution anything that goes over those two limits along with the income attributable to them will have to be returned and those excess contributions and excess aggregate contributions when they are returned, the ABLE program must notify the designated beneficiary of such return at the time of the return and to avoid penalties the tax must be returned on a first in last out basis. No later than the due date of the beneficiaries tax return for that taxable year and last‑in, first‑out means essentially what it says. If somebody contributed 13,000 dollars and somebody contributes 2,000 well the last contribution in was that 2,000. That's the fist one  ‑‑ first one out that has to go, so it gets returned. So it's the last one in, it's the first one to be kicked out.
>> The way you implement the state programs it's going to be much easier I suspect to prevent the receipt of this.
>> Exactly and I think that's a really important point. We would hope that the state ABLE account programs would be able to set up systems that would be able to detect these contributions perhaps before they are accepted by the program.

So that you don't have to go through that process but if they are accepted that they are refused or returned before they create problems. Particularly for people who are on the SSI program but these are things we need to think through carefully when we consider the comments that we need to submit. And so I will turn it now over to Stewart who will be talking about distributions, qualified expenses and some other details.
>> Thanks. One of the interesting things about these accounts is that the time horizon for distributions may be short or it may be long. In that way I think these accounts differ somewhat from qualified tuition accounts where the horizon might be on the longer end. We anticipate that people will use ABLE accounts in different ways that some people will use these accounts on a more day‑to‑day basis while others may have long‑term savings goals. Next slide, please. So the regulations provide that qualified disability expenses are expenses that relate to the designated beneficiaries blindness or disability or that the benefit of that designated beneficiary maintaining or improving independence or quality of life. That definition is one that looks to the broad spirit of the regulations, look to language in the preamble in the statute which set out a broad purpose for ABLE expenses the term with the quality expenses should not be limb limited to expenses where there is a medical necessity loan or provide no benefits to the other individual. Next slide.

So one of the issues that will have to be resolved is public safeguards to distinguish between distribution used for the payment of qualified disability expenses and other distributions. A qualified ABLE program must permit the identification of amounts distributed to housing expenses as that term is defined for purposes of the supplemental security program of SSA. I believe that I am going to now turn this over to Michael.
>> Thanks, Stewart. I must say I'm surprised by an interesting development in these proposed rules was the bringing into a context of the ABLE program a possible role for what are called community development financial institutions or CDFIs. Many of you who are in the disability community may not be very familiar with CDFIs, community development financial institutions take many forms. There are some I believe over 900 CDFIs across the country. Some are very geographically anchored. Some are focused on a particular type of people. For example there's a disability opportunities fund which is nationwide in scope. There's a CDFI for native Americans which is nationwide and focused on triable reservations across the country.

I believe there's a CDFI that's focused just on women. But what's interesting here is the mention in the regulations that a concern that states are going to find the administrative requirements in their management of ABLE programs to be administratively burdensome and a possible solution and one that the proposed regulations offices is to allow a qualified ABLE program. That's the program set up by the state to contract with one or more CDFIs that commonly served individuals with disabilities and their families to provide one or more of the required services. And what the regs talk about is some of the rolls the CDFI could play. Those include the roll for applying for the screening and verification of disability.

The certification of distributions. Possible development or utilization of debit or prepaid cards to facilitate distributions. And other matters that may relate to data collection and reporting. One of the things to know about CDFIs is they have a annual appropriation that flows to the treasury department and what's called the CDFI fund. This was established back in 1994 to promote community development and economically distressed communities through investments in CDFIs across the country so it is possible in the future, as CDFIs, you have to be a certified CDFI by treasury could be applied for what is called the technical assistance funds which could be used expressly for this purpose. Working with one state or more than one state in helping meet some of these administrative requirements. This is a new development this is one that is now resulting in some new discussions and is one of the ways to look at, well, how is the state going to handle some of the requirements that are expressly put out within the regulations? So wanted to share that with you. Now here's some ‑‑ the next slide is really very, very important everything that we shared with you so far which is part of the proposed rules that are being made that came out in federal register of June 19th sets a number of opportunities for anyone. Any potential relevant stakeholder that could be a government agency, that could be a governor's office, that could be any private citizen, a person with a disability, a parent, a family member, a disability nonprofit, a CDFI, literally anyone, has the opportunity to submit public comment to treasury by September 21st, 2015. The notice of proposed rule making can be found including instruction on how to submit public comment and we have for you the URL taking you to the pages in the federal register. I will tell you from someone who has had much experience over the years in submitting public comment to proposed rule making, across different federal agencies. I would make a couple of suggestion to you. The first is be specific. Provide, if you can, if there is a concern regarding what you think is perhaps confusing language or needs further clarification or if you have suggestions in terms of even further guidance that might be issued by treasury, be very specific. Site to the specific section in the regulation, site what you feel the issue or challenge is and then propose a solution. A solution can be specific language, a solution can be sort of your concept or your framework to help treasury and the IRS think about what it is that might respond to the concerns that you have. They're also separate from the public comment period, there is going to be a public hearing here in Washington, D.C. on October 14th at 10 a.m. I believe although I don't have that note in front of me I believe that's going to be at the IRS building. And I'm sure as we get closer to October 14th there probably will be some additional information perhaps coming out.
