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**STATE OF VERMONT**  
**OFFICE OF THE STATE TREASURER**

**To:** House Committee on Commerce and Economic Development  
Senate Committee on Economic Development, Housing and General Affairs

**From:** Beth Pearce, State Treasurer

**Date:** January 12, 2016

**Re:** Vermont Achieving a Better Life Experience (ABLE) Task Force Legislative Report, Pursuant to ACT No. 51, Title 33, CHAPTER 80. § 8004 of 2015

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**Overview**

During the 2015 legislative session, the General Assembly, in collaboration with the Office of the State Treasurer, Vermont stakeholders, State agencies and departments, and legislators, secured passage of Vermont's enabling legislation for the implementation of the federal ABLE Act. The Vermont Achieving a Better Life Experience (ABLE) Savings Program is intended to ease financial strains faced by individuals with disabilities by making federal tax-free savings accounts available to cover qualified expenses such as education, housing, and transportation. American families currently enjoy tax incentives to save for significant future expenses such as college, retirement, and other life events. The ABLE Act empowers individuals with disabilities and their families to save their own money in a 529A (or ABLE) account for the purpose of maintaining health and independence without jeopardizing the account holder's federal benefits including Social Security and Medicaid.<sup>1</sup>

Vermont passed enabling Legislation (S.138) for a Vermont ABLE Savings Program in ACT 51 during the 2015 Legislative Session. The Governor signed Vermont's ABLE legislation into law on June 3, 2015. The Office of the State Treasurer recommended addressing IRS issues prior to implementation to avoid potential administrative problems that could impact participants. In the interim, the Office of the State Treasurer has been engaged in monitoring and responding to the regulatory environment for state ABLE programs and in soliciting stakeholder input as charged under ACT 51.

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<sup>1</sup> The Arc, <http://www.vermonttreasurer.gov/sites/treasurer/files/pdf/misc/ABLEActInfoSheet2015.pdf>.

## Vermont ABLÉ Task Force

Pursuant to ACT 51 of the 2015 Legislative Session, the ABLÉ Task Force (the Task Force) was convened on August 31, 2015. The Task Force is charged with providing recommendations and preparing an update to the appropriate House and Senate Committees by January 15, 2016 as detailed below.

### **ACT NO. 51, Title 33, CHAPTER 80. § 8004:**

The State Treasurer shall convene a Vermont ABLÉ Task Force to include representatives of the Department of Disabilities, Aging, and Independent Living; the Vermont Developmental Disabilities Council; Vermont Center for Independent Living; Green Mountain Self-Advocates; and other stakeholders with relevant expertise, to provide recommendations on or before January 15, 2016 to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs on planning and delivery of the ABLÉ Savings Program, including:

- promotion and marketing of the Program;
- rules governing operation of ABLÉ accounts, including mechanisms for consumer convenience;
- fees charged to account owners;
- future enhancements to protect from the loss of State benefits as maybe necessary to fulfill the intent of the ABLÉ Act;
- the composition and charge of an ABLÉ Advisory Board; and
- a progress update on implementation of the Program consistent with US Treasury Department Rules, the Internal Revenue Code, and the federal ABLÉ Act (P.L. 113-295 of 2014).

**Activities of the Vermont ABLÉ Task Force:** The Task Force met five times and has undertaken the following activities:

- 1. Broadly representative stakeholder group established:** The Office of the State Treasurer worked with the following stakeholder groups and government entities who participated in the Vermont ABLÉ Task Force: Vermont Agency of Human Services; Vermont Department of Disabilities, Aging, and Independent Living; Vermont Department of Children and Families; the Vermont Developmental Disabilities Council; Vermont Center for Independent Living; Green Mountain Self-Advocates; Vermont National Alliance on Mental Illness; Vermont Bankers Association (VBA); the Association of Vermont Credit Unions; Vermont Student Assistance Corporation

(VSAC); Vermont Legal Aid; offices of Congressman Peter Welch, Senator Patrick Leahy, and Senator Bernie Sanders; Vermont Department of Taxes; the Vermont Attorney General's Office; and parents of individuals who may qualify for the ABLÉ Program.

