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"GUIDANCE UNDER SECTION 529A: QUALIFIED ABLE PROGRAMS"

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* * * * *

PROCEEDINGS

(10:05 a.m.)

MS. JUDSON: Welcome, everybody. This is a Public Hearing on Proposed Regulations, "Guidance Under Section 529A: Qualified ABLE Programs," (REG-102837-15). I am Victoria Judson, Associate Chief Counsel, Tax Exempt and Government Entities. I'm pleased to have with me today on the panel Taina Edlund to my left, Senior Technician Reviewer, Office of Chief Counsel, Tax Exempt and Government Entities; Theresa Melchiorre, Attorney, Office of Chief Counsel, Passthroughs and Special Industries; and Catherine Hughes, Attorney-Advisor, Office of Tax Legislative Counsel, Office of Tax Policy.

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We have 13 people who signed up ahead of time to speak today. Is there anyone else in the audience who would like to address the group today? Under our rules everyone has 10 minutes to speak. We have a light system here and when you start speaking, the light will be green. When you have seven minutes left, that's time to begin wrapping up and it will be turn to yellow. And when it turns red, your time is up. There may be questions from the panel and the time asking and responding to those questions doesn't count against your time. With this sophisticated machinery can stop it if it's during and sometimes -- if people will refrain from running off immediately after they're done, sometimes people on the panel have some follow-up questions.

We very much appreciate the comments that have been submitted, the written comments that we are considering, and that you've come today to speak with us. The main thing I want to make clear about this hearing is this is our opportunity to hear from you, to hear your thoughts in response to the regulations we proposed. It's not a forum in which to ask us questions because we are still considering all your thoughtful comments.

And with that I will turn to the first speaker who is Sara Weir.

MS. WEIR: Okay, good morning. I feel like I need a set of PowerPoint slides here. My name is Sara Weir and I'm the President of the National Down Syndrome Society. I want to thank our panelists here this morning for your time and dedication to this important issue not only for NDSS, but millions of Americans with disabilities.

At NDSS we represent over 400,000 people with Down syndrome and their families in the United States. Our organization was a leader in the effort to pass the Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act. And I can't think of a more historical day than being at the IRS this morning and kicking off today's testimony with talking about the history behind the passage of the ABLE Act. I know many of you in the audience have heard us talk about it over the years, but I thought this could be our contribution to today's testimony.

The idea for ABLE started nearly a decade ago around a kitchen table in Northern Virginia where a group of parents, Christina, Jen, Tho, Brook, and Steve -- Steve Beck who the bill is named after -- were discussing the inequities that exist in the current system as it relates to the ability for all individuals with disabilities and their families to save for their future. These parents, along with the staff and the board of the National Down Syndrome Society, were instrumental in the introduction of the first ABLE bill by Congressman Ander Crenshaw from Jacksonville, Florida, which at the time was called the Financial Savings Account for Individuals with Disabilities, FSAID. It was a mouthful act in 2006. NDSS and our colleagues and friends at Autism Speaks and a coalition of 100 disability organizations made this bill a priority and our advocates came back to Capitol Hill year after year to urge its passage.

In 2010 the bill was renamed the Achieving a Better Life Experience Act in an effort to better define the goals of the legislation and ultimately was rewritten to

replace the ABLE program under the auspices of the 529 College and University Savings Program in the IRS tax code.

In 2014 Senator Casey and Senator Burr, along with Representatives Crenshaw, Cathy McMorris-Rodgers, Chris Van Hollen, and Pete Sessions, along with their congressional staffs, led the passage of the ABLE Act in the 113th Congress. After many, many years of advocacy, the momentum behind the ABLE Act intensified in the 113th Congress after the bill continued to receive record-breaking congressional support and media attention. On December 3, 2014, the U.S. House passed the ABLE Act 404-17 as a standalone bill. A few days later the U.S. Senate passed the ABLE Act as part of the Tax Extenders package in 2014.

At the end of the Congress this bill, the bill that we're implementing today, received 85 percent of the entire Congress' support and those numbers are 381 out of 435 in the U.S. House, and 78 Senators out of 100 co-sponsored this bill. The Stephen Beck, Jr. ABLE Act, public law 1132-295, was signed into law by President Obama on December 18, 2014.

The ABLE Act is named after the late NDSS Vice Chairman -- and we like to say the quarterback of this bill -- Stephen Beck, Jr., one of those original kitchen table parents and a father of two daughters, Mary Rose and Natalie. Steve made it his life's passion to ensure his daughter Natalie, who just happens to have Down syndrome, had the same opportunities as everyone else. Our friend Steve passed away just a few days after the House voted the passage of the ABLE Act.

NDSS has actively assisted state legislators and advocates in facilitating the passage of state ABLE bills and to date 35 states have passed and 33 states have enacted their own ABLE bills. That's since January and that's nothing shy of incredible. I just can't commend our team, our colleagues at Autism Speaks, and the National Disability Institute for everything that they've done to make that happen.

NDSS has openly and collaboratively discussed the ABLE program design in light of the proposed ABLE regulations with major stakeholders from the financial sector, the college savings plans, the state treasurers' offices, and, of course, other disability groups, many who are here represented today.

Yesterday we also made history and NDSS, along with the National Disability Institute, Autism Speaks, and the Disability Opportunity Fund, launched and formalized our leadership of what we're calling the ABLE National Resource Center. The ANRC because we need another acronym in this town comprised of these four steering organizations and over 30 other national disability groups will provide consistent, reliable information about the benefits of ABLE accounts and its potential impact on quality of life experience for individuals with disabilities.

Additionally, the ANRC will educate individuals with disabilities and their families, state governments and related agencies, financial service companies, financial planners, and attorneys in relevant specialty areas about the rules governing the administration and the use of ABLE accounts. Because NDSS

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played an active role in the federal ABLE Act effort, we have firsthand knowledge about the legislative intent regarding the bill.

At all times the goals have been threefold: One, to make ABLE accounts widespread throughout the country and accessible; two, to keep the administrative costs down and low; and the third, to minimize all burdens whether reporting or other on beneficiaries. Our official comments, which we previously submitted, were developed with these three goals in mind. Our comments are detailed in our written submission and our Board member, Sara Wolff, will testify shortly to lend a personal perspective to them. We want to highlight a few areas.

Signature authority for designated beneficiaries: We have requested that the IRS consider expanding the scope for the individuals eligible for signature authority to include a single designee of the parent or legal guardian. There are many adults with Down syndrome who live semi-independently, but look to trusted friends and family members to help them with their finances. They should be able to transfer authority over ABLE accounts to such a support person of their or their guardian's choosing. We have limited our request to a single designee to minimize the possibility of abuse of this provision and too many hands on the ABLE accounts.

The second is we would like to urge the IRS to allow self-certification under the penalty of perjury for eligible single ABLE account ownership and qualify disability expenses to consider such self-certification as a necessary safeguard requested in the proposed regulations. Under this model, similar to how savings accounts, beneficiaries who maintain their own qualifying paperwork and receipts would be ready to produce them if an audit is proved their eligibility to be a qualified beneficiary and their proper use of ABLE accounts for qualified disability expenses. Additionally, we request that the IRS develop a consistent eligibility certification form to minimize confusion among potential beneficiaries, financial institutions, and health care providers who are making the eligibility determination. This approach will also minimize the paperwork burden on our program administrators, which will help us to keep the costs down. We have confidence that people with Down syndrome, along with other necessary supports, will be able to self-certify and maintain the documentation.

Finally, we'd like to urge you to provide for an exception to the annual certification requirement in the case of conditions like Down syndrome, which will not disappear or improve. Improving yearly certification requirements on people with Down syndrome just increases the burden on beneficiaries who have this lifelong condition.

So in conclusion we'd like to take a moment to thank the Department of Treasury for being so open to discussions with the disability community and other stakeholders throughout the regulation process, especially Cathy Hughes who's been phenomenal to work with.

While IRS finalizes the proposed regulations, we request that the IRS issue interim guidance on the issues mentioned above. Although we are aware that IRS will provide transition relief to states who develop programs that do not fully

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comply with the final regulations, we are hearing from the state ABLE administrators that such interim guidance would enhance the pace of ABLE program development and ultimately lead to ABLE accounts becoming available as soon as possible.

So after nearly 10 years of advocating for this savings mechanism for people with Down syndrome and other disabilities, we don't want to wait any longer. We just thank you for all that you're doing.

MS. HUGHES: Sara, your comment offered some additional suggestions of things that should qualify as a qualified disability expense for those folks with Down syndrome, and you pointed out that it's impossible to provide a complete list of the kinds of expenses that should qualify. If we were to approach this from the other direction, how would you describe what expenses should not qualify as qualified disability expenses?

MS. WEIR: Well, I think we proposed this in our comments, I think coming up with those examples that don't meet the qualified disability expenses. I know when we worked on the initial legislation, we kept them broad because I think you can draw corollaries to many expenses that are related to a disability -- transportation to get to and from a job, housing if you're able to pay for your own rent or live semi-independently, everything from excess medical costs that Medicare or Medicaid and other private insurance companies don't provide. So I think keeping them broad is really helpful to the implementation process and it's less of a burden on the states so that you're not having to audit families and go through and say this wasn't a qualified expense.

MS. HUGHES: But is there anything that wouldn't qualify?

MS. WEIR: Well, a trip to Disneyland? I think you can -- with the exception of vacations or extracurricular activities, I would think you'd have to approach from an inclusion perspective. People with Down syndrome or other disabilities want to live as normal a life as possible, so I think those extra expenses like vacation wouldn't qualify, but most other expenses are related to the disability.

MS. HUGHES: Thank you.

MS. JUDSON: I have one question as well. You and many other commenters have requested that people be able to self-certify their disability certification. How do we reconcile that with the legislative requirement that the certification include a signed copy of the doctor's diagnosis?

MS. WEIR: Well, I think the eligibility is twofold: You meet the definition of Social Security, and I can guarantee you 100 percent of our folks with Down syndrome are going to meet that definition. I think for other conditions and diseases that you're going to offer eligibility for the doctor's note is important. But Down syndrome does not change. You are born with it. And to place that eligibility or that yearly requirement on our families is unnecessary. I know we hear from families all the time where Social Security still calls our families every year and asks the family if their child or their adult still has Down syndrome. I think you have to look at Down syndrome autism conditions that aren't going to

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change over the lifespan and make it as easy as possible. So that's probably a better question for another constituent group rather than Down syndrome.

MS. JUDSON: Okay, and so your focus is really more on the renewal aspect.

MS. WEIR: Uh-huh, yes.

MS. JUDSON: Thank you. Charles Hammerman.

MR. HAMMERMAN: Good morning. I just have two quick comments before I get started with my prepared remarks.

I just wanted to acknowledge the absolute, wonderful receptivity and generosity of Cathy Hughes. Six months ago we met. I came down here as an invitation from Cathy as a private citizen who was a parent of a child with a disability and this ABLE thing was being discussed. Over the last 6 months we've run into each other at conferences and such and at every stage you've been incredibly gracious about our conversations and discussions on this topic.

And the second item before I get to my formal remarks is I want on the record that I got my tax extensions in and filed as of this week, so I made the October 15 deadline, so I'm good to go. I won't have any problems getting out of this building.

Good morning, more formally, to the whole panel. My name is Charles Hammerman and throughout my career I have worked to empower and promote financial independence for people with disabilities. And I appreciate this opportunity to join with others in expressing my strong support for the proposed ABLE program regulations issued in June.

I will devote my remarks to the specific role identified in the rule for certified community development financial institutions, or CDFIs, and how and why CDFIs are uniquely qualified to help states ensure that ABLE programs are accessible, understood, and fully utilized by all eligible individuals, including those who are low income, who are unbanked, or fearful to put their benefits at risk by saving money.

My testimony today on behalf of the Disability Opportunity Fund and the Disability CDFI Coalition will expand on the written comments I submitted to the IRS last month. First, allow me to tell you a little bit about my personal experience. I am the father of Stephanie, a 26 year old daughter with cerebral palsy. Professionally, before founding both the DOF and DCC, I was an Assistant U.S. Attorney in the Eastern District of New York and a Wall Street professional. My experience as a father fuels my commitment to ensuring that individuals with disabilities have the opportunities and the tools they need to reach their potential, pursue success, and contribute to their communities. My professional experiences enabled me to create and expand access to those opportunities by providing the financial products, services, and information individuals and families need to thrive. I created the first Treasury-certified CDFI dedicated exclusively to addressing the unmet financing needs of individuals with disabilities and their families. I'm also the founder of the Disability CDFI Coalition, a network created to harness the unique capabilities of CDFIs across the country

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to empower people with disabilities. And finally, as Sara mentioned just now, as a member of the ABLE National Resource Center, I am part of the collaborative effort working to see that state ABLE programs are effectively launched and once launched, to make sure that all eligible individuals and families have the information and tools they need to take full advantage of ABLE program accounts.