>> Probably not. I mean, what happens is you have to submit your written comments by the due date in the proposed regulation if you want to speak. And then once the ‑‑ that date has passed, you'll be able to get at the hearing a list of who is scheduled.
>> Who is scheduled to speak. Typically in terms of these type of public hearings about proposed rules you're not going to get a lot of time. Usually there's going to be a great demand because of how many interested parties there are here. And how these regs will affect the implementation of qualified ABLE programs by state. But that is not a reason to be discouraged or not participate in the process. I think it's a great opportunity and perhaps my last point about this is it is really important not just to express your concern. There are some points in these regulations which we think are outstanding and deserve further affirmation in written comment to treasury. You never know what position you have which you think is wonderful about a piece of regulations that others may not like and so if you remain silent while others just criticize a particular component that's confounding enough for the regulation writers. I will share just one with you is I am personally thrilled at the explanation of what qualifies as a disability expense the notion that this is not a medical test, this is not based on medical necessity but takes the broad construct of helping people have healthy more independent lives not only in the categories ‑‑ the specific categories that were in the law of which there were many from housing to technology, education, transportation, health care, all kinds of things, it took it even further to capture also permissible would be a dispersement for daily living expenses. That's a big deal and then it goes further which has always been a confounding issue this is not something that has to be exclusively for the use of the individual with a disability. The beneficiary of the account and also the owner of the account. It makes it clear that there may be others who are getting benefit but that doesn't exclude it from being a qualified disability expense. And there are lots of examples of that under other laws and other funding streams. The notion that everything from the purchase of a van that is a critical means of transportation for individuals with disabilities to the use of a computer. Or a laptop or an iPad or things of that sort.
>> Michael I just want to follow up on what you're saying. I think that it is very important for people to become involved in this process and that a lively debate is something that is the benefit of the custodian committee to providers to the treasury and IRS. An active discussion will make these regulations more clear. It will make these regulations better. I think this is something we should all welcome.

We should talk about ‑‑ people should talk about what they like and people should talk about what they don't like.
>> Thank you, Stewart. The last point in next steps is that there is a preliminary summary of the highlights for individuals with disabilities and their families. Many organizations are putting summaries together and perhaps already have on their website. We offer you further one on WWW.real economic impact.ORG/news and further parts of the URL. We will tell you and go to the next slide, Chris, on behalf of the ABLE national resource center we will be pulling together a regulatory comment team. Their organizations will be working together and for those of you who are not familiar with the resource center we put this together back in January. There are 27 organizations that participate. We have a meeting each Friday. Our main goal is to provide a consistent disability voice to ‑‑ accelerate between the disability, government, financial service company. Again to accelerate effective design of ABLE accounts nationwide to work together across the disability spectrum on education and outreach and also educate government at a federal and state level about consumer needs and challenges in establishing and/or managing an ABLE account. Next slide. We hope too to work with financial service companies and we have already been engaged in dialogue with quite a few companies. Often asking the question, well, what's the right product or right product mix. An ABLE account is different than a 529 college savings plan. Lots of expanded purposes, qualified expenses that will be covered. And ultimately, what we hope to do is educate the public policymakers and other relevant stakeholders about the positive impact of ABLE accounts as individuals and multiple systems work together to look at are there further need for changes and further policy development that might be necessary. Next slide. To learn more about the ABLE national resource center contact Chris Rodriguez and, again, if you're a national disability organization and would like to participate there is supply no charge. We can link you in. Some people come here in person and others participate by phone. Again, it's to try to provide a kind of continuity and consistency to what is going on out there around ABLE implementation. Next slide. Yes.