2. **Public information site established:** The Vermont ABLÉ Task Force website was created and reviewed by members of the Task Force. At Task Force request, informational materials that are adapted for people with developmental disabilities are included on this website. See: [www.vermonttreasurer.gov/reports/ABLE-task-force](http://www.vermonttreasurer.gov/reports/ABLE-task-force)
3. **Input sought from national working groups:** A representative of the Office of the Vermont State Treasurer attended a meeting with other State Treasurers' Offices, stakeholders, and the US Treasury, Office of Internal Revenue in August, 2015 to discuss collaboration with other states and to address regulatory concerns with respect to proposed regulations. Further, the Office of the State Treasurer continues to work in multiple national working groups to discuss implementation around the country.
4. **Public comment regarding IRS rules solicited from Vermont stakeholders:** On June 19, 2015 the Internal Revenue Service issued proposed (preliminary) regulations titled *Guidance Under Section 529A: Qualified ABLÉ Programs*,<sup>2</sup> to implement the provisions of the ABLÉ Act. The IRS issued these preliminary regulations with the intention of soliciting public comment.

The Office of the State Treasurer has been involved with the College Savings Plan Network (CSPN) and the National Association of State Treasurers (NAST) in an effort to explore collaboration amongst states. This group also communicated to the IRS the concerns of advocacy groups regarding the importance of having final regulations delivered with respect to timely implementation.

The following letters were completed by stakeholders and submitted to the IRS:

- On behalf of Vermont's Congressional Delegation (attached).  
<http://www.vermonttreasurer.gov/sites/treasurer/files/pdf/misc/ABLE%20IRS%20letter%20from%20VT%20delegation.pdf>
- On behalf of the Vermont State Treasurer, in collaboration with state treasurers from Rhode Island and Illinois (attached).

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<sup>2</sup> Federalregister.gov, <https://www.federalregister.gov/articles/2015/06/22/2015-15280/guidance-under-section-529a-qualified-able-programs>.

<http://www.vermonttreasurer.gov/sites/treasurer/files/pdf/misc/ABLE%20Comment%20Joint%20Letter.pdf>

- On behalf of the Vermont Developmental Disabilities Council (attached).
- On behalf of the Vermont Bankers Association (attached).

In the Public comment letter submitted on September 21, 2015 by Vermont State Treasurer Beth Pearce, Rhode Island State Treasurer Seth Magaziner, and Illinois State Treasurer Michael Freichs, three broad areas of concern were highlighted: (1) determination of eligibility of designated beneficiaries, (2) determination of qualified disability expenses, and (3) the limitation of one ABLÉ account per designated beneficiary. In short, without clear guidance on these three issues, the Task Force agreed that ABLÉ programs would be excessively difficult to push forward at the state level.

The IRS public hearing regarding ABLÉ regulations occurred on October 14, 2015. A certified transcript from the public hearing is linked here<sup>3</sup>:  
<http://www.vermonttreasurer.gov/sites/treasurer/files/pdf/misc/ABLE%20hearing%20transcript.pdf>

In response to public comment, the IRS “announced three changes to the proposed rules for new tax-favored Achieving a Better Life Experience (ABLE) accounts for eligible disabled individuals that will be included in the final regulations when issued. These changes will make it easier for states to offer and administer ABLÉ programs [Notice 2015-81](#), posted today on [IRS.gov](#), fully describes these changes. They include:

**“Categorization of distributions not required:** ABLÉ programs need not include safeguards to determine which distributions are for qualified disability expenses, nor are they required to specifically identify those used for housing expenses. Commenters noted that such a requirement would be unduly burdensome and that, in any case, the eventual use of a distribution may not be known at the time it is made. Designated beneficiaries will still need to categorize distributions when determining their federal income tax obligations.

**“Contributors’ TINs not required:** ABLÉ programs will not be required to request the taxpayer identification numbers (TINs) of contributors to the ABLÉ account at the time when the contributions are made, if the program has a system in place to reject contributions that exceed the annual limits. However, if an excess contribution is deposited into a designated beneficiary’s ABLÉ account, the program will need to request the contributor’s TIN. For most people, the TIN is their Social Security number (SSN).

