

ABLE National Resource Center

PRESENTS

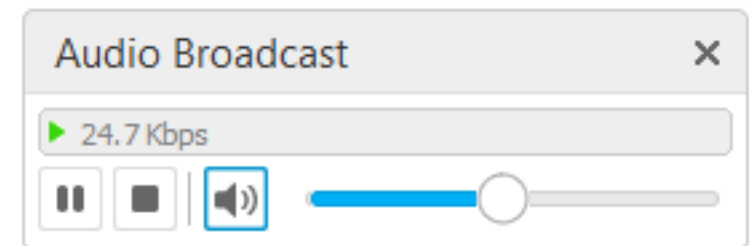
**Understanding ABLE
Part II
Proposed Regulations**

80 FR 35602 (6-19-2015)

July 14, 2015

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Webinar Presenters and Special Guest

Presenters

- ▶ **Michael Morris**, National Disability Institute
- ▶ **Chris Rodriguez**, National Disability Institute
- ▶ **Stuart Spielman**, Autism Speaks
- ▶ **Heather Sachs**, National Down Syndrome Society
- ▶ **Marty Ford**, The Arc

Special Guest

- ▶ **Catherine Hughes**, United States Department of Treasury

Webinar Agenda

- ▶ Status of State Implementation
- ▶ Highlights of NPRM
- ▶ Moderated Panel Discussion
- ▶ Questions and Answers

State of the States

- ▶ 27 states have enacted their own versions of the ABLE Act and should be in the process of setting up state ABLE programs. Those states are:
 - ▶ Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Louisiana (pre-federal and post-federal), Maryland, Massachusetts (pre-federal), Minnesota, Missouri, Montana, Nebraska, North Dakota, Nevada, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and West Virginia.

State of the States Con't

- ▶ The following states have passed ABLE related legislation and are currently awaiting the Governor's signature: Illinois, New York, Ohio, Oregon.
- ▶ The following states have ABLE bills filed that are still active: California, District of Columbia, Maine, Massachusetts (revision of pre-federal legislation), Michigan, New Jersey, North Carolina, and Pennsylvania. We expect most of these bills to become law.

Notice of Proposed Rule Making (NPRM)

On June 19th the Department of Treasury, in conjunction with the IRS, released a Notice of Proposed Rule Making (NPRM) regarding the Achieving a Better Life Experience (ABLE) Act. The NPRM acts to:

- assist states and program administrators in better understanding the guidelines on how to develop and maintain an ABLE program;
- give additional clarification to parts of the law which may benefit from further explanation and/or guidance;
- allow for a 90 day period for the public, including individuals with disabilities and their families, disability related advocacy groups, state administrators, and other stakeholders, to provide input on the various components of the NPRM

Major Areas of the NPRM

- ▶ Establishing an Account and Signature Authority
- ▶ Eligibility and Re-Certification
- ▶ Transfers, Rollovers, Residency Requirements
- ▶ Contributions
- ▶ Distributions
- ▶ Qualified Disability Expenses
- ▶ Community Development Financial Institutions (CDFIs)

Establishing an Account and Signature Authority

The proposed regulations provide that:

- ▶ The eligible individual is responsible for establishing the account
- ▶ The designated beneficiary is the owner of the account

Establishing an Account and Signature Authority Con't

HOWEVER

If an eligible individual is unable to establish an ABLE account on his or her own behalf, the ABLE account may be established by the eligible individual's agent under a power of attorney or, if none, by a parent or legal guardian of the eligible individual.

AND

If the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to establish an ABLE account but not exercise signature authority, the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary may be given signature authority.

Eligibility and Re-Certification

The proposed regulations provide that:

- ▶ Eligibility should be determined for each taxable year, and that determination applies for the entire year
- ▶ A qualified ABLE program may impose different periodic recertification requirements for different types of impairments.
- ▶ A qualified ABLE program must specify the documentation that must be provided, both at the time an ABLE account is established and thereafter, to ensure that the designated beneficiary is, and continues to be, an eligible individual.

Loss of Qualification as an Eligible Beneficiary

The proposed regulations provide that:

- ▶ If the qualified beneficiary ceases to be an eligible beneficiary 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 contributions to the designated beneficiary's ABLE account are no longer allowed and distributions will not be considered qualified disability expenses. If the individual regains eligibility the moratorium will be lifted.

Transfers, Rollovers, Residency Requirements

The proposed regulations provide that:

- ▶ A qualified ABLE program may continue to maintain the ABLE account after that designated beneficiary changes his or her residence to another State.
- ▶ Funds in a qualified tuition account (typical 529) will not be allowed to be rolled over to an ABLE account absent tax consequences and penalties.
- ▶ A qualified ABLE program is allowed a program-to-program transfers to effectuate a change of qualified ABLE program or a change of designated beneficiary to another eligible individual (provided that the successor is a sibling of the former beneficiary and the transfer is made prior to the death of the transferring account owner).