>> I'd like to throw in just one things in terms of the implementation by the state if I may. The initial notice that we put out as well as the proposed regs themselves talk about the effective date of these regulations and how we anticipate going forward of the press release that came out with the regulations. I want to explain what we're talking about because what we're saying is for those states that are currently enacting their ABLE legislation before we have final regulation and we'll be starting to open these accounts before the issuance of final regulations, we are not going to challenge the qualification of the program or those accounts. However, once final regulations are issued, the states will have a certain period of time to take those state programs and bring them into compliance with the final regulations.

So, for example, for a state that is going to start opening these accounts with individuals before the final regulations are issued and I assume that's many of them, they might want to have something in their contract that is going to accommodate future changes that are going to be necessary based on the final regulation. The other thing for the state to notice going forward is in the proposed regs we've tried to provide several hints of things that the states might want to do at the state level that we didn't feel we could do at the federal level but we thought would be important in terms of protecting the interest of the disabled individuals who are the DBs of these accounts. One might be including in the state legislation what state and local programs might be exempted from the income and asset requirements because this only apply to federal programs. That could be a real trap for a lot of people who depend on local programs. Another question deals with whether or not all changes of DBs and roll overs ought to be done on a program to program transfer to avoid the risk that these funds could go through a bank account of the DB and disqualify them for benefits.

We had several of those that we tried to hint at in the preamble so I hope the states take notice of those.
>> Thank you, Katherine, we are taking in a lot of questions coming in from you across the country. We have a number of questions as well pre‑prepared we're going to try to get to as many of these as possible. We have some time definitely left today. So I'm going to start with one that came in online. The question is who is responsible for determining eligibility each year and maintaining the documentation? Determining eligibility means, of course, being a person eligible to have an able account. The determining of eligibility this ‑‑ is Michael speaking, my interpretation of the law and proposed regulations is that eligibility would be determined by the state, the qualified ABLE program. What requirements they have are certainly guided by the regulations and guided by the law. Breaks down into people in two categories. There are individuals who are current Social Security beneficiaries. One category. They're either recipient of SSI and/or SSDI. In addition to that they had to have had their age of onset of disability at age 26 or younger. That's category A. That's a pretty straightforward set of criteria for eligibility. The second group are those and there are others, many others, potentially in the millions, of people who still have the age of onset of disability age 26 or younger but are not on Social Security benefits. And that is that second class which requires as in the statute and discussed in the regs a letter of certification of level of disability that is signed by a licensed physician. Now how and what kind of documentation would be required to be presented to a state regarding this second class? Because the first class is pretty straight forward in terms of Social Security beneficiaries but in the second class my interpretation in reading the regs is quite a bit of flexibility to the state to determine what is it going to take? I believe and I will throw out for discussion among our panelists here, that it is possible for a state to create a simple one page form. The devil's in the detail of what that form requires but the form would be in my vie obviously identifying information about the individual if they were not a Social Security beneficiary which could be a check box and with appropriate information provided would require the notion that there is a letter of certification from the physician who is licensed in that state to make the judgment based on the criteria that has been offered up in the law and by the regs. I don't know that one would have to go beyond that but I'll throw it open to the panel if you think otherwise.
>> So one of the things that strikes me about this, Michael, this is Stewart speaking, is that it will probably be helpful if states talk to one another in trying to come up with approaches. I think that the IRS and treasury will be very interested in working to smooth things out but I do think that every state will not have to develop its own wheel. That there is probably some efficiency in working towards standardization. I'm mindful of the way that things are done often in national association insurance commissioners. Where NAIC as an organization tries to develop model laws that states adopt and I can imagine states following similar practices. It's not a ‑‑ that's not a must. But ‑‑ and this is certainly a personal opinion but I can see some advantage to doing that.
>> Marty.