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<sup>3</sup> IRS.GOV, <http://www.vermonttreasurer.gov/sites/treasurer/files/pdf/misc/ABLE%20hearing%20transcript.pdf>.

**“Disability diagnosis certification permitted:** Designated beneficiaries can open an ABLÉ account by certifying, under penalties of perjury, that they meet the qualification standards, including their receipt of a signed physician’s diagnosis if necessary, and that they will retain that diagnosis and provide it to the program or the IRS upon request. This means that eligible individuals with disabilities will not need to provide the written diagnosis when opening the ABLÉ account, and ABLÉ programs will not need to receive, retain, or evaluate detailed medical records.”<sup>4</sup>

The Task Force agreed that the IRS guidelines released on November 20, 2015 were responsive to concerns but that further coordination between the U.S. Department of the Treasury, Internal Revenue Service (IRS); Social Security Administration (SSA); and Centers for Medicare & Medicaid Services (CMS) would be needed.

- 5. Assessment of market demand and ABLÉ account utilization:** To better meet consumer needs, states have been undertaking efforts to determine how many individuals would be eligible for ABLÉ savings accounts and what patterns in utilization might impact the selection of appropriate vendors or products.

It is difficult, at this time, to predict cost and volume features for ABLÉ Savings Programs. A reasonable proxy for the total eligible population is considered to be the total number of individuals currently receiving Supplemental Security Income for the Blind and Disabled (SSIBD) and SSDI benefits in Vermont who were found to be disabled prior to age 26. As of August 31, 2015, these figures totaled 12,828, including:

- SSIBD – 5,654
- SSDI – 7,174

These figures were provided by the Agency of Human Services: Department of Disabilities, Aging, and Independent Living; and the Department for Children and Families.

Patterns of cash-flow, deposits, and withdrawals from ABLÉ Savings Accounts are also difficult to predict. Advocacy groups in Vermont and nationally have indicated that states can anticipate two user types with distinctly different needs.

- Family members of an individual with a disability may use ABLÉ Savings Programs. In anticipation of a family member’s long term support needs, they may begin saving

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<sup>4</sup> IRS.GOV, <https://www.irs.gov/pub/irs-drop/n-15-81.pdf>. (Quoted directly from November 20, 2015 IRS guidance: <https://www.irs.gov/uac/Newsroom/New-IRS-Guidance-to-Simplify-ABLE-Program-Administration>.)

when a child with a disability is quite young. These users will likely desire a slightly higher return in exchange for investing in longer term instruments.

- Working people with disabilities represent a second group of potential users. Currently Social Security benefits have a low asset limit (\$2000); ABLÉ Savings Programs will allow workers with significant disabilities to save for certain expenses without reduction and frequent fluctuation in their social security benefits. These users are more likely to need the flexibility to make frequent withdrawals from ABLÉ Savings Accounts without burdensome fees.

The considerations noted above may lead to two types of ABLÉ accounts:

- a. **(Long-term accounts)** An investment option that resembles existing College Saving Plan 529s. This option would allow for long term investment to mature over time and be of value once a child reaches adulthood.
- b. **(Shorter-term accounts)** This investment option would be similar to a HSA<sup>5</sup> account. This option would allow for financial organizations to hold accounts with the intent that more frequent withdrawals would be likely as well as (possibly) more frequent investment.

6. **Elimination of the home-state requirement for ABLÉ:** On December 18, 2015 the “PROTECTING AMERICANS FROM TAX HIKES (PATH ACT) ACT OF 2015” was signed into law. An amendment to the PATH ACT eliminated the residency requirement for qualified ABLÉ programs. The passage of this amendment allows for individuals to use ABLÉ programs located in a state of which they are not a resident.<sup>6</sup>

### **Vermont ABLÉ Task Force Legislative Recommendations to the General Assembly**

The Task Force will continue to work to develop the best possible program for Vermonters who wish to take advantage of the benefits offered by an ABLÉ Savings Program. To facilitate this, the Task Force makes the following recommendations:

1. **Concerning existing benefits interaction with ABLÉ Assets:** While ABLÉ accounts are exempt from consideration as an asset or resources in determining eligibility to other benefit programs, there is concern that unclear coordination of ABLÉ accounts with other

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<sup>5</sup> Health savings account.