Let me start by providing some background on CDFIs and the Treasury Department's CDFI Fund. CDFIs are specialized mission-driven financial institutions that provide financial products and services designed to meet the needs of urban as well as rural communities that are underserved by traditional financial institutions for a variety of reasons.

In 1994 the Riegle Community Development and Regulatory Improvement Act was signed into law and this act established the CDFI Fund within the Department of Treasury. The mission of the CDFI Fund was and remains to increase economic opportunity, promote community development efforts that benefit underserved populations and distressed communities by investing in and growing CDFIs. Today, thanks in large part to the CDFI Fund, there is a dynamic network of more than 955 CDFIs, working in urban and rural communities across the country. This network includes regulated institutions, such as CDFI Fund credit unions, CDFI banks, as well as unregulated institutions, including CDFI venture capital funds and CDFI loan funds, such as myCDFI, the Disability Opportunity Fund.

Since its inception the CDFI Fund has awarded more than $2 billion on the competitive basis to mission-driven financial institutions through an array of financial and technical assistance programs that enable CDFIs to effectively develop and deliver financial products and services to underserved communities and populations across the country. CDFIs fill a vital niche in the nation's financial services delivery system by serving communities and market sectors that conventional lenders cannot with the ultimate goal of bringing CDFI customers into the mainstream economy as bank customers, homeowners, entrepreneurs, and asset builders.

To be eligible for most CDFI Fund programs, an organization must first be certified by the Treasury Department as a CDFI; a very rigorous process to determine that an organization is one, an established nongovernmental financing entity, two, with a primary mission of promoting community development serving one or more underserved markets or populations, and finally is accountable to the underserved market or target population it serves. This certification process is something I mentioned today because it highlights one of the reasons CDFIs are uniquely qualified to partner with the states on ABLE program marketing and implementation as experienced community-based financial institutions that have been vetted by the Treasury.

CDFIs are recognized for their innovative approaches to community development, known for developing, refining, and adapting their financial products and services to address the needs of the market or markets they serve.

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This could mean developing a response to a food desert in a rural community or in the case of the Disability Opportunity Fund, financing the acquisition and renovation of a cooperatively-owned home for adults with autism.

I launched the Disability Opportunity Fund in 2007 with a goal of establishing a CDFI that engaged people with disabilities in an effort to expand their access to capital. Building on my experience as a professional with Merrill Lynch, I focused on providing technical and financial services to individuals and organizations serving the disability market with an emphasis on financing affordable housing, schools, and vocational training centers. Since we started, the Disability Opportunity Fund has provided over $50 million in financing through 45 loans to projects in 11 states. We have leveraged an additional $40 million in financing for projects benefitting people with disabilities. We've created 417 affordable housing units, 75 affordable group home housing units, and 343 new classroom desks for children with disabilities.

As I mentioned, we were the first CDFI certified exclusively to address the unmet financing needs of individuals with disabilities, but our strategy from the beginning was to structure our financial products to resemble those offered by the wider CDFI industry in order to facilitate our ability to partner and collaborate with other CDFIs. Early on we saw how we could replicate the success of the Disability Opportunity Fund and empower more individuals, families, and communities by joining together with other CDFIs. In an effort to generate more CDFI partnerships, we launched the Disability CDFI Coalition earlier this year. We invited CDFIs, financial institutions, disability service providers, and advocacy organizations to become part of a national network committed to harnessing the power of CDFIs to empower people and families with disabilities.

The Coalition was organized around three primary goals: To develop a network of CDFIs to effectively address the needs of individuals with disabilities and their families; two, to build a bridge between the disability community and the CDFI community; and three, to build and maintain a technical assistance and support center. Membership in the Disability CDFI Coalition now includes over 125 organizations and/or individuals, representing a diversity of CDFIs as well as conventional banks and a growing number of state agencies engaged in ABLE program development. Passage of the ABLE Act last December, followed by the release of the proposed ABLE program rules this summer, fueled our efforts to bring more CDFIs into conversations with the disability community and reinforce the importance of outreach, financial education, and marketing to promote participation in ABLE programs. This is where CDFIs can and should be put to work.

I'd like to share a couple of examples of CDFI collaborations that have been fueled by the ABLE program and encouraged by the work we're doing at the Coalition. In August I made a presentation to the College Savings Plan Network. Soon thereafter the state treasurer's office in Ohio requested DOF's assistance in discussing local marketing efforts for ABLE accounts. We in turn introduced the state.

MS. JUDSON: Excuse me, Mr. Hammerman, you're technically out of time. So if you could wrap up?

MR. HAMMERMAN: Two pages? Okay. We in turn introduced the state treasurer's office to the Finance Fund, a statewide CDFI based in Columbus, Ohio. The Finance Fund has committed to organize the other Ohio-based CDFIs and is standing by ready to assist the treasurer's office on ways to promote and educate others in the state on the Ohio ABLE program. This is just one example of how a CDFI is well-suited to help state ABLE program administrators reach individuals and families who may be unaware of the ABLE program or need assistance understanding the mechanics of savings or need reassurance from a trusted source that establishing an ABLE account will not jeopardize their eligibility for SSI or other benefits.

In conclusion, on behalf of my fellow CDFIs and particularly the Disability CDFI Coalition, we thank you for including CDFIs in the proposed regulations and for recognizing that CDFIs are uniquely qualified to support education and outreach efforts to promote state ABLE program participation and particularly efforts to reach individuals and families who are outside of the economic mainstream whether because they are low income or underserved by conventional financial institutions or concerned by putting benefits at risk by opening ABLE accounts.

I thank you for the opportunity to address you today and I look forward to working with you and your colleagues in the Treasury Department as you work to finalize the ABLE program regulations in the coming months. I welcome any questions or comments that you might have for me today. Thank you.

MS. HUGHES: I do have one question. Several commenters expressed approval of the regulations expressly approving contracting with CDFIs. But several commenters also suggested that the regs should not limit that just to CDFIs. It should also be expanded to contracting with other organizations. How would you respond to that?

MR. HAMMERMAN: We're so welcome and that's why we created the Coalition. This is not -- we never -- when you and I had our first conversation 6 months ago, it was not an exclusive -- it was just an extra tool. The way when you and I were together in August talking to the College Savings Plan Network, I had a big slide up there that had a toolbox. We're just another tool in the toolbox. So we are very welcome. It's a very big tent. There are a lot of -- we need to get everybody involved to get all the marketing out and get these things up and running. So we're very welcome to invite everybody in on that.

MS. HUGHES: Thank you.

MS. JUDSON: Thank you so much.

MR. HAMMERMAN: Thank you very much.

MS. JUDSON: Sara Wolff. I gather Ms. Wolff is not here yet, so we will call her again at the end of the rotation. Sandra Madden and Margaret Creonte. If I mispronounced your name please correct it.

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MS. MADDEN: Hi. First I'd like to thank you for the opportunity to provide comments with respect to the proposed ABLE Legislation. My name is Sandy Madden, I'm here on behalf of the Census College Savings. A census --

MS. JUDSON: Could you move the mic a little closer?

MS. MADDEN: Oh, I'm sorry. Thank you. A Census College Savings is a leading provider and record-keeping services for the 529 industry. A Census College Savings has 13 years of experience in administering qualified tuition programs or 529 programs. We have partners in 17 different states across 31 different plans. We have approximately 69 billion in assets and we represent approximately one-third of the 529 market. Since the introduction of ABLE legislation, we've been corroborating with our partners in order to try to develop a strategy to best provide a solution for an ABLE Program.

Some of the issues that keep arising are really some of the fundamental differences between 529 plans and ABLE programs. And what we are trying to achieve is a simplified product that will be easy to use and build on the similarities of existing infrastructure that we already have in place, and keep cost low for participants.

Many of our recommendations focus on requesting changes that will bring ABLE more in line with the operations of 529 plans. The first issue that I'd like to discuss is with respect to the certification of eligibility requirement. We believe that it will be important for participants to be able to self-certify, and recertify their eligibility with respect to ABLE Programs.

We believe that having this requirement may add cost and undue burden to build service providers and those participants. For the service providers it would be two-fold. It would be in the collection and the analysis of this information, which is medical information and we have no in-house expertise with respect to dealing with medical information.

We don't have the personnel available to make the determinations and evaluate diagnoses, and the associated medical documentation that would be associated with that. So we feel that would add quite a bit of cost with respect to adding personnel and gaining that expertise in order to fill this requirement. With respect to participants we feel this would subject them to having additional risks, for having their personal data and including sensitive medical data, disseminated and stored at a third party service provider.

We also believe that this would ultimately add cost to the underlying product, potentially delay implementation, and result in a less user-friendly product as it would delay the enrollment process. If self-certification were allowed, which we would -- that would be our recommendation, that would be allowed, it would streamline enrollment for potential ABLE Program participants. Participants could potentially certify under penalty of perjury that they are eligible individuals, and Treasury could also consider creating a standardized form for the certification, which I think would aid in allowing people to understand clearly what the pieces of information they are required to provide.

The next issue that I would like to discuss is with respect to the proposal for safeguards for the use of distributions. The PROs regulations require that safeguards should be established to distinguish between qualified and non-qualified distributions, and it's shown in the eligibility of a qualified expense. Currently 529 programs have no such requirement, and 529 program service providers have no automated means by which to determine the nature of the distribution.

The definition of a qualified distribution is broad, and may vary among individual participants. This is a subjective and burdensome task that requires extensive training and expertise by the state or its service provider to make a determination with respect to which transactions are qualified and which transactions are non-qualified.

In addition, in dealing with our state partners we've come to understand that a debit card type product is something that could be of significant interest to this population, and it would be difficult to implement this type of a product if the determination with respect to the qualified or the non-qualified nature of a transaction needed to occur at the point of the transaction.

We would recommend that potentially -- particularly with respect to the use of a debit card that the participant be allowed to make that qualified or non-qualified designation after the fact, and really in keeping in line with the approach of the 529 industry, that the ultimate responsibility for making these determinations, and for tracking and storing tax information is really incumbent upon the participant.

So we believe if this proposed regulation was modified it would significantly benefit participants with respect to lower cost, functionality of the product and ease of use.

The next issue that I'd like to discuss is with respect to the collection of Social Security numbers and Tax Identification numbers from third party contributors. Currently there's no such requirement for 529 plans, and we have no process in place to collect such data. Social Security numbers and Tax Identification numbers are sensitive data to collect and to store. We also believe that would act as a disincentive to contributors. There are many instances where we have noticed as far as the distributions that it's a one-time distribution, and it may act as a disincentive if that family member needs to produce a Social Security Number in order to make a contribution to an ABLE plan.

So we think that this would be a key place where we could make some modification. Also in connection, somewhat in connection with that, is the issue of excess contributions. Currently the proposed regulations would require the return of any potential gains to a contributor. Currently we have established procedures for rejecting contributions if they were to exceed contribution limits.

So we don't believe that they would necessarily ever be a case where we would have a contribution that was entered into an account and then would -- and then result in gains to be reported. In the rare instance that a contribution get through, principal only could be returned. In addition, on a case-by-case basis if

that event were to happen we could try to then identify third party contributor to provide the necessary information that would be associated with that with any associated earnings.

We believe modification of these proposed regulations with respect to this would result in lower cost to participants, as there would be no costly bills to meet this requirement, no tax reporting to third parties, and create ease of use for family members and other parties to contribute.

The next issue I'd like to address is in response to the request for input from Treasury with respect to program-to-program transfers, versus indirect transfers. A Census College Savings believes that program-to-program transfers are the most efficient and cost-effective manner to achieve this objective. Based on our experience in processing planned transfers for 529 accounts, program-to-program is the most efficient.