>> Yes, I think that, Michael, it is possible based on what is in the statute you could develop the form that basically allows the individual to attest to their belief that they need the criteria and that there's a physician that also attests to his or her belief that the individual meets the criteria as they've seen it. What I want to comment on is whether the states are developing different criteria. I believe that this should not be left up to the individual states. I think this is a national program and should not devolve into fifty plus different programs. We really don't want to see that many different approach to the definition of disability especially since it is the base of it starts with the Social Security definition of disability and the certification is based on part of that definition. I think it will, you know, in the beginning might sound okay but over time as years do on and more and more different people begin to start interpreting and redefining and reinterpreting and redefining it will become a program that won't make sense from state to state and we have too many problems with that and when you have people that move from one state to another it may be eligible in one state and not eligible to another regardless of the age of onset and that won't work and I'm really worried about that. It should remain a federal definition it is in the statute and I think it should remain so. So I think we have to keep it at that level.
>> I don't know, Katherine, is this one you want to comment on you want to pass?
>> You know, I think this is certainly where we would benefit from a systems of comment. The IRS is not qualified to make disability determinations that the Social Security administration does. We're not trying to replicate that process. So anyone who has suggestions as to what, you know, whether the final regulations should specify something along this line to sort of standardize it. As Michael said before, give us some specific suggestions. You know, we're certainly willing to listen.
>> Great. Thank you.
>> Thank you. I think the second part of this question, I know we're still on the first question. We have many but the second part of the question is who is require as responsible to maintain the documentation and also an interesting issue, I personally believe in my reading of the law and even in the regulations although it's clear the state qualified ABLE program has a responsibility for overall management and oversight of the program, I here, again, believe in the same way that so many of understand respond to different provisions of the tax code at a federal level give a case in point. Putting down on my tax returns that I have made the following contributions as a charitable deduction that I only have to provide detailed information if it's per contribution if it's more than 250 dollars. For those under I can provide a laundry list. I'm basically attesting to my honesty and it is later on in the game if I happen to be a person singled out for an audit so I believe here, I don't see the state or the federal government wanting to collect this documentation. Where or why I see it more of an attesting by the individual based on a standardization of requirements back to the initial question of certification. If the person is challenged by either the state or the federal government they need to produce the documentation. But I can't see this paper shuffle in some way of documentation now even with all the clouds that we have where you don't have to overload your own servers. I don't see the need for collecting thousands of papers from individuals. But that's my point of view. It seems to me another area worthy of comment but again, we try to look at this as nothing about this program should slow down the intent of Congress which was to deliver on the promise of ABLE which is that an individual should be able to go from certification without, as in the case of Social Security, spending months waiting to find out if I'm eligible or not.
>> So one of the things that I think is worth mentioning, this is Stewart is that a lot of individuals who set up these accounts have challenges. And this is obvious. This is the rationale for creating an ABLE program and I think that while simplicity is in general guiding principle for tax administration, it should be particularly true for accounts like this that are designed to help individuals with disabilities maintain a quality of life.
>> Do you want to make any comment on that? I'm going to go to question number two if you pull it up, Chris, is are there certain preestablished conditions that would automatically allow an individual to be a beneficiary through the certification process and I'm going to turn that over to Marty because there is language in these proposed rules that does take into consideration certain preestablished conditions.
>> Okay. Very briefly I would say that the statute does refer to allowing those conditions deemed to meet the requirements of subsection and then it refers to it and in the rule itself the proposed rule I should say, refers to the conditions known as the compassionate allowance list. Which is something that the Social Security administration had developed to allow certain conditions that fall into special categories of severity of the disability and the ability to have certain level of evidence available and the ability to quickly judge whether that person is definitely going to be severely disabled based on this. The easiest one to ‑‑ for people to understand when you talk about the compassion allowance list is to mention Lou GER rig's disease that's one that's on there.

The other criteria is that the person must have had it before the age of 26. So in using this list it's the compassion allowance list in addition to being disabled before age 26. I think that's just one thing that we should be looking at but that is clearly mentioned as one of the things in the proposed rule that would be usable.
>> I would also add, this is Chris that that list was given but there's a provision in the rules that asks for certain provisions or impairments or disabilities that different groups believe ‑‑ that aren't included on that list but should be taken into consideration for kind of the preestablished conditions for automatic eligibility and taking those into consideration with the periodic recertifications.