Contributions

The proposed regulations provide that:

- ▶ A qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment, or other similar method of payment
- ▶ The total annual contributions to an ABLE, other than amounts received in rollovers and program-to-program transfers, must not exceed the individual gift tax exclusion in effect for that calendar year (currently \$14,000) in which the designated beneficiary's taxable year begins
- ▶ A qualified ABLE program must provide adequate safeguards to ensure that total contributions to an ABLE account do not exceed that State's limit for aggregate contributions under its qualified tuition program

Contributions Con't

The proposed regulations provide that:

- ▶ A qualified ABLE program must return contributions in excess of the annual gift tax exclusion (excess contributions) to the contributor(s), including net income attributable to the excess contributions
- ▶ A qualified ABLE program must return all contributions, along with all net income attributable to those contributions, that caused an ABLE account to exceed the limit established by the State for its qualified tuition program (excess aggregate contributions)
- ▶ If an excess contribution or excess aggregate contribution is returned to a contributor, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return
- ▶ In order to avoid penalties and tax consequences the fund must be returned on a last in, first out basis and no later than the due date of the beneficiary's tax return for the year in which the excess contributions were made

Distributions

The proposed regulations provide that:

- ▶ An ABLER account may be used for long-term benefit and/or short-term needs of the designated beneficiary

It would be reasonable to expect distributions and frequency of distribution to reflect that.

Qualified Disability Expenses

The proposed regulations provide that:

- ▶ Qualified disability expenses are expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life
- ▶ 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 Con't

- ▶ A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions.
- ▶ A qualified ABLE program must permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.

Community Development Financial Institutions (CDFIs)

As a means to offset administrative burden, the proposed regulations expressly allow a qualified ABLE program to contract with one or more Community Development Financial Institutions (CDFIs) that commonly serve disabled individuals and their families to provide one or more required services.

Next Steps

- ▶ The deadline for submitting public comment is September 21st, 2015
- ▶ The NPRM can be found at (including instructions on how to submit public comments):
<https://federalregister.gov/a/2015-15280>
- ▶ There will be a public hearing held in Washington DC on October, 14th at 10am
- ▶ Preliminary Summary of Highlights for Individuals with Disabilities and their Families:
<http://www.realeconomicimpact.org/news/?id=1514>

ABLE National Resource Center

- ▶ Collaboration of 27 National Disability Organizations
- ▶ Managed by National Disability Institute
- ▶ Provide a consistent disability voice to accelerate ABLE Act implementation at a federal and state level

Five Areas of Impact

1. Serve as a facilitator between the disability sector, government, and financial service companies to accelerate the effective design and availability of ABLE accounts nationwide.
2. Educate the disability community about the opportunities available to save and plan for a better economic future and quality of life experience through the establishment of ABLE accounts.
3. Educate government at a federal and state level about consumer needs and challenges in establishing and/or managing an ABLE account.

Five Areas of Impact (con't)

4. Educate and inform financial service companies about the needs and interests of the disability community to offer investment product choices to place ABLÉ account resources.
5. Educate the public, policy makers and other relevant stakeholders about the positive impact of ABLÉ accounts at an individual and systems level and any needed changes for further policy development.

ABLE National Resource Center

- ▶ To learn more about the ABLE National Resource Center or if you are a national disability non-profit organization and want to join the collaboration, please contact

Chris Rodriguez

CRodriguez@ndi-inc.org

- ▶ Monthly meetings are the first Friday of each month at 11:00am EST

Questions for Panelists

Question 1

Could you give an example of what a potential eligible individual might expect to fill out when opening an account?

Might that look different depending on whether the individual is applying as a recipient of SSI/SSDI and those applying through the “disability certification”?

Question 2

Are there certain pre-established conditions that would automatically allow an individual to be an eligible beneficiary through the disability certification process?

Question 3

I understand that the definition of a qualified disability expense is now broader, could you provide an example?

Question 4

I understand that an eligible beneficiary can only have one able account, is that per lifetime? Can a typical 529 college saving account be rolled over into a 529A ABLE account?

Question 5

If I am applying for eligibility through the disability certification process, when is my application considered filed with the Department of Treasury (meaning I can open an account)?

Question 6

Could you further explain what a Community Development Financial Institution is, and give examples of how these may play a role in helping states implement and maintain ABLE programs?

Question 7

Will there be tax forms related to the ABLE program that the eligible beneficiary and/or the administrator will be responsible for filing?

Question 8

I understand that the ABLE Act allows individuals to contribute to an ABLE account, but do the regulations say anything about contributions from businesses, employers, or other “non-individual” entities?

Question 9

For the purposes of a rollover or transfer, what does “family member” mean?

Question 10

What are the benefits of a “program to program” rollover?

Question 11

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 final regulations? Will I be penalized?

Question 12

As progress is made to develop these programs, does the ABLE National Resource Center have a website I can go to in order to get updates?

Question 13

When can I expect to see the first ABLE accounts being opened?

Questions from the Audience

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