If the information is not coming directly from another account, the likelihood of mistakes is higher. In addition, the information is often incomplete and the principal and earnings breakdown of the transfer dollar amount is often not provided. In (inaudible) a program-to-program transfer is likely the best way to ensure that all important record-keeping information is being properly transferred to ABLE record keepers.

The final issue, what I'd like to address is with respect to timing of earnings calculations. We request that Treasury provide guidance regarding the calculation of earnings for ABLE Program distributions, and to make it similar to that if the calculations in 529 earnings.

As proposed, all distributions during the taxable year shall be treated as one distribution, and incoming and investment in the program shall be computed as the close of a calendar year. This was initially similar to 529, and then it was changed for the calculation to be done, the earnings calculation to be done upon distribution. This is the current way that the system is set up, it would be no additional cost to continue to do it in this manner, and we believe that this would allow for more accurate calculation with the earning.

We appreciate the opportunity to share our regular concerns with the Treasury. And thank you for your consideration.

MS. HUGHES: One question. Could you explain how, you know, the purpose of keeping track of the earnings on distributions is to make sure that the designated beneficiary can accurately report the income on a non-qualified distribution.

MS. MADDEN: Mm-hmm.

MS. HUGHES: So the fact that the computation would be more accurate if done on a per-distribution basis, how does that accuracy translate into making sure that the designated beneficiary is accurately reporting the income on their 1040 that's attributable to a non-qualified distribution?

MS. MADDEN: We would propose that, potentially, a way to address that issue, which I think is getting at providing the non-qualified earnings, and the qualified earnings, and that we would potentially be able to issue to tax reporting forms that would have those separated out. So the participant would receive information on earnings that relate to non-qualified, and earnings related to qualified.

MS. HUGHES: Thank you.

MS. JUDSON: I have one other question. You know, are recommending that there be self-certification both initially and with renewal, and how do we reconcile that with the statutory requirement that the certification be filed with the Secretary and include a copy of the individual's diagnosis signed by the physician?

MS. MADDEN: Well we think that to accomplish this, the self-certification would still be consistent with that, and it would just be the participants themselves that would keep that medical determination, and that doctor's determination, and then they could provide it upon request. So I think it's just moving the burden from the record-keeper, or third party record-keeper storing and maintaining that data, as opposed to the participant holding and destroying and maintaining that data, and then providing it upon request.

MS. JUDSON: But in terms of filing information on diagnosis with the Secretary, what would you envision -- what are the capabilities to record, for example, different diagnosis, doctor's name? Are there abilities for you to get any of that information to the Service?

MS. MADDEN: Yes. I mean, I think that if it was structured and more of a check-the-box type of a format, that would be something that would be very workable.

MS. JUDSON: Thank you.

MS. MADDEN: Okay. Thank you very much.

MS. JUDSON: Stephanie Hoffer?

MS. HOFFER: Good morning. Thank you for the opportunity to be here today, and welcome these regulations. First let me refer you to my written comment on the LIFO requirement and the REGs. I'm not going to address that today, but if you have question, I'd be happy to answer those after my remarks. Instead, I'd like to focus on Section 5, 29 A to B, flush language, and for those of you in the card who are not tax attorneys, I apologize.

I'm going to provide a statutory interpretation for that flush language, so that is in keeping with policy goals established by Congress for the ABLE Act, and then demonstrate that this interpretation is also cost mutual.

The Section 5 29-A, sub-section B, paragraph 2, describes contributions to the ABLE account, and it provides two enumerated rules, the contribution must be in cash, and it cannot exceed the section 2503 gift exclusion amount, in effect for any given year. And right below those two enumerated rules and the flush language the statute has that quote for purposes of this paragraph, and again

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that is paragraph 2, subsection B on contributions, rules similar to the rules of Section 408 D-4 also apply.

Section 408-D, in turn describes the tax treatment of distribution from and IRA, and most specifically 408-D-4, the cross-reference language describes the treatment of contributions to an IRA that are then distributed in the same year. And the 408-D-4, these distributions are treated as though they were never a part of corpus of the IRA, and they are not included in income subject to Section 72, rather they are treated like a return of basis plus taxable earnings.

And so this seems to be a mismatch, and the question is, how does that rule bear on Section 529-A-2-B, which deals with not distributions, but contributions? And one possible answer, although not the answer, I think that should be preferred, is that the cross-reference is meant to describe the tax treatment of the distribution of excess contributions that are bounded out under Section B-2-B.

This however may not be a reasonable interpretation for purposes of Chevron Analysis. The tax treatment of those returned contributions were they to occur, is described in a different portion of the statute, and hat is section 529-A-C-3C, and of course under the statutory interpretation can only, again, surpluses that we should not interpret through portions of this statute to be a dumb zone.

So, because Section 529-A-C-3-C, unambiguously address the tax treatment of distributions of many contributed in the same year as the distribution, that cannot be the subject matter to which the cross-reference to 408-D-4 refers. For the others, the second canon, the whole (inaudible) canon of statutory interpretation requires us to consider the cross reference in light of its surrounding text, and that cross reference to 408-D-4, appears in the paragraph describing contributions to the account.

And so as a result I think we are required by Supreme Court jurisprudence to read Section 408-D-4 as a part of the statute's description of contributions, so when read in this light I think we can understand section 408-D-4 as being a sort of a directive on timing. Subsection C-1-D requires distributions be accounted for on an annual basis and the cross reference to 408-D-4 may produce a parallel result for contributions.

So in the context of the IRA, again, the deposited distributed in the same years in which it's contributed is not treated as a contribution to the corpus of that account, and by analogy, then the deposit to an ABLE account distributed in the same year should not be treated as a contribution for purposed of applying the annual contribution limit found in paragraph 2 of subsection B.

But more plainly, for those of you in the audience who don't like to toss around subsections, money deposited in an ABLE account that is then withdrawn in the same year should not count against the contribution limit, as a result. It also should not be treated "an aggregate" contribution for purposes of that overall limitation which appears in Section 529-B-6.

Okay. So having established an interpretation that have flush language, allow me then to move onto policy, because this is a pretty change in interpretation

from the way in which most people in the press have reported the act. So this interpretation is completely in keeping with dual goals established by Congress for the ABLE Act which will, "To encourage and assist individuals, and in saving private funds." And then second quote, "To provide secure funding for disability-related expenses."

So two things, cover disability related expenses, but also encourage savings. Under favored interpretation of the flush language of beneficiary can do both things, but adapting a disfavored interpretation of that language, requires able beneficiaries to choose between Congress' two goals. And they can't use disability related expenses then, could not be replenished, in a way that would encourage savings. And this point I think is crucial, was policy point.

Probably Congress' motivation in the passing of the ABLE Act was to create parity between individuals with disabilities in terms of financial planning, and typically-able counterparts. People who do not rely on government services should remain independent in the community can take advantage of other tax-preferred savings vehicle such as the 529-Card COB Savings account, heath savings account, IRA, 401(k), individuals with disability cannot have these accounts without losing access to services that they need to remain in the community.

So as a result the ABLE account itself has to serve these purposes. It is a fund for higher education, a fallback for uncovered medical expenses, and the retirement account, and all of those things in addition to what we typical would think of as being disability-related expenses. So interpreting the flush language of section 529-A-B-2 is merely being a method of taxing excess contributions, not only in Section 529-C which serves that exact same function, but it would prevent ABLE beneficiaries from achieving the parity that Congress intended for them.

And just as a side note, the Supreme Court in King v. Burwell has come out with this real proposal of method of statutory interpretation, and I think it would be completely appropriate for Treasury and the IRS to consider those purposes when interpreting this flush language.

Okay. So let me move on to cost, having established an interpretation of the flush language and suggesting that it supports Congress' overarching policy reasons, and I now turn to the fact that this interpretation would because cost neutral. So from a fiscal perspective this is true for three reasons, and the first is, adapting a favored interpretation of the flush language does not increase tax expenditure. The reason for this is that Section 529-A-C-3-C requires the disgorgement of any profit that's associated with a deposit that is then distributed in the same year.

As a result tax deferral is not available in this context, and the flush language therefore doesn't increase tax expenditure. The second reason why this interpretation of the flush language is cost neutral is that it is not likely to increase burden on other Federal programs. So first and foremost, any provision that tends to increase savings inside of the ABLE account is likely to decrease the

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burden on SSI, and that's because the statute provides that SSI benefits are suspended once the ABLE account balance reaches $100,000.

So adopting this favored interpretation of the flush language means that beneficiaries who are inclined to save are going to reach that $100,000 mark more quickly, and move out of the system more quickly.

Second, greater savings inside of the ABLE account is going to increase states' ability to invest -- increase investment earnings and lead more quickly to ABLE Programs that are self-sustaining.

And then third, ABLE beneficiaries, who out-earn that Section 2503 limitation, currently have the option and will continue to have the option of placing additional earnings inside of a highly-restrictive special needs trust. This thing is federally sanctioned and like the ABLE account, the corpus of the trust is not counted as an asset for purposes of benefit eligibility. But unlike the ABLE account, these trust funds cannot be used many times for the ordinary expenses of adult living, and the beneficiary has to relinquish complete control over the funds.

Despite these being so draconian people do use them to preserve eligibility, and so the questions with flush language is not whether a beneficiary is going to not be eligible for Federal programs, and then become eligible because of this interpretation, but rather on what terms will people be eligible. So, I think the likely news here is that ABLE beneficiaries may shift excess earnings from special needs trust into the ABLE account, or that money can be used to make purchases that otherwise might have to be covered by the Federal or State Government.

Okay. To the extent that the favored reading of the flush language enables beneficiaries to respond by spending more time in the workplace, studies suggest that this may decrease health care cost overall, result in the additional payroll tax and perhaps even increase income tax revenue. And then finally, adopting this appropriate interpretation of the flush language increases the government chance of receiving recruitment through the statutes, Medicaid payback provision.

So under Section 529-A-F, any amount remaining at the end of the beneficiary's life, is supposed to be used to repay state Medicaid for services that it covered during that beneficiary's life. And any interpretation of the flush language that restricts savings inside of the account, works directly against the government's financial interest. A favored interpretation, in contrast, not only promotes financial independence, but it also promotes saving, and it makes it more like this Medicaid payback provision will come into play.

So, in summary -- look at -- like -- at me run over like them at the Oscars. I urge the Treasury to adopt an interpretation of the flush language that -- a deposit that is then distributed in the same year would not be counted against the contribution limits described in the Code. And with that I'm open to question. Thank you so much.

MS. JUDSON: I have a two-part question.

MS. HOFFER: Yes.

MS. JUDSON: First, is there anything in legislative history, or other commentary that will support your interpretation that this is what Congress specifically intended? And second, why shouldn't we say that B-2 are the rules saying, what you need to do in order to be qualified ABLE account, and the reference for 8-D4 is to the IRA rules when you accidently put too much in and take it out, so that's what you need, the limits you need to have an ABLE account and the -- what's it -- C-Section on contributions returned before the due date, 3-C is what the tax rules are with respect to money that comes out when collected. And in the IRA context you have those different structure, so that would give both sections a meaning that's consistent with the general meaning for doing the structure that 529 follow from IRA environment.

MS. HOFFER: Potentially, potentially. Let me start with the legislative history. So I really come through and as far as I can tell there's nothing that speaks directly to the meaning of that flush language. So there's nothing that particularly supports this interpretation, but also there's nothing that's particularly there that would strike the interpretation.

With regard to an interpretation that suggests that the account has to bounce out excess contributions, I mean, I don't -- if you look at the language, it actually says the account cannot accept contributions in excess.

MS. JUDSON: So that's also the structure in IRA, so that generally, sad to say that accounts can't take certain money, and then there's a correction mechanism provided, if they accidently do, and that piece tells you what the tax treatment should be particularly, you know, when you include the income amount that was erroneously in there for a certain period.

So it seems to follow that structure, and then both sections have a new name. So partly the question is, if Congress intended to have this very different rule, which would mean you could put $100,000 in your IRA as long as you spend it all on your (inaudible), so wouldn't they explicitly say that, and how would we administer that, when we didn't know till after what you spend, how much you are allowed to have in? So how would people put in systems that would run the whole program?

MS. HOFFER: Well, so the portion of the IRA statute that is in the cross reference is really limited, 408-D-4 addresses only the tax consequences, the distribution that's bounced out, and it's not, it's not limited to that. It applies across the board to any distribution, if you put a contribution in, you would try it in the same year, 408-D-4 (inaudible), and that's not only in the case of ones that get rejected, but when you -- the contribution that you then take out within the same year.