>> Before we go to another question we can leave this one on the screen but this came in from the participants across the country. If your state is not one with an ABLE program, is there any way to still use the ABLE account? And we covered this in our first webinar but we didn't touch it today. States do have the ability to contract with another state that has established an ABLE program so that's the one way that I'm aware of a state never moves state legislation, skips that step but decide to go to Virginia, Florida, one of the many, many states that now have an approved ABLE program and they contract with that state just to take an example. We ‑‑ you live in Georgia, Georgia didn't move anything legislatively. No program is underway but the governor and appropriate powers that be decide to contract with Florida then they will work out all the issues of what does that mean, flow of information, sharing of fees and all kinds of things. But you're not left out in the cold. Just because your state hasn't moved legislation. There is this other opportunity that was clear in the regs and certainly clear in the law.
>> Although I think they would ‑‑ the state would probably have to move legislation to authorize contracting with another state.
>> That's an interesting question. I don't read it that way.
>> Okay. I guess it depends on the state law.
>> Um ‑‑
>> And state policy.
>> Yeah.
>> And state policy.
>> There is a way to do it. If they don't want to go so far as to set up their own program they can certainly go through another state to do it. The question is how they have to go through that. So it can be done.
>> Right.
>> Michael is right.
>> Okay. Let's go to question number three.
[Pause].
>> And we touched on this before but I'm going to bring it back to Stewart. I understand the definition of a qualified disability expense is now broader. Can you give us specific examples.
>> Well, as you say, Michael, we have talked about this in some ways so I'm simply going to refer to the example that is given in the regulations of an individual who uses a smart phone device to navigate and communicate more safely and effectively. Okay question four. I understand that an eligible beneficiary can only have one ABLE account is that per lifetime and the second part is can a typical savings account be rolled into a 529A account. I understand ‑‑ those are two distinct questions. Heather, you're still there.
>> Yes, I am.
>> Okay.
>> Regarding the rolloverto the ABLE account unfortunately, no, indeed proposed regulations, treasury did say that you would not be able to roll over a 529 to a 529A. Again, this is something that we could comment about it was my understanding that they don't believe the IRS to have this transfer because you're talking about 529A would not constitute an expense from the 529 account so that was something that was clear in the proposed regs but that, you know, people should feel free to comment on. And Michael, what was the other part of the question?
>> Whether or not an eligible beneficiary can have one ABLE account. Is that per lifetime.
>> Yes. So you can only have one ABLE account at a time. So, you know, you open an ABLE account, decide to close it or maybe in the case that, you know, we were discussing before how perhaps the disability is not a certification for the entire life and then you have to close the account. You can open another account at a later date. Another example is moving to another state. But you would have to close out the first account in order to open up the second account. So you may have one, you know, I guess the answer is you may have multiple accounts over the lifetime but only one ABLE account at one time.
>> Right. That's the way the proposed regs construe the statutory language. One at a time.
>> Yep.
>> Okay. Let's go to question number five if I'm applying for eligibility through the disability certification process, when is my application considered filed with the department of treasury meaning I can actually open my account?
>> So I can take this one, Michael. This is Chris. According to the proposed regs one of the things that they clearly wanted to make sure that they were accomplishing is to make sure that an individual who is an a qualified beneficiary can set up these accounts as quickly as possible.

So while the federal statute talks about having to submit your disability certification to the secretary meaning the secretary of the treasury that requirement would be fulfilled under the current proposed regulations as soon as you fill out the applicable forms or paperwork with the state program manager.
>> Which ‑‑ that state program manager then is obligated under the regulations and hopefully under the plan to provide that information to the treasury department at least annually so given that is the environment of the state program ‑‑ giving it to the program for example when you open the account is the condition.
>> Yeah. In that moment.
>> Okay. Let's go to question six. Could you further explain about CDFIs and give examples of how these may play a role in helping states implement and maintain ABLE programs and we also had a question come in from online did the NPRM require CDFIs to work with ABLE account states or is it on request? Well let me take that part of it first is no state is obligated mandated to meet any functions through a CDFI. It was offered in the proposed rules as an option. And it is up to the state to consider whether or not it wants to pursue those options. I know in discussions we've had is it's obvious that there are some CDFIs who may be interested in this role and there may be states who are less interested in some of the administrative requirements. Maybe a match can be made between them. The CDFI with ‑‑ also having the opportunity to access a funding stream that flows into treasury through a appropriations from Congress with technical assistance. There are some possibilities of a match here.