<sup>6</sup> Public Law 114-113, DIVISION Q—PROTECTING AMERICANS FROM TAX HIKES ACT OF 2015, TITLE III—MISCELLANEOUS PROVISIONS, Subtitle A—Family Tax Relief, Sec. 303. Elimination of residency requirement for qualified ABLÉ programs.

benefit programs may result in confusion concerning ongoing eligibility for these benefits.

The Task Force recommends that the Vermont Agency of Human Services (AHS) and its Departments conduct rulemaking and other appropriate measures to ensure that ABLÉ accounts are expressly exempt from consideration as an asset or resource in determining eligibility. This will eliminate confusion for administrators and beneficiaries and ensure that participants in ABLÉ savings plans may continue to participate in other benefit programs uninterrupted and without affecting their eligibility. This will also ensure consistency across public benefits programs. Further, that AHS and its Departments shall ensure that retroactive “lump-sum” payments from SSI/SSDI, as long as consistent and permissible under AHS policy and pending CMS guidelines, should be allowed to be deposited into ABLÉ accounts without penalty.<sup>7</sup>

- 2. Agreements with other States:** Given the small population of Vermont and small estimated number of potential ABLÉ account participants, it may be beneficial to join a multi-state effort to take advantage of economies of scale. The Task Force recommends to the General Assembly that language be added to Act 51, Sec. C.7 33 V.S.A chapter 80, §8001 of the 2015 Session to allow for the State Treasurer to enter into agreements with other states. The Task Force recommends that the following language be included in the enabling ABLÉ statute:

*Act 51, Sec. C.7 33 V.S.A chapter 80, §8001. “PROGRAM ESTABLISHED,”* is amended by adding the following language:

“The Treasurer may elect to participate in, sponsor, conduct, or administer a cooperative agreement or consortium with other states in order to implement the Program (Vermont ABLÉ Savings Program) provided that the Treasurer, in consultation with Program stakeholders, first determines that implementation through cooperative agreement or consortium with other states is in the best interest of the State and the beneficiaries of the Program.”

The Task Force has engaged and participated in multiple ongoing national ABLÉ implementation working groups with other State Treasurers and relevant State agencies both in Vermont and nationally regarding potential ABLÉ partnerships.

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<sup>7</sup> Exclusion of SSI/SSDI income deposited into an ABLÉ account would apply to any retroactive lump sum benefit awards so long as they are transferred to an ABLÉ account within 30 days of receipt. This is done in consultation with AHS, DAIL, and DCF. (*Explanation: It can take two or more years to get through the determination process for SSI and SSDI. After determination, thousands of dollars of “lump sum” payments or back payments may occur but are unable to be held because of the \$2,000 limitation.*) Note, that CMS guidelines are still pending.

- 3. Vermont ABLÉ Advisory Board/Vermont ABLÉ Task Force:** The Task Force and the State Treasurer believe that continuation of an ad-hoc Task Force represents the most effective way of obtaining input from consumers, disability services providers and other stakeholders. The Task Force will continue to include representatives of the Department of Disabilities, Aging, and Independent Living, the Vermont Developmental Disabilities Council, Vermont Center for Independent Living, Green Mountain Self-Advocates; and other stakeholders with relevant expertise. A legislatively established ABLÉ Advisory Board is not required and not recommended at this time.

The Task Force recommends that an annual report regarding process and progress of the ABLÉ program in Vermont be developed by the State Treasurer, in collaboration with the Task Force, and submitted on January 15 of each year to the appropriate House and Senate Committees.

- 4. Next Steps and Final Notes:** The State Treasurer's Office is awaiting final IRS regulations (See attached document concerning preliminary guidance from the IRS). After final regulations are issued, Vermont will pursue the appropriate steps to implement an ABLÉ program for Vermonters.