And so because the cross reference is so narrow, it doesn't -- I don't think the analogy is to that entire regime. As far as the administrability goes, when you look at the statute, if you are talking about assessing distributions that happened at the end of the year. So what will the aggregate distributions of the account;

you look at that at the end of the account's year, and it makes sense then, also, that you would assess what would the aggregate contributions would do at the end of the year as well. And I think that -- you know -- with the (inaudible) stopper this is the test that's probably not all that difficult and I think it's actually comprehended to some extent by the current reporting requirements in the REG.

MS. JUDSON: But you just said that everything is determined as at the end of the year, and that the statute says we are not allowed to accept a contribution in excess of the limit that sorts of fights with your determine it all after the fact?

MS. HOFFER: Yeah. I agree that there is some inconsistency there, but I don't -- I don't see this as an issue. I mean, I guess after listening to -- I'm sorry, I've forgotten, Sandra, so that you immediately bounce those out. For administrability, if you guys were the administrator this may create difficulty for you, right. But it's -- I think that's the case because they are working with a hard number, $14,000, whereas I think it's just as easy to say, at the end of the year, we are going to look at that number and then make returns, right.

And this has kept -- there's a regime in place that deals with that, so the money that's returned the profit has to be disgorged. That disgorged profit is included in tax, if the disgorgement mechanism doesn't work properly there's a 6 percent excise tax on the money that remains in the account for too long. And this is Congress' regulatory mechanism built up to determine what the profit is, and none of that would be necessary if the only result was when you hit that $14,000 limit, the 529 administrator is going to bounce back.

MS. JUDSON: Well, under your proposal of the administrator at the end of the year would have to collect information on how much is spent, and at that point determine whether there excess. That's under the new interpretation.

MS. HOFFER: They would look at distributions from the accounts.

MS. JUDSON: Okay. Thank you very much.

MS. HOFFER: Thank you.

MS. JUDSON: Mark Hagen. Mark Hagen, please? Is Mark Hagen here? Okay, Mary Morris please.

MS. MORRIS: Good morning. Thanks for having us here. So again thank you so much for the Treasury and the IRS for drafting these regulations and getting them out quickly. I found as we were working on the comments for this I always know how much easier it is to edit than it is to take the first cut at something. So I appreciate the fact that you all took the first cut and we're just suggesting edits to a really well-done piece of work, but we think that there are things that can be improved on it. I'm here today representing the College Savings Foundation, which is a national organization of state college savings programs and program managers and others who are interested primarily in college savings and now many of us have become interested in disability savings account through the ABLE contract.

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I also have the privilege of serving as the CEO of the Virginia 529 college savings plan and that's -- hence my involvement with CSF -- and we also have the responsibility for building Virginia's ABLE program so we're working on that. Our mandate in college savings is to make our programs and to make higher education more affordable and accessible for everybody and I think that theme runs throughout what we're doing here with the ABLE programs is to make life more affordable, make it easier, make it better for persons with disabilities and to have it be accessible.

Successability works in a lot of different ways and I think all the comments that you will hear at least from those of us who now run college savings programs and have at least 18 years of experience -- many of you have prepaid programs, goes back even further in trying to run a complex program with relatively small contributions. Very much of a retail kind of a contribution base and the benefits of making it simple, efficient, cost effective, and I know you've heard those words many, many times and I'm not, guess if you did award all, those were the three that might come up in the 320 some comments that you had, but they bear repeating. Simple, effective, efficient, use those words accessible, cost effective and that's the bottom line really on all of that, the simplicity and the cost effectiveness and so that runs throughout. I think the theme in these programs too is self- determination, that's a big factor and the impetus for the ABLE programs and so I think that goes along with the theme of our recommendations on these regulations that self-certification and tax payer responsibility are really paramount and we think that that's consistent with tax regulations generally. With pretty much everything we do whether it's a 1040 or many other IRAs, many kinds of programs the responsibility is on the taxpayer, in this case the qualified beneficiary of an ABLE account to verify or certify that they are eligible, to know what their circumstances are, we know they all -- from discussions with the social security administration if they are receiving federal benefits they already have an obligation to report a change in circumstances whether that's excess income or additional income or assets that that exceed the permissible amounts.

And so I think our recommendations or our suggestions are consistent with those concepts as well -- that it is the responsibility is on the potential taxpayer or the person receiving federal benefits to make those determinations and to report when there's a chance in circumstances.

So you've already heard it and I'm going to go very, very briefly and I know that some of my cohorts from college savings will address the three primary issues and we also would reiterate the request that we know it's difficult, but that at least on some of the major issues that will inhibit the possibility of opening programs quickly that we could receive some interim guidance through a notice in advance of the final regs, because I think I have a clue on how hard it is to get those through and the timeframe involved.

The key one to me has always been the eligibility certification and, again, to me self-certification works. I know you asked the question about how do you get around the statutory language so I was looking at it really quickly. The first thing I

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look at is that disability certification is filed with the Secretary of the treasury under the statute. Now I know the regs sort of say well it's deemed filed by the secretary by filing with the state, but that does push onto the states that burden in the proposed regs to accept the documentation. But when you read back down through it it is clear that a diagnosis has to exist, we just believe that as long as that exists and there's some method for collecting some information on that, and I know we discussed that at a prior meeting with you all.

That's the type of data that we can collect in an online application. The name of the physician, the type of diagnosis. I was looking at the 5498 QA which collects two kinds of information, the basis for the eligibility and I would think that a certification on an application could have those categories and you would check-the-boxes to which applied and the same thing for the type of disability. It would be a check the box. It would match up with the 5498, so for reporting purposes that would be sufficient. The one thing I do know in at least my recollection that's not recorded legislative history. Although I know at the forum that Representative Crenshaw set up fairly recently on the -- some of the staffers that we were talking to had the same recollection that I did.

We had some discussions with JCT and with other congressional staffers prior to passage of this legislation and it was written differently and required a reporting by the states as to types of disabilities and some pretty complex reporting and our comment there was that is just really not feasible for our programs collecting that kind of data, collecting documentation, particularly when it is personal medical information for which the programs that are going to be running this are not used to that and not qualified to accept would really put a burden on the programs, and the legislation was changed and so I think that's pretty consistent. Their recollection is consistent with mine that there was never an intent on Congress to put that sort of recordkeeping and some of the reporting requirements in this legislation. So I would ask that you take that into account.

I know we've also requested broad signature authority, there is some issues in that in terms of when the account is set up, whether the qualified beneficiary as I'll call them has to actually establish the account unless they are a minor, but we think that the more flexibility the better is possible there. We know that they are within the social security realm, there's a possibility for representative parties and representative signatures and we would hope that we would have some similar flexibility with these programs. On the distribution side, we talked about that a lot and the requirement there. It's not even really clear. I understand that there is an attempt to ensure that there is not any fraud and all the rest of it, but having the states make an attempt to collect whether or not a distribution is qualified or the purpose for which a distribution is made, we think would just be an unworkable and untenable requirement. One way we know that is that it proved to be so very quickly in the college savings realm where the types of expenditures are much more narrow, and trying to track those expenditures and determine whether or not they were qualified was going to put programs under I suspect and that was changed pretty quickly through legislation.

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And again it seems that if the social security mechanism is the proper place to track that, and again I think that there is a responsibility to indicate if you receive funds and it's not for qualified purpose, then that can have an impact on those federal benefits and there would be a duty to make a report to the SSA on that activity. So the timing works better than trying to collect that type of information through a state program. And again we've mentioned that we think that these programs will at least -- some individuals will use debit cards, you are not even going to be filing a form requesting a distribution.

Some of this just is the nature of technology. It's changing more and more. The college savings plans have gone to online distribution. You are not sending a form in with documentation and waiting a couple of weeks and getting things back, so just the practicalities of it and again making a simple, efficient, accessible program would indicate that we not ask any questions about the distributions and that burden be placed on the qualified beneficiary.

The third key point that I think many of us in the college saving world have talked about is the collection of contributor TINs. I think you heard from a census, we would say the same thing from a state program that sort of runs its own program in-house, we have mechanisms to prevent excess contributions now and think that those would be perfectly adequate and the likelihood of an excess contribution being accepted is very slim. It would be noticed very quickly if it were accepted, so that the possibilities for earnings on those excess contributions again I think is quite slim. I think we could probably make some adjustment to get the proper information should that happen, but that you put that burden on every single contribution is excessive isn't required because the brakes are in there to prevent those contributions.

I'll throw in one thing that I had put I know in my states comments since I have a little bit of time left, which is just flexibility for contracting states. I would hope that a state that doesn't provide a program and wants to contract with another state might have the flexibility to work with more than one state, so they are not really vetting it necessarily but saying these are qualified programs and our citizens can utilize them, and then investment direction. That was actually in one of the primary components of the college savings foundation letter.

It goes to college savings as well. We think that the investor control doctrine that we discussed in the letter -- and I know that I'm running out of time so if you want more on that, but that the selection from another group of broad based options is important, but particularly when circumstances can change in ABLE accounts when you have a very broad time frame and if someone has a -- they got out of remission, they are in the hospital for a few months, they want to rebalance they may need access to their funds. If they come out of a crisis and they go back into a different phase they may want to go back more into an investment and an asset gathering phase.

And so that ability to rebalance and to move from among the options in the program more freely than twice a year and that just has to do with how you

define investment direction, we think is really important for ABLE programs. Thank you very much.

MS. HUGHES: One question, you mentioned contracting states being allowed to contract with more than one to offer choice.

MS. MORRIS: Right.

MS. HUGHES: If we were to construe the statute that way, that state contracting states were not limited to contracting with only one program.

MS. MORRIS: Right.

MS. HUGHES: Would that be an unfair advantage to the citizens of that contracting state because if my own state has a program I don't have that choice, I have to use my residency. Is that an unfair advantage that we'd be giving?

MS. JUDSON: As you know I don't like that restriction, but I understand that's a legislative one, so I understand that, but well -- when I look at how you get the practical application of the language that is in there that allows for a contracting state it makes it very difficult to select one state because then what if your citizens say well that wasn't the best one. You chose Virginia which of course will be a great program, but maybe they think it should have been Florida or Colorado or whatever, so that's a potential problem, the due diligence that's involved.

Whereas if you can open it up more broadly and say here's some choice, I would argue also that states that aren't able to open a program are going to be disadvantaged because they won't have any program. They won't have any options. I think that's a flaw in the statute which again I know you can't address, but that's one of my issues with the home state requirement. So to me this is a way to provide a little bit of flexibility that I think is not inconsistent with the language. It clearly doesn't say that you can do that, but I don't read that it says that you can't allow that flexibility and to me it takes some burden or responsibility off that contracting state in the contract or state to say this is what we offer. There is no liability. You can have a disclaimer that we're not saying this is the best program in the world, we are not telling you that you are going to make money because you can't do that in an investment, but to say it is a qualified program within the federal statute and we're saying our citizens can utilize this and this and this program.

To me it's an advantage but I understand there's going to be unfairness in this I think for a number of years until every state figures out they are able to open a program or find some other mechanism.

MS. JUDSON: I had one question about your comments at the end and your written comments and that relates to -- is there anything in the legislative history or any support for your view that Congress meant to change the standard of determining when you have an investment choice as opposed to the frequency. It seemed one way to view the statutory change is they just want to allow you to do it twice a year rather than changing the whole standard. And also mention that one other commentator had suggested that we have a more narrow exception. If

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people are moving money into a liquid investment in order to distribution, whereas you seem to be proposing that as long as it's within an aggregated fund you can move as much as you want.

MS. MORRIS: Well a couple of things. I don't think that in this latest change -- I think it came very quickly and without a whole lot of thought so I don't think there is any legislative history on the why or the real purpose. I think they were attempting to address a need that the college savings industry had been talking about for a very long time and I will say that within the College Savings Foundation for about the last year, we sort of hit on this and I'm sort of a reform tax lawyer, so the original statute never made any sense to me when it says no investment direction, period, ever.