>> It's my understanding that some of the CDFIs could get corporate grant to help defray these administrative costs. They don't have to depend on the CDFI alone.
>> Absolutely. CDFIs are not by any means solely funded by public funds the whole innovation of the program when it was first created is public and private funds.
>> There's no guarantee that the treasury funds would make these grants but there is a possibility of the private funding.
>> Yeah. What role would CDFIs play I think we talked about earlier. Could help manage the certification or recertification process. It could oversee the dispersement. Any of the reports requirements in the Act almost everything and this would be a negotiation between the CDFI and the qualified state ABLE program. Question seven, will there be tax forms related to the ABLE program that the eligible beneficiary and/or the administrator will be responsible for filing?
>> So, this is Stewart, and I'm aware of two forms that are drafts that are online and one is form 5498QA.

Which is an account contribution form. And the other form is is a 1099QA. Which is a distribution form. I also want to mention not a form but publication 907 tax highlight for persons with disabilities. That publication is referred to in the instructions for one of the forms and I anticipate that 907 will have some very useful plain language information for individuals regarding ABLE. The breadth of that publication is greater than ABLE but I would be surprised if there isn't a good amount of space in 907 for 2015 that is devoted to ABLE. The only other thing I want to add, Michael, is as our discussion before about disability certification suggests, I think that one of the areas that is very appropriate for people to discuss and comments is what additional forms, if any, should be developed by the service. You know, what is the kind of guidance whether ‑‑ and regulation, you know, in forms or in pubs. What is it that the service should do or we would like to see the service and the treasury do to make ABLE friendly to users?
>> The other ‑‑ without answering that question, the other filing that's going to be required is the program filing to the Social Security administration which we mentioned in the proposed regs by we can't write Social Security regulations. So I don't know what Social Security will be requiring.
[Pause].
>> Okay. I'm going to go with some of the ones that I see up on the screen coming in. And here's a few simple one we can tackle is the ABLE Act only for individuals with developmental disabilities or also with physical disabilities. Well, the ABLE Act and the regulations, these proposed rules do not limit by category of disability. So you could have a sensory disability, physical disability, cognitive, intellectual disability, developmental disability, but the key is really those multiple parts of definition of eligibility or determination of eligibility. It has to be age of onset, age 26 or younger and then the two prompts. You are a current recipient of SSI and/or SSDI and/or the other way which is you're not on Social Security benefits but the licensed physician certifying to the degree of your disability that would make you qualified so not limit to developmental disability at all. A person with a disability otherwise qualified for an ABLE program is from Maine. Maine's legislature has declined to participate. Can the person now move to New Hampshire, get accepted into the program. Wow, move back to Maine and continue? The answer is yes. But it seems like a lot of work for qualifying another I must say particularly in that row of New England states that are right next to each other, New Hampshire, Vermont and Maine. People often live in one and work in the other and, you know, we have to leave that to individual circumstances. But your hypothetical is actually try. Is as long as there have to be an agreement between the two states.
>> You have to be a resident of the state. They have to really establish residency.
>> And that will require state law in terms of ‑‑ varies as to what does it require. Do you have to live for one day or sometimes there are other residency much longer requirements.
>> And you may seriously jeopardize any community based services ‑‑ that you need and many people find that it takes eight to ten year to qualify in the state you move to.
>> Tread carefully.
>> When you move back you may disqualify because Maine doesn't have the ABLE account in their state program you may be disqualified from the local program.
>> I want to go to question eight. I understand that the ABLE Act allows individual to contribute to an account. But to DO the regulations say anything about contributions from businesses, employers or other "non individual" entities.
>> Yes, they do.
>> And the answer is ‑‑
>> The answer is yes they can but nothing in the ABLE Act trumps the usual tax consequences of those kinds of contributions.

For example, if dad's employer wants to make a contribution to the ABLE account for dad's child that's going to be considered to be compensation income to dad so the ABLE Act is going to treat it the same way that's going to be income to dad and then dad is deemed to make the contribution.