And the way it was interpreted I just think was misinterpreted 18 years ago and no one ever really challenged it and that what it really meant was that you could not specify and work with a broker whose going to say I'm going to put you in a particular stock or a particular fund that's not offered within a program. And that certainly could happen and I think it can happen now with this language which I don't know that any program is ever going to do that, but that would be a possibility which is different from a reallocation among that limited group of offerings that a program provides. So to me if you go backwards in time you can make the original language make sense and of course Treasury changed it to one time a year even though that is not anything close to what the statute says, but it was to address a perceived need because of the way that had been interpreted so -- and again we've used that investor control doctrine with annuities and insurance to sort of make the case that in that doctrine that's exactly how it's interpreted.

That it's not considered investment direction if you choose from among a group of broad-based investment options.

MS. JUDSON: Thank you.

MS. MORRIS: Thank you.

MS. JUDSON: Jennifer Brown.

MS. BROWN: Thank you for allowing me to speak today. My name is Jennifer Brown and I am the founder and CEO of the Investor Card LLC. I am also a member of CSPN as a corporate affiliate. I have over a decade of experience as a financial advisor at the broker dealer level as well as owning my own registered investment advisory firm. I am hoping that my insight and comments will be found beneficial for today's meeting. A little bit about my company, the Investor Card LLC currently has two products -- 529 Easy and Able Easy. One of the things we'll be talking about is ease of use based off of that. The Investor Card is a financial technology company that uses a payment card linked directly to investment accounts. It is similar to the cash management account, but it takes one important step further. It can trigger a trade inside the investment account. This could be a money market fund or an investment.

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When the card holder is online or at the register the Investor Card allows the user to purchase up to 80 percent of investable assets leaving a buffer for market movement or 100 percent of cash or cash equivalents at the point of sale as if they are using a typical debit card. My concern is since the financial institutions nor I know the savings or spending habits what they'll be with these accounts there is confusion as to what type of accounts the ABLE account should be. Should they be investment accounts or should they be savings accounts?

Since the disability community and the person may only have one account they would be left to choose. That means for somebody who's using it day to day they would open a savings account and someone who is looking at a longer time horizon would open an investment account. But what happens to those who either don't know their needs or want to establish an account that has both features. With the Investor Card solution they have the best of both worlds. I believe strongly that an investment component needs to be part of their account.

If we talk about investment objectives. I'm here today as CEO and financial advisor to explain how innovative technology can help the disability community navigate the waters of these new ABLE accounts.

We want to encourage ABLE account holders to save and invest for their future needs. That means that the account holder would have some of their moneys invested in the market. Changing of investment objectives can become tricky for people who pull money out of their accounts on a daily, weekly, monthly or even quarterly basis. For example, if somebody has 30 percent in cash equivalence and 70 percent in investments and they pull the money out now reducing the accounts say to 20 percent of cash equivalence and 80 percent in investments this would be considered an investment objective change. With the Investor Cards ABLE easy a pro rata trade would keep the investment objective at 30-70.

Now disbursement timing. Another concern is pulling the money out of the account prior to using the funds. Will this cause a problem with SSA or calendar year end? A perfect example is demonstrated of the October 4th Wall Street Journal article titled Watch the 529 Deadline Mismatch. The article suggest that with 529 accounts tuition is due early January and account holders pull money out of their 529 accounts in December to pay the tuition in the first week of January. This action now causes account of the year discrepancy. The Investor Card allows the account holder to take a real time distribution, therefore the disabled community does not have to worry about SSA or tax implications.

So I'll also talk about restricted loop. The government has been using debit card for quite some time now, with unemployment benefits, social security benefits, food stamps to name a few, and we can talk a little bit about food stamps. Food stamps, SNAP or EBT is now used across the country allowing families to purchase qualified items using a debit card. There is a merchant network that is set up to allow for these purchases. My card can allow for the same or similar restricted loop, however if we take the database of SNAP for food and CGIS for medical we've just scratched the surface.

Even I do not believe there should be a restricted loop on the card, my company can incorporate these restrictions if necessary and with your guidance and assistance but mainly to help the consumer but not to dictate, and we still believe that the onus should be on the cardholder. We can work to put the restrictions using category codes and even down the line get to merchant identifier, but this will take some time and we do need to get these accounts out and start having people have use of these accounts. Again we believe due to the nature of these accounts and the diverse amounts of disabilities within the community may make it nearly impossible to decipher what is qualified and what is not. That being said the institutions and state, we can help them develop a robust payment card for ease of use for the disability community.

Our patent pending technology makes using an investment account easier. The account owner would not have to first trade the account, wait for the account to settle, wait for an ACH, instead they would be able to use their account at the doctor's office or to purchase medical equipment or whatever qualified needs they have. Let's also talk about the cardholder. I believe that the accounts will need two cards. We can offer a card to the account holder and their legal guardian if permitted. As long as the guardian is attached to the ABLE account they will be able to use the card to qualify expenses and secure an ease of use.

The Investor Card may have some solutions to help with distribution process. That being said states and financial institutions may not choose to use our company. Therefore I can't stress enough the ease of use and understanding of ABLE accounts is very important. We are all striving to make a product that the community can get behind. If it is too cumbersome or confusing then the community will reject these accounts. I will gladly partner with you to make the distribution process clean and easy for the account holders. Thank you for your time.

MS. JUDSON: Thank you very much.

MS. BROWN: Thank you.

MS. FORD: Thank you very much. Thank you all for you attention to detail on many concerns of people with disabilities who have waited for this program and who will need to use the program. We found many, many good provisions and I covered them in written comments. I only want to highlight a few point here. And I'm going to go through my points in the order that the regulations were written. So it may appear that I'm repeating a few topics but that's because they are repeated.

First in the definition section, regarding a designated beneficiary and the person with signature authority, there were some comments about authorizing a representative and I wanted to comment that we do not think that representative pay should be an authorized signatory. These folks are not necessarily chosen by the beneficiary. They do not go through a formal process like a guardianship process. It is a process but not that structured. There's no assurance that the beneficiary approves of that person. The representative pay is put in place to manage monthly cash benefits not long-term savings or investments.

It's a different job and you might want a different selection process and a different set of assurances in terms of the skill sets of that individual. Many that pay are actually case managers or people who are working in a group home with someone or group home operators or providers. A rep payee can be an organization, it can even be a state or local government and I just do not see that that's the right person to be handling somebody's account. These are very personal savings accounts and should not be subject to that kind of authorized signature.

In terms of eligible individual we think that you hit on a proper interpretation of the statute basing eligibility on blindness or disability under Title II or title XVI of the Social Security Act or separately on the basis of a disability certification filed with the Secretary. We believe that that's the proper delineation of statute and that those are separate ways of coming into the program. For qualified disability expenses, we strongly support the language and that definition particularly including expenses that are for the benefit of the designated beneficiary in maintaining or improving his or her health, independence or quality of life. I believe that that's very, very important and may bring in a lot of what's necessary to define the disability expenses.

It's very hard to define everything that someone will need. I know what you are trying to get at Katherine in terms of how do you say what's not included. But it's very difficult for individuals in advance to know what's going to be needed. Having grown up in a family with somebody with very, very difficult needs, uh, you never knew what was coming and so many of those things would fit under maintaining or improving health, independence or quality of life. In the section dealing with qualified ABLE program, establishment of ABLE accounts or beneficial interest we support the strong statement about the personal signature authority being responsible for handling the funds of the designated beneficiary if there is such person and that the account obviously does belong to the designated beneficiary.

In terms of the eligible individual and the disability certification we believe that this needs to be a federal process using federal forms and this should not be devolved down to the states. We thing that the disability certification, the physician's signature and diagnosis are only needed for the certification process and not for the Title XVI or Title II process and that this could be designated on that form when it's filled out and that state administrators should not be put in the position of having to collect or store medical records.

This should be a federal process established at the federal level with federal forms, this would take an enormous burden off the states and these could be check-off forms and from the earlier questions I think that this is something that the physician's diagnosis or at least the physician's signature could be on the form or have it electronically sent to catch up with the record at the state level when the individual is applying for the account. But this should not be something that -- we really do not want to see 50-plus programs developing because over time with different kinds of criteria for what has to be submitted we will end up with 50 different programs. It may start out looking the same but then it will

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branch off and what you have in California will be different from New York and Mississippi and that would just not be acceptable. The individual and his or her representative should be required to maintain the records of the supporting documentation for the forms and sign under penalties of perjury.

And this process should also apply for recertifications. We strongly support underqualified disability expenses, we strongly support the expansive and nonexclusive list of potential qualified disability expenses and particularly the addition of the basic living expenses and your language about the expenses not being limited to items for which there is a medical necessity or which solely benefit a disabled person. Again people with disabilities often have a wide range of needs related to their disability and we appreciate that the definition reflects this wide array. Particularly for people in the SSI program, inclusion of basic living expenses will be important for folks who hit that $100,000 limit because otherwise if you were restricted to the very strict list and they no longer receive the cash benefit at the $100,000 mark they would actually need to have a way to pay for their basic living expenses and food, et cetera, so having that added to the list is very important and we urge that that stay in there.

We do have some concerns. We want to make sure that the IRS and the states don't have to get into this issue of distinguishing between non-qualified and qualified distributions. Again we think that the individual needs to be focused strictly on qualified distributions and keeping track of their distributions and keep records of those distributions until asked and that the housing versus non-housing expenditures is an issue for the social security administration only and that the IRS and the state agencies do not need to deal with that. On post-death payments we would urge that -- we've had questions about this so we urge that the funeral and burial expenses be very clearly outlined. That these are paid along with the outstanding payments due before the state Medicaid agencies are paid and clarify that these do not have to be prepaid funeral plans.

We also suggest that the state's ability to pro rate the Medicaid payments if they are more than one state would be helpful and actually put into the regulations that states are creditors only and not beneficiaries. And two more points I'd like to make: In the area of marked and severe functional limitations there were some comments made that appeared to misunderstand the use of marked and severe functional limitations. This is a way to help the people who are coming under the disability certification. Coming at the same level of impairment of the social security listings level, but without having to show anything regarding work. It does not require a showing of whether or not you are working at a substantial gainful activity level and so that's a misunderstanding of one of the commenters and I think it's important to point that out. There's no requirement of not working in this test. So I think that's important.

And lastly we strongly support the safe harbor provision in here. We think it's a very practical solution to an administrative problem that could unnecessarily devour administrative resources in trying to keep track of account earnings versus contributions and we think it makes the limits easier for designated

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beneficiaries and their families or supporters to understand and therefore comply with and so we urge you to retain this provision in the regulations.

One other thing I noticed -- or a couple of other things I noticed in reading through comments, the issue of subaccounts. I believe that subaccounts make sense within the one account if that's possible so that there could be more liquidity when people are taking funds out for living expenses. And one question that we have gotten a lot, in presenting is whether purchases that are made from account funds remain exempt and so if there is any clarification that the IRS could make that would be very helpful. Thank you.

MS. FORD: I have three seconds left. Thank you.

MS. HUGHES: One of your comments recommended that we allow the -- whoever has signature authority over the account -- to name a successor DB, a successor designated beneficiary, on the death of the DB of the account. How do you see that interacting with the availability of those funds to pay the Medicaid claim? Would Medicaid be out at that point? They would be trumped if there's a successor DB, or how do you see that working together?

MS. FORD: This was to sort of bring together another section of the statute which allowed a transfer or a rollover to another family member, a sibling, who's also an eligible individual. And the question had come up as to whether or not that could be done after the death of the individual, and a lot of us had had a lot of discussion about this and realized that you can't do that after the death of a person, because whatever is in the account upon that person's death is then the estate of that individual, and you can't do that after death, and the law already says what happens to the funds after death. But you may have a sibling -- and I've seen this before -- a sibling with very significant disability who is in need of those funds, you know, both siblings, and you don't want to put the family in the situation of having to start guessing, you know, okay, when is this person going to die? Should we transfer the funds now? What if they live? You know, it's a terrible situation to be in, so we thought that if there were a way, you know, like you do a life insurance designation at work, if there were a designation that could be made that just says, upon the death, this, you know -- so that you could do it during the life of the person, make that designation that, you know, should this person die, it would go to that sibling. It's not intended to get around the Medicaid, it's intended to allow that rollover for that sibling, so that you're not, you know -- this person is potentially going to die or, you know, it may happen, so it's just allowing the rollover without losing those funds at the person's death. But, obviously, if the person dies before that's done, obviously, the statute takes over and all of the things that happen under the statute would occur.

MS. MELCHIORRE: Under the estate tax rules, I mean, a person, the DB, the owner, could certainly have a will, and in the will, they can certainly make a bequest of whatever is left in that account to anyone that they want.

MS. FORD: I agree, but if the person has been using Medicaid for any substantial amount of time, there's probably very little left. If they've used Medicaid for a month, maybe there's something in there. If they've used Medicaid

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for a couple of years, with a $14,000 limit annually on contributions, there won't be much in there, for a lot of people.

MS. MELCHIORRE: Right, I understand. I see your point, but with the DB being the actual owner of the account for, like, estate tax purposes, and -- I don't see how, from an estate tax perspective, that you can cut Medicaid out, because they would be a creditor, so you wouldn't really be able to transfer anything more than you would be able to do if the person just designated it in their will.

MS. FORD: No, this is -- I mean, we were seeing this as something that occurs, a designation that occurs during life as if you were taking out an insurance policy and saying this is my beneficiary.

MS. MELCHIORRE: But that's the same thing that happens with respect to an insurance policy. Because if you sit there with an insurance policy or your IRA or anything else, as long as it's your actual account and you make that contractual designation, then it's going to go to this particular person or that particular person, it just denotes the type of bequest. It still comes into the estate as a whole, the estate as a whole is still subject to creditors of which the state here would be a creditor, Medicaid would be a creditor, and the estate would get a deduction under 2053, and then whatever's left --

MS. HUGHES: I think insurance policies, depending on the insurance policy --

MS. MELCHIORRE: No --

MS. HUGHES: -- it'd go around estates.

MS. MELCHIORRE: Yeah, but it would still (inaudible) in the gross estate, and it still is taxable.

MS. HUGHES: It depends on the policy.

MS. MELCHIORRE: Right, it depends on the policy.

MS. HUGHES: I think the IRS can do what it wants.

MS. MELCHIORRE: No, it can't. I mean, we weren't really thinking --

MS. HUGHES: I would suggest that the IRS come up with a creative way to do this.

MS. MELCHIORRE: How's that? We'll think about it.

MS. HUGHES: Okay.

MS. JUDSON: Thank you.

MS. FORD: But anyway, that was the point was to effect that transfer for somebody -- Clearly --

MS. HUGHES: You just didn't want to make the transfer pre-death --

MS. FORD: Yeah.

MS. HUGHES: -- I guess when death was going to occur.

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MS. FORD: Yeah. You don't want to force the family or the parents or whoever might be a part of that person's life to be trying to do some second guessing if the person is near death, but also, if they're healthy, they might -- you know, siblings might do this for each other, and you obviously can't do it after death.

MS. HUGHES: Yeah, okay.

MS. FORD: So that was the intent.

MS. HUGHES: Okay. Thank you.

MS. JUDSON: Is the request to not have it subject to the Medicaid or not, because I think that was --

MS. FORD: Well --

MS. JUDSON: -- Cathy's original question.

MS. FORD: Well, if you did a rollover --

MS. JUDSON: At first I heard no, but then I heard maybe yes.

MS. FORD: It's to make it not subject to Medicaid in the same way that the other rollovers that are already written into the law are not subject to Medicaid until the second person dies. This person who receives the rollover would have to die before the whole thing is subject to the Medicaid payback.

MS. JUDSON: Thank you.

MS. FORD: Thank you.

MS. JUDSON: Thank you.

MS. FORD: Any others?

MS. JUDSON: No.

MS. FORD: Okay, thank you very much.

MS. JUDSON: Okay, thank you. Kathleen McGrath?

MS. MCGRATH: I was hoping we'd take a break. Is this good? I'm Kathleen McGrath, here today on behalf of the College Savings Plan Network, CSPN, which is an affiliate of the National Association of State Treasurers. I am also the Pennsylvania 529 College Savings Program Executive Director. We are extremely grateful for the openness and opportunities to -- excuse me, your receptiveness to our concerns that you've already shown. I think the progress of bringing to life this wonderful new program that Congress has created exemplifies how the Federal agencies, state government, and private sector can come together and work cooperatively to advance the best interest of the people that we all serve. I personally think this is an example of government at its best, and I'm really proud to be part of it. And we thank you for the opportunity to present testimony here today.

These regulations are of critical interest to the College Savings Plan Network, because we are an association of the state agencies and its private sector

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partners who operate the 529 programs on which ABLE was somewhat modeled, and we expect that most of our agencies will be the ones operating ABLE programs. And we have also reached out because not all states have the same 529 and ABLE agencies, so we've reached out to those states that have different ones and have brought them into the fold.

So we have, as Mary mentioned, we have about 20 years of experience, some of us more, in operating 529 programs. We bring this expertise to ABLE programs. We understand what it will take to create and maintain an ABLE program and allow them to thrive. We also understand the importance of ABLE, and we are committed to providing individuals with disabilities and their families the best possible ways to save that will meet their widely varying needs. But because we have the 529 experience, we are realistic about the challenges we face to meet that commitment.

The first challenge is to determine the need, and we've talked about that here this morning already. We have no real firm information about how many people will be eligible, how many will open accounts, how they will use the accounts. These are all big unknowns that will make our task very challenging.

The second challenge is creating cost-effective programs, and there are two big hurdles for this. One is the size of the assets, the bigger the asset, the lower the cost per account. And the second is the administrative cost, of course, the higher, the higher the cost to the account. There are lots of limitations within the ABLE Act, statutory limitations that are going to hold down the size of the assets, things none of us here can do anything about even if we would want to, and many of us would, allowing only one account per beneficiary, requiring the account owner to be the beneficiary, imposing annual account limitation -- or excuse me, contribution limitation, and allowing the Medicaid repayment. These are all statutory limitations that are going to keep down the assets. But, again, having big assets, a lot of money under management, is important to keeping the per account cost low. In addition to these asset limitations, there are the administrative burdens, and as you've recognized in your regulations, the statute itself puts in more regulations in ABLE than it does in 529s.

The reality, however, is that few states are appropriating general fund money to operate these programs. Some are allowing it to have startup cost, but even fewer will allow there to be ongoing state dollars to support these. So they have to be supported, self-supporting, like 529s are, and that means they are supported by fees. So achieving cost-effective program is a big challenge.

The third challenge is creating programs that are simple and easy to understand, easy to open and use. And this is a result the complexities of the program itself and its interaction with other federal needs means-based, like SSI. Very challenging to us to put all the requirements into the program and educate people on what the impact's going to be, which we see as our obligation, so that people can make informed decisions.

So we are committed to overcoming these three big challenges and coming up with programs that will serve the people intended to be served by ABLE very

well. The ABLE regulations will either make our task easier or harder. It's either going to make our programs more affordable or more expensive. And we urge that adopting the final regulations that address the concerns that we have written about in our written comments will go a long way to making these programs easy to use, best possible programs, and the most cost- effective programs.

As you know from our previous communication with you -- and thank you for that previous communication -- we have three major areas of concern, and they have been touched upon by previous people testifying, but let me touch upon them for the College Savings Plan Network.

The first is, we advocate for streamlined eligibility processes. The proposed regulations put some degree of burden on the states. There's some difference of opinion about how much that is, and some states are willing in interpret it to be less than other states are willing to interpret it, but the bottom line is that most states see these requirements as being major roadblocks, major roadblocks. As was said, the existing 529 procedures on which we hope to build don't have any such requirements. The security of maintaining such information is a big concern to the states. We don't desire to have that kind of information, and we don't really think that there's a need to. We think that programs can be structured without it.

Secondly, we have no expertise in this. Now, we could develop, we could contract it out, but that's all a big dollar cost. The other thing that we're very concerned about is barriers to having people open an account. The more requirements you put on somebody to open an account, the less likely they are -- we see this in the 529 industry. When they go through the enrollment process, they'll be, like, "Oh, I need my child's Social Security number? I don't have it. Oh, okay." They put it aside and, you know, maybe years later they open it. So every single requirement becomes another barrier that we have to get over. If people need to submit documents, it's a big burden. It will really discourage people from doing it.

In the 529 area, at least in Pennsylvania, 90 percent of our accounts are opened online. Submitting documents online can be done, but it's not the easiest process. We believe that the solution we've advocated for in our written statement is a viable option that protects the statute, it does what the statute intends, and minimizes the burden.

We think it's also in keeping with the fundamental structure of the U.S. tax system, which is self-reporting, subject to audit. And we don't think that the disability community or individuals with disabilities should be held to any higher burden of proof. We advocate for a streamlined distribution process. Again, we don't have the ability to collect data. There's also a timing issue. The problem with the timing is, you don't have to use the distribution at the time you take it out. So people might not know at the time they take it out how they're going to use it. We certainly won't know. You could do an after-the-fact kind of thing, but, then again, you're relying on people to self-report, we'll have to nag them to do that, and it's not going to be very helpful to the Social Security people because there'll

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be a mismatch between the data that we gave them when the distribution was taken and the data that we would get when it was actually used.

Besides that, this requirement is really one that goes to the Social Security Administration's need, and they have processes in place already where they can get that information directly from the SSI recipient. We do not need to be the middle-man. It's just redundant and ineffective.

The third point that I'd like to talk about is obtaining the Social Security Number or the Tax Identification Number, and we think, as others have testified, that there's a much easier way to accomplish the goal there, which is to have the SSN number for people who get the return of excess contributions. We need to just focus on those people, not every contributor. It will be a barrier to people contributing if they have to give their SSN. People are very protective of their SSNs. Even our account owners are reluctant to give it to us, let alone somebody who's just contributing at an event, a birthday party or whatever, and we do encourage a lot of gift-giving.

The other provision that I'd like to mention just very quickly is that there are a suggestion that there be sub-accounts. We think that this is a way to really help families who may have a lot of conflict about who's going to be the signature authority. Divorced mom is not going to want to contribute to an account for her child if divorced dad has the signature authority over it. We believe that some states, not all, but some states will be able to create a master account with different sub-accounts conforming to all the requirements of the statute, but allowing different people to have signature authority.

So, again, we thank the Department, and we think that you can really help us make these programs viable options for the people they're intended to serve.

MS. HUGHES: Do you know what processes are in place to make sure that you would be able to get the TIN of a contributor if something needed to be refunded? How would you identify that contributor?

MS. MCGRATH: Yeah, well, it would be a very hands-on process. As was said before, we believe that we'll stop it before it gets there, so it'll be a very unusual circumstance. If it has come in through a check, we will have the check imaged, so we would be able to go back, find the information, and hopefully reach out to those people, and locate them based on the information. We could go back to the bank and see if the bank will be cooperative in giving us information on who that person is and reach out to them in that way. So it would be a very labor-intensive process, but certainly much better and easier than getting the TIN for every single person who contributed, not something we want to do, but something we can do, and can do if need be.

MS. JUDSON: You also recommended that there be transfers to liquid assets vehicles not be counted as one of your two-times-per-year asset re-allocations, and I assume you would have systems that could easily do that, or such a rule be adopted.

MS. MCGRATH: Yes, we would need to identify the -- I think we used the term disbursement accounts, an account intended basically to have money go out of. So in the 529 world, people can choose several different options, and they could have more than one. So somebody might have an equity option or they might have a balanced option with some equities and some fixed-income, and they may also have a money market or a checking account kind of option. So what we were advocating in that comment is that you be allowed to move it, say, from your all-equity to your checking account or money market option, from which it would be disbursed, and that that money from the more investment type could go to the more liquid type as frequently as necessary to have people have easy access to their money, but not have to have a large part of it in an account that's not going to grow much.

MS. JUDSON: And it would be one way only into the money market.

MS. MCGRATH: Yes.

MS. JUDSON: Thank you. Thank you very much.

MS. MCGRATH: Thank you.

MS. JUDSON: Stuart Spielman?

MR. SPIELMAN: Hi.

MS. JUDSON: Hi.

MR. SPIELMAN: Can you hear me? Okay, good. I want to point out that my friend Sara Wolff is here. She wasn't here when she was called and I want to make sure that Sara has a chance to testify. I'm Stuart Spielman. I'm Senior Policy Advisor and Counsel for Autism Speaks. We're the world's leading autism science and advocacy organization. Autism is a term that describes a group of complex brain disorders characterized by challenges in social interaction, verbal and non-verbal communication, and repetitive behavior. The pillars of our mission at Autism Speaks are awareness, family services, science -- we're the largest public charity funder of scientific research in autism in the world -- and advocacy. Advocacy has meant for a very, very long time for Autism Speaks ABLE. We have regarded ABLE accounts as integral to our mission. We, working with groups like National Down Syndrome Society and National Disability Institute, have been at this for more than a decade. When I look at some remarks by our co-founder, who, back in 2008, said that ABLE accounts would reduce an unreasonable financial burden for millions of families and end discrimination against individuals with disabilities in the Federal tax code, he continued, parents can save tax-free to send their child to Harvard, they should be able to save in the same way to help every child meet his or her full potential.