>> Right. The internal revenue code has a very interesting definition of person and the definition is not a natural person but broader than what most of us ‑‑ most of us don't think of creations, legal creations, as people but there is a broader definition of person.
>> And whether a disabled person can make a contribution themselves and how the tax consequences will use ‑‑ will flow from that.
>> Okay. I'm going to take a few that have come in online. Is how complicated and expensive will it be to manage an account? Will one have to hire expertise to make sense of one's obligation go ahead Stewart. You try.
>> I want to go back to something I said before which concerns the nature of these accounts and the purpose of these accounts. You know, to help individuals with disabilities and their family members cope with expenses. I would hope that we see rather ease ‑‑ easy administration. You know, these accounts I anticipate are going to have ‑‑ a lot of these accounts are probably going to be small or dollar accounts. Similar to what we see in the 529 area where a lot of the accounts are under 10,000 dollars and, you know, one of the advantages to the 529 model is that they are relatively easy to use. And they don't have the ‑‑ for some people off putting quality of trusts. So I think one of the goals will be to make things easy for individuals and their families and everyone involved.
>> Marty?
>> I think that what Stewart is saying is important and I think we need to have that goal in mind. I still think that regardless of how simple we make it, people who are using the SSI in the medicaid programs are still going to have some serious issues that they will need to pay careful, careful attention to in terms of how they handle the funds in the account. How they handle distribution. Basically, how they manage to follow changes in the law and regulations regarding SSI and medicaid and how they make sure that they are being very, very careful about their expenditures and handling of the dollars. Mistakes within the accounts ‑‑ if you make a mistake in the 529 account or in the SSID account your consequences are tax eKO consequences. You'll have a penalty. If you make mistakes in the SSI program, you could potentially be endangering your SSI eligibility and medicaid eligibility and your home and community based services program eligibility and I think minor mistakes that build up over time that aren't corrected can have very, very serious consequences for people.

And I think for that reason this becomes far more serious in terms of making sure that people have access to really good solid assistance in knowing what they can and cannot do and how they go about finding that assistance on a regular basis when needed and I think that organizations like all of ours ‑‑ those that operate at the local level need to think about very carefully about high ‑‑ how we do that. I think we need to be careful in terms of families making decisions.

This has to be one of the elements in the decision‑making. Do we have the capacity to make these judgments ourselves or are we going to need help if it's a situation where the son or daughter is going to need ongoing help. Can they make these arrangements so I think it's something that has to be thought of regardless of how much money is in there.
>> Respect to SSI for determining eligibility as obtaining a benefits verification letter may cause undue delays. Would it be sufficient for a program to accept the individuals who I think self certification of SSI, SSDI participation.
>> I think that's up to the state programs as to what evidence, you know, if you show a letter ‑‑ the annual award letter from SSI maybe that would be sufficient at the state level. I don't know but that will be up to the state.
>> I wonder if even that your direct deposit or proof that you're getting a monthly payment and it's clear that's a Social Security payment coming in. So, I know, again it sounds like flexibility of the states they need to determine what it is. It doesn't have to be overburdensome on the individual or the state but they need to figure it out. Okay? There is also the question asked for individuals with mental health diagnosis, there are all kinds of alternative therapies yoga, life coaching, other things. Will these be considered allowable disability expenses? Again, I would say likely. There are so many categories of what qualifies as a qualifies disability expense. Whether you would qualify that under health or even daily living, I think it's possible. I think though this question gets at a different point. And that is that although we acknowledge and appreciate the interpretation in the proposed rules of this broad acceptance of what might qualify as a disability expense, there is then a further sentence there which says however, the qualified state program will have to evaluate whether or not it is a qualified disability expense? And I think some people have read that to mean oh my gosh, we're going to have to create an army of people to create one by one each expense. My interpretation is the exact opposite. The overarching rule is about getting people access to an account. This isn't about slowing them down or diminishing the importance of getting the benefit of money put into the account to meet different quality of life experience needs. I think that this lends itself to a potential certification and form‑related issue as we talked about earlier on the certification side. I think there's some of the same issues here. I think that states rather than fifty interpretations I think we would all be served well by potentially a consortium of states and there is the college savings plan program. Creating an approach that's reasonable and balances interest.