Mr. Wright's remarks allude to some of the great challenges that families and individuals of autism have. One in 68 children is on the autism spectrum according to the Centers for Disease Control. The numbers for boys are even higher, it's 1 out of 2 boys, and the challenges are not just limited to children. We have 500,000 young people transitioning into adulthood every year. We don't even know the total number of adults with autism, and studies have shown that

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adults with autism have challenges getting jobs, holding onto jobs, and doing things with their time that we would all want to see our family members do with their time.

The economic burden on autism can be measured in many different ways. It can measure in healthcare and non-healthcare costs, but let me return to the regs, since this is what we're all here for. I want to talk about three points. One point, and of course, we (inaudible) comments and you've seen our comments, but I just want to highlight three points. One point would be transfers from a qualified tuition, global account, and if those rules do not permit these transfers on a tax-free basis, this is a particular issue for individuals with disabilities like autism that are diagnosed after birth. The median age of diagnosis for a child for autism is 53 months, and probably the most common question I get from family members is, "Can I transfer money from my child's college savings account into an ABLE account?" I recognize that, of course, the regs take the position that the authority does not exist, it's not apparent, but I want to emphasize that this is a very real concern for families. What do they do when they have a 529 account and they have reason to believe that that 529 account, which they've put time in, it's become part of the family regalia, if you will. People make a contribution on the child's birthday, and then the family gets a diagnosis and they wonder, what do we do with this money? I don't know if there's any data. Of course, they can pull this money out without the 10 percent penalty if they show that disability is the reason, but I don't know if there's any data on pulling that money out. I am concerned that some families may inadvertently trigger that penalty for lack of understanding of how the rules work.

I hope you could get to the interpretation of the transfer because this is very, very important, not just for families affected by autism, but by families affected by many other developmental disabilities. So there's been a lot of discussion about administrative burden. We certainly are concerned about fees and paperwork burden to our families. And going back to a question, Cathy, you asked at the beginning. I actually, looking at the statute, I don't think that the statute requires that the physician's note that the paper note actually be filed with the state or any other entity. I don't believe that's not the word that's used, and I think that simply having that note, being able to produce that if necessary, would meet the requirement of the statute. I don't think Service must insist that the paper be produced.

The third point I want to talk about is qualified disability expenses. I think most of us really applaud you on your definition of qualified disability expenses, and since I have the advantage of testifying near the end, I've been pondering your question, Cathy, and I've come up with two examples, and I hope I'm not going to unnecessarily limit somebody out there in the world, since these expenses are going to be specific to individuals. But the two expenses I came up with while I was thinking about this, were online gambling expenses, and the other expense, which I would very much like, would be a Ducati racing motorcycle. Those are some expenses, but I think that there are many expenses which have a clear and important nexus to disability that perhaps are not obvious, and I'll just mention

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one kind of expense, which is clearly not near that poll of online gambling or Ducati racing bike, and that would be swimming lessons. About 50 percent of children with autism wander or elope, and it's a term used to describe an individual going from a safe place to a place that may not be safe. This year there have been 30 deaths of individuals, and most of the deaths occur from drowning, so I would regard swimming lessons as clearly something that a parent of a child with autism would feel would be an important disability related expense, yet, again, because this is individual, and this particular hazard may not be the same for other disability groups, it may not be so obvious. This is not something that -- you know, obviously a Ducati racing bike has a significant recreational purpose; this is clearly not in that category.

I'd like to end on a personal note. I was in this building for a number of years, and I admire and applaud the work that all of you do. I don't think I'm seconding or thirding or fourthing, whatever the term is, but we've had extraordinary collaboration with Treasury and IRS on these regs? It's been a wonderful process, it's made me proud of my time here, and I just want to finish by thanking you for all of your work here.

I have a 21-year-old son on the spectrum, and I spent a lot of time when I was here thinking, what on earth am I going to do to help him down the road? And this is an issue that wasn't just something I was pondering, it's obviously something that other individuals, IRS, and Treasury, and non-government employees ponder. This is important work and I appreciate all the time and effort that everyone on the panel and the Service and Treasury has made on getting these regs out quickly and listening to the disability communities. Thank you.

MS. JUDSON: Thank you so much.

MS. MELCHIORRE: Thank you very much. Scott Gates.

MR. GATES: I'm going to pull this back a little bit. Is that good enough? Can folks hear me or do I need to get into this a little more?

My name's Scott Gates. I am the administrator for the Kansas 529 plan and general counsel for the Kansas State Treasurer's Office. I've been in that role for about 10 years now running Kansas' 520 plans.

I want to repeat the comments that several have made thanking you for your openness in this process and thanking Cathy for coming to meet with college savings administrators to engage in dialogue about these programs. It's been very helpful for us.

I would also encourage you to move from this process of proposed rules to final rules or advanced guidance or anything that we can use as more definitive guidance as quickly as possible. We appreciate the advance notice which gave us some freedom to conform our plans if we create them, and yet you then come up with rules later. However, as you see that repeated comment about cost and efficiency, particularly for small states like Kansas, if I have to bear the expense to create a program one way and then bear the expense to change it later, that creates a very hard -- it puts me in a very difficult position of do I wait or do I run

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that risk of significant change coming between the proposed regs and the final regs. So as expedient as possible and prudent would be appreciated.

As I talk with a number of small states, I think we have some very serious concerns about how we will fund the cost to administer these programs. When we passed our enabling legislation we received no appropriation for the program. And, frankly, we hoped that we'd be able to fund operations through reasonable fees charged to account owners. However, the duties imposed upon us by some of these regulations cause me to question that hope today, and I think you've heard that concern from some other state administrator representatives.

So as I talked to other small states, I just -- many of us smaller states may not be here today, but I wanted you to hear their concerns through me that we're really worried about how to pull this off. Unlike 529 accounts, we can only market these to Kansas residents. I understand that's a statutory requirement, not something we're here to change today. However, I think that our consideration for what goes in the regulations needs to take that into consideration, into effect when we talk about costs.

Our estimate is that there are approximately less than 100,000 Kansans that will be eligible for these accounts. We got there by Census data that shows 300,000 Kansans are disabled, and when breaking that through various age categories in the Census data, we come up with an estimate of maybe about a third of those became disabled before the age of 26. So if you use kind of some uptake models that we have experienced in the 529 industry, you know, a 5 or 10 percent uptake model in the first three or five years of the program will leave us with maybe 5-, 10,000 account owners to pay for the cost of running this program.

Let's just talk by way of example and comparison. My health savings account has a $2 a month administration fee, and that's only until my assets get above $2,500. Then they just -- the assets pay for those expenses. I seriously doubt whether we could fund Kansas' costs to run this program on a $20 to $25 a year annual fee for 10,000 account holders. Just seriously doubt that.

More importantly, I think the issue is the oversight functions that have been delegated to the states. And let me go directly to the issue of certification of eligibility status when the accounts are opened. I think that's the issue of greatest concern to my treasurer. We've heard several folks talk about self-certification and I think, frankly, the CSPN industry approaches self-certification from two perspectives.

One, we want to be easier and not as hard on account owners. That's some's perspective. For other administrators, frankly, they can't afford anything else without the state giving them an appropriation or imposing owners' fees on account holders. We're left in a position where the very limited compliance of self-certification is the only option left available to us.

When we originally introduced our bill, our social service agency estimated that it would cost about $100,000 for them to review applicants as they opened

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the accounts and determine who was eligible. Of course, we removed that from the fiscal note when we sat down and we looked at the requirement in the statute that it was a certification approved by Treasury, not by the state administrators, so. In my state, my treasurer feels very strongly that self- certification is not sufficient because if Treasury isn't reviewing the certification and the state is allowing self-certification, then essentially no one is looking at compliance.

I did have one solution, however, that is not in my written comments that I just, frankly, thought in my hotel room the other evening, and that is what if we allowed someone to open the account, but yet we held the account in a cache position until such time as that certification is approved by Treasury? This would place that responsibility, as required by statute, on Treasury. There would be no tax consequences because there would be no earnings because it would be held in a cache position. And if that person later applied for Social Security programs, then eligibility could be determined at that time by the Social Security Administration. So there's no impact on tax consequences and there's no impact upon Social Security programs as well. Just a plausible solution.

I'd like to move next to the issue of the certification of withdrawals. And I found it kind of interesting here that even kind of the members of the disability community here have a very difficult time in helping define what are qualified expenses. So think then the position that puts state treasurers in to try to define what qualified expenses are. We have no experience running social service programs. We run financial programs.

I highly applaud Marty Ford's comment where she said the states, frankly, shouldn't be involved in the withdrawal process at all. And where I am more concerned is what happens if the state makes an initial determination, we don't have authority and statute to make a final determination, and then either the IRS or the Social Security Administration, in reviewing either their taxes through audit or their benefits eligibility through their annual eligibility determination, makes a different determination? We have now given that taxpayer a false sense of security that they were doing it right when, indeed, the person with the ultimate authority comes in and says you did it wrong and here are the consequences. I just think that's a horrible position to place a taxpayer in.

I want to speak briefly about a couple of things that have come up in the other comments. I, too, appreciate the privilege of going later in the day. And one was that calculation of earnings ratio and how Census asked that that be done the same way that we do it for college savings plans. And, one, I do appreciate their efficiency argument. You know, it does help it be more cost-effective if we don't have to create new systems.

On the flip side, however, there's also a policy argument. And if you think through this for a minute, if I take a withdrawal in January and I decide, okay, I'm going to take the tax hit. I don't have qualified expenses, I just need the money. Right? So now, under the rule that we have proposed that says you look at the earnings as of the time of that withdrawal, I know the financial consequences upon me at the moment that I take that withdrawal. What if I only withdraw half

my funds? I leave all my funds in the account and then at the end of the year, under the current rule, I'd be penalized based on earnings that occur on the money that I chose to leave in the account. I have no idea what those earnings might be. I'm walking into an unknown penalty because of a decision that I made 11 months ago. There's more certainty for the taxpayer and, I feel, better policy if we just -- we know what the costs are right when we make the decision.

The last thought, I wanted to go back to Professor Hoffer's comment about should these be savings vehicles or should we not count money that comes through the account for operational expenses? There's another way to get to that policy issue, and that is for folks who are on SSI to have a bank account that's outside the ABLE system for your ongoing expenses and have the ABLE system only be your investment account. Right? And then you can have a -- link the two through ACH Withdraw so I can move money electronically from my ABLE savings program account to my outside ABLE bank account, and that way all that money that I have to use for operational ongoing monthly expenses doesn't count against the 14 grand that I could invest. And all the beneficiary would have to do then is make sure they never have more than $2,000 in that operational outside ABLE account.

So there's some ways to do that. We can provide the electronic mechanisms to make that happen a little more efficiently so that every dollar they contribute and then use isn't eating up what they could save.

I think I'll go ahead and conclude my statements there and see if you have any questions for me.

MS. HUGHES: I do have a question about the -- and I think I asked it of someone once before, when you said I withdraw it in January and I know what the income is on that nonqualified distribution, you as the state plan knows. How does the DB know? They get to the end of the year. DB has to file his income tax return. How is the DB being told the income on that January nonqualified distribution?

MR. GATES: In our systems you can see the principal and earnings in your account.

MS. HUGHES: Okay, so that the notice that they will get at the end of the year from you will just have total distributions, total income, right?

MR. GATES: The 1099Q that you currently get for 529 accounts, it has the amount of the distribution and the portion of it which is earnings.

MS. HUGHES: Right. So that the DB would have to go back into their online account statement to figure out the income on each distribution? Is that what you're saying?

MR. GATES: It would be -- they're rolled up for the purpose of the 1099Q. You only get one 1099Q. But if you make multiple withdrawals, they then roll them up, but they still strike the earnings the day that you take the withdrawal.

MS. HUGHES: Okay.

MR. GATES: So when I'm making the decision I can see online, okay, my account's got $1,000 in contributions and $400 in earnings. And then at the end of the year you get the 1099Q that includes both.