>> Yeah and I think, Michael, you're bringing up an interesting point we're fortunate to have Kath ruin Hughes with us today and the treasury and IRS will no doubt be active along with the Social Security administration providing guidance but that is not to minimize the responsibility for organizations like ours to continue to provide information and to work together as a group with everyone interested in this process. To make sure that people can make the right choices and are willing to go to Marty's point about complexity. We do want to make this easy but making things easy means having information. And so the obligation here, you know goes beyond just regulations and the purely legal functional work that the government does to, you know, all of us making this as ease ‑‑ as simple as possible for as many people.
>> A couple of questions that came in online I think we can quickly handle. Can you use ABLE account funds to purchase a home?
[Pause].
>> I don't know why not. It is a housing expense.
>> I think the answer is yes. Another question came in online.
>> That may be one where you ‑‑ you may be asked to verify that was really a house. Not a motorcycle.
>> Well, you know ‑‑ are you going to house the whole family?
>> Yeah.
>> That one might be a little close er to the line where you might get an income tax audit on that one but I can't say what the answer would be.
>> It's not an automatic exclusion by any means.
>> No.
>> No. Another question that came in is ‑‑ they skipped on me. If you mentioned that states will not be left in the cold if they choose not to implement ABLE but if the state required to contract with another state unfortunately, not. So this requires a lot of advocacy in the individual states.
>> Right. Right. We think there are a lot of carrots here in that ‑‑ in that there should be a broad response and of course, you know, we are seeing a robust response from the states but, ultimately, states will have to make decisions.
>> Question. My state is in the process of developing their ABLE program. And should hopefully be opening accounts sometime early next year what happens if my state's ABLE program does not meet all the criteria of the PROO proposed rules will I somehow be penalized?
>> You will have time after the issuance of the final regulation to bring your account into compliance in the final reg if you do that you will not be disqualified.
>> Won't that bring  ‑‑ primarily be on the shoulders of the state program to bring the whole program into compliance.
>> It'll be the program and the individual account.
>> Okay.
>> For example if the state were to say, in our state program we're not going to let you change a BOOEP beneficiary to someone who is not a sibling of the DB ‑‑ if the final regulation said that. Let's say. And your contract for the particular account did not say that, you'd have to amend both the state program and the individual contract to adopt that change. But you'll have time after the issuance of the final reg to bring those into compliance.
>> Okay.
>> Are contributions to ABLE accounts tax deductible for a relative of the disabled individual. For example, who might wish to make a contribution. Again, the ‑‑ most states have not enacted a statute which will give you a tax advantage on the contribution going in. The tax advantage is on the income made on the contribution when it's withdrawn depending on where those funds are invested for any type of gain. Now what goes up also goes down and I am familiar in this with 529 college savings plan when we had some down years in the economy actually money put in ‑‑ ate into the principle and reduced money. You know what I don't know is can you withdraw funds ‑‑ if you put money in and it's worthless less when you take it out can you take a deduction on the loss? That's a Stewart question.
>> I'm going to not opine on investment loss questions.

I think this is beyond the scope of what we're doing.
>> No problem. I think we are out of time. We have covered a lot of ground today. We hope you have benefitted from hearing the update on where states are from our review of key highlights from the notice of proposed rule making and this give and take with you. We took a lot of questions. We'll look through all the questions that have come in to see if there are some others we can try to answer if you have a specific question and are concerned we didn't cover it please do contact Chris Rodriguez. We, on behalf of the many disability organizations that are participating in the ABLE national resource center thank you. Hopefully you're more informed the more informed you are you can make better decisions about your individual choices and hopefully this dialogue we know will continue. As I said, we will be working on comments and we expect that we'll be doing further webinars and further education efforts. But thank you for staying with us and please, continue your work in your individual states where so much of the activity is going on but also share with us your challenges, your concerns so that we can reflect those if they come in from lots of people in the comments that we'll submit to treasury. I want to give a special thank you to Katherine Hughes for sitting with us. For helping us deal with some of the questions. It's enlightening and I think all of this will help create an accelerated implementation of ABLE account someday we hope and I hope this doesn't take more than a few years regardless of where you live. You will have the opportunity to take advantage of the promise of an ABLE account. So thank you and have a great day. Bye‑bye.
>> (End)