MS. HUGHES: Okay. So the DB would have to go look at the online transaction by transaction and figure out -- if I'm the DB and I pulled a qualified distribution and a nonqualified distribution, it's up to me to figure that out?

MR. GATES: Right. And, in fact, when we do take -- in our systems, which since this is our back office I probably should (inaudible) they're nodding their head to make sure I don't mess this up -- when I take a distribution it is shown on the confirmation form that goes out, you withdrew this much in (inaudible) principal and you withdrew this much in earnings. So they see it right at the time they take that withdrawal and then it's confirmed at the end of the year on the 1099Q, which aggregates all of them together.

MS. HUGHES: Okay. Thank you.

MS. JUDSON: Thank you very much. Christopher Rodriguez and Michael Morris?

MR. RODRIGUEZ: Chris Rodriguez.

MS. JUDSON: It's Chris Rodriguez.

MR. RODRIGUEZ: Good morning. My name is Chris Rodriguez and I am the senior public policy advisor for the National Disability Institute. Thank you for the opportunity to speak today concerning the Stephen Beck, Jr., Achieving a Better Life Experience Act. As the country's only organization solely dedicated to advancing the economic self-sufficiency and financial well-being of all Americans with disabilities, this long sought after piece of legislation signed into law December 19th of 2014 has been of particular interest in NDI and is closely associated with the mission we so diligently pursue. Thank you.

Disability in America crosses the dividing lines of gender, race, ethnicity, age, and geography. The most common characteristic across these dividing lines is living in or near the parameters of poverty, making the ability to make ends meet something altogether unattainable. The poverty rate for individuals with disabilities is 28.4 percent. That's nearly double the national average. According to the 2013 Census data, median income for an individual with a disability was 20,515, more than one-third less than that same individual's nondisabled peer.

This should come as no surprise when we consider that only 19.8 percent of people with disabilities were considered to be active participants in the American labor force as compared to 69 percent of people without disabilities. Based on FDIC 2013 survey data, households headed by an individual with disability are more likely to be long-term underbanked and less likely to have checkings and savings accounts when compared to their nondisabled peers.

This is incredible considering we are 25 years after the passage of the Americans With Disabilities Act, buoyed by the promise of equal opportunity to

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advance economic self-sufficiency, yet the rate of unemployment and the prevalence of poverty among this population has remained virtually unchanged.

Millions of Americans with disabilities rely on the overwhelmingly modest yet significant cash benefit provided through supplemental security income, along with the often vital and essential supports provided through Medicaid. These public benefits, providing a lifeline to individuals with disabilities and their families to access community-based supports as opposed to archaic institutional type settings, are associated with long-term sentences of poverty. This perpetual state of chronic poverty is anchored by the rules and continued eligibility that disallow a beneficiary with a disability the ability to acquire resources of more than $2,000 at any given point, therefore holding that individual with a disability hostage from pursuing the American dream, an idea and philosophy apparently reserved for those of able body and mind.

Recognizing this issue, we're determined to address it. Individuals with disabilities, both family members and friends, local, state, and national disability-related organizations, and disability champions in Congress set their attention on a solution. Nearly a decade later, through no lack of effort or patience, the ABLE Act was signed into law and with it the hope and the vision to transform opportunities for millions of Americans with disabilities to rethink their goals, reduce their dependence on public benefits, and chart a personal pathway out of poverty. If implemented in a thoughtful and responsible manner ABLE accounts will allow millions of individuals with disability, their families, and their friends to contribute to ABLE accounts, set saving goals, and provide funds for emergency short-term needs and long-term objectives.

The distributions of income funds contributed to ABLE accounts are tax-free. The funds in the account are not taken into consideration when determining eligibility for any federal means-tested or resource-tested public benefits. Funds deposited into the account, into the ABLE account, are truly a down payment on freedom for individuals with disabilities and a first step toward improved education and employment, financial inclusion, and economic advancement.

To date, 32 states have passed laws to create the infrastructure to establish ABLE account programs and allow investment choices and tax-free disbursements, provided that those disbursements are made for disability-related expenses that will assist the beneficiary in maintaining or increasing their health, independence, and/or quality of life. The potential impact of ABLE accounts is clearly transformative. However, the benefits may not be fully realized absent sound programmatic parameters and guidance. For this reason, NDI was pleased to see the timely release of the Notice of Proposed Rulemaking.

In addition, we have been exceedingly impressed with the relatively open line of communication with the Treasury Department and the IRS concerning the details of this NPRM. Undoubtedly, your willingness to communicate with and learn from the disability community and other relevant stakeholders has contributed to the development of several exceedingly positive aspects included

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in the NPRM. While we have documented many of these positive attributes in our written testimony or written comments, I would still like to mention must a couple.

We are in strong support of the proposed broad definition of qualified disability expenses, including the allowance for basic living expenses. Individuals with disabilities often have a wide range of needs related to their disability and we appreciate a definition that reflects this wide array of needs. In addition, relating the expenses to maintaining or improving the beneficiary's health, independence, or quality of life further pairs the more tangible aspects of the program with the spirit and intent of the law. We also appreciate and strongly support the language stipulating that the qualified disability expense need not be for medical necessity and may have coincidental parochial benefits to an individual in addition to the qualified beneficiary.

Second, we strongly support the language allowing beneficiaries to be able to change his or her residency while still maintaining their ABLE account in its state of origin. It's conceivable that a qualified beneficiary may over the lifetime of the account need to change residency to another state. It is important that the individual has the option to continue to maintain their ABLE account in the state in which it was established.

Our last example: We wish to express support and to underline the significance of the IRS's reaffirmation that the beneficiary is the account owner. Putting forth a declaration stipulating ownership of the account by the individual with the disability makes tangible the intent of the law to increase the beneficiary's independence and give support to the ADA's vision of providing equal opportunity to individuals with disabilities to advance their economic self-sufficiency.

Furthermore, it brings closer to reality the opportunity to express self-determination and individual choice, concepts often overshadowed by a paternalistic approach to individuals with disabilities, one which only results in a diminished capacity for higher expectations. While we for the most part remain enthusiastic concerning the contents of the NPRM, there are areas which we believe will require further explanation or guidance. Again, those are detailed in our previously submitted comments, but I would like to the opportunity quickly to further articulate some of those recommendations.

We would like clarification on whether or not a state with an ABLE program can contract with multiple states. Not unlike the operations of a 529 college savings plan, we believe potential ABLE beneficiaries and their families should have as wide an array of program options as possible, providing the availability to choose between multiple ABLE programs promotes competition among programs and thus incentivizes states to ensure lower fees and minimal costs to the beneficiary. These costs will be further reduced if multiple states are allowed to contract together into ABLE program consortiums, an idea which has been proposed by multistate financial entities in their ABLE program design discussion.

A fundamental advantage of creating an ABLE account is that it should not be cost-prohibitive to families and qualified beneficiaries with relatively low to modest means. We believe that allowing a state without an ABLE program to contract with multiple states with ABLE programs is a reasonable interpretation of the statute and supported by the intent of the law.

Next, uniformity of paperwork. While we appreciate the flexibility given to the states with respect to the development of their programs, we would urge the Treasury and the IRS to develop suggested forms that would meet the requirements of the various components. These suggested forms, many of which we have described in our comments should mostly be uniform across program, create a streamlined opportunity for potential beneficiaries to enroll, and maintain a very limited amount of administrative burden on the states. We will be offering -- we would be willing to offer input and assistance in the creation of these forms, as our comments reflect the description of forms that we believe would meet the previously mentioned criteria.

As an example, and an important one, I'm going to touch on the qualified disability expenses safeguard. With respect to the language related to the responsibility of the ABLE program to establish safeguards and distinguish between nonqualified and qualified disbursements, there seems to be a certain level of uncertainty on the safeguard. Our recommendation would be that the individual be able to fill out a single form that is signed under penalty of perjury that states that the beneficiary -- all disbursements for that beneficiary were made during that tax year and for disability-related expenses. So that was one example, but it's just an example that we'd like to be seen throughout the entire program.

For the rest of it we had one more suggestion, but you can read that within our comments. But I'd like to stop now and say thank you for all your hard work and see if you have any questions.

MS. JUDSON: Thank you so much.

MR. RODRIGUEZ: No problem.

MS. JUDSON: Is Sara Wolff here?

MR. RODRIGUEZ: Yes.

MS. JUDSON: Please come up.

MS. WOLFF: Good morning, my name is Sarah Wolff. I am 32 years old, from Morristown, Pennsylvania, and happen to have Down syndrome. I am honored to be here today on behalf of the National Down syndrome Society to testify before the Department of Treasury and Internal Revenue Service. I am excited to share my personal story and discuss how the Achieving a Better Life Experience Act, best known as ABLE Act, will change my life forever. I have been employed as a law clerk at O'Malley & Langan Law Offices in Scranton, Pennsylvania for over 14 years. I volunteer at the ARC as the coordinator of self-advocacy and participate in the Friends of the ARC auxiliary. I am an active member of the National Down Syndrome Society's Board of Directors. Through

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NDSS I participated on the Self-Advocacy Advisory Board as well as the Down syndrome Ambassadors Program. I am also a member of the ARC of Northeastern Pennsylvania Board of Directors, currently holding the position of secretary, as well as serving at the state level on the ARC of Pennsylvania Board of Directors.

Just because I have Down syndrome that does not hold me back from achieving my full potential in life. I strive to be a productive member of society. I lost my mother in 2013 and I worry about the day that my father will no longer be here for me. Individuals with disabilities are outliving their parents more and more. With the passing of ABLE, I am eager to plan for my future using the same tools that are available to all Americans and provide assurance to my siblings that I don't need to be a financial burden to them as I grow older.

I am particularly proud of my efforts in the passing of the ABLE Act. I became a strong supporter of ABLE in 2009 and spread the word about ABLE in press conferences, lobbying efforts on Capitol Hill, and interviews. Lots of interviews (laughter) on national radios, internet outlets, and pieces published by *The New York Times*, CNN, and *The Washington Post*. In 2013 I testified before the Senate Finance Sub-Committee on Taxation and IRS Oversight. I urged the Committee in Congress to give individuals with disabilities the opportunity to use savings tools that other Americans have always had as an option. I also authored a change.org petition calling for Congress to pass the ABLE Act. It received over 300,000 signatures. The passing of this landmark legislation is a step forward for people with Down Syndrome and other disabilities to realize and achieve their hopes, dreams, and aspirations.

I realize that there is more work to be done with ABLE to help facilitate my usage of an ABLE account. For example, the scope of the individuals eligible for (inaudible) authority should also include a single designee of the parent or legal guardian. Personally, I rely heavily on the support of my sister, and so does my father, when it relates to making the best decisions regarding my life. Although -- this, clarification my sister could continue to assist me even though she is not my legal guardian.

In addition, under the section of eligibility for those beneficiaries who need to be certifying, the IRS should consider a standard certification form that would be signed by a physician and beneficiary under penalty of perjury. The beneficiary should not have to send personal medical information to an ABLE administrator. The form should be standard across all states so that there is no confusion over who would qualify for an ABLE account. If I qualify for an ABLE account in one state, I should be assured that I will qualify for that same account in a different state. For instance, I have a brother living in Florida, and one can't predict how life will change. I need to plan for my financial independence regardless of my state residence.

Lastly, in regards to recertification, people like me with conditions that will not improve like Down syndrome should not have to recertify every year. I was born with Down Syndrome, live my life with Down syndrome today, and will every day

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in the future. I ask the IRS to consider a recertification waiver that would be signed by a physician and require recertification every five years instead of annually. The fact that I have Down syndrome is not going to disappear. Please don't make me and those like me have to submit paperwork to prove this every year.

In conclusion, I would like to thank you for this opportunity to comment on the proposed regulation to section 529A. It is an honor and privilege to be the voice of all individuals with disabilities across the United States of America. I urge that the final regulations be put forth quickly or that the IRS issues interim guidance to our (inaudible) to the issues put forth. Thank you.

MS. JUDSON: Thank you so much. Thank you very much. (Applause) Is Mark Hagen here? Is there anyone else here who would like to speak? Then we thank you all very much for attending and for your thoughtful comments. This ends the public hearing on Reg 102837-15. Thank you.

(Whereupon, at 12:38 p.m., the HEARING was adjourned.)