The State Treasurer's Office will also continue to monitor SSA and CMS<sup>8</sup> guidance concerning ABLÉ (see attached document concerning preliminary guidance from the SSA) and to share findings with the Task Force.<sup>9</sup>

The State Treasurer's Office, in collaboration with the Task Force, continues to engage other state's concerning possible partnerships and consortiums regarding ABLÉ implementation and, to address concerns regarding a small population of potential participants in Vermont.

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*Please find attached documents that are pertinent to this report.*

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<sup>8</sup> CMS guidelines are still pending; AHS will continue to monitor as well.

<sup>9</sup> SSA.GOV, "Advance Notification Regarding Reporting by State ABLÉ Programs Under Section 529A of the Internal Revenue Code." <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>; <https://www.gpo.gov/fdsys/pkg/FR-2015-12-14/pdf/2015-31351.pdf>

**The Vermont ABLÉ Task Force recommends the following changes to Act 51 of the 2015 Session of the VERMONT ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) SAVINGS PROGRAM as noted below:**

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➤ **Found on page 107 of the 2015 Act.**

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2015

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CHAPTER 80. VERMONT ACHIEVING A BETTER LIFE

EXPERIENCE (ABLE) SAVINGS PROGRAM

§ 8001. PROGRAM ESTABLISHED

(a) The State Treasurer or designee shall have the authority to establish the Vermont Achieving A Better Life Experience (ABLE) Savings Program consistent with the provisions of this chapter under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLÉ account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account; and which:

(1) limits a designated beneficiary to one ABLÉ account for purposes of this section;

(2) allows for the establishment of an ABLÉ account only for a designated beneficiary who is a resident of Vermont or a resident of a

contracting State; and

(3) meets the other requirements of this chapter.

➤ **Act 51, Sec. C.7 33 V.S.A chapter 80, §8001. "PROGRAM ESTABLISHED," is amended by adding the following language:**

The Treasurer may elect to participate in, sponsor, conduct, or administer a cooperative agreement or consortium with other states in order to implement the Program (Vermont ABLÉ Savings Program) provided that the Treasurer, in consultation with Program stakeholders, first determines that implementation through cooperative agreement or consortium with other states is in the best interest of the State and the beneficiaries of the Program.

➤ **Found on page 113 of the 2015 Act.**

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2015

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distributions and account balances from all ABLÉ accounts created under the Vermont ABLÉ Savings Program.

(d) Requirements. The Treasurer or designee shall file the reports and notices required under this section at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

Sec. C.8. VERMONT ABLÉ TASK FORCE; REPORTS

➤ **amended by adding the following language:**

The State Treasurer shall **continue, up to and through the time where an ABLÉ program is established,** to convene a Vermont ABLÉ Task Force to include representatives of the Department of Disabilities, Aging, and Independent Living, the Vermont Developmental Disabilities Council, Vermont Center for Independent Living; Green Mountain Self-Advocates, and other stakeholders with relevant expertise, to provide **updated report** on or before January 15 **2016** **2017** to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs on planning and delivery of the ABLÉ Savings Program, including:

- (1) promotion and marketing of the Program;
- (2) rules governing operation of ABLÉ accounts, including mechanisms for consumer convenience;
- (3) fees charged to account owners;
- (4) future enhancements to protect from the loss of State benefits as may



Michael Frerichs  
State Treasurer  
Illinois



Seth Magaziner  
State Treasurer  
Rhode Island



Beth Pearce  
State Treasurer  
Vermont

September 21, 2015

CC:PA:LPD:PR (REG-102837-15),  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Dear Treasury and IRS Rulemaking Staff:

As the administrators of our respective state's ABLÉ programs, we would first like to commend US Treasury on the transparent comment period they have organized in order to ensure the safe and efficient implementation of the Achieving a Better Life Experience (ABLE) Act. Many stakeholders have worked tirelessly for years in order to make tax-advantaged savings plans for people with disabilities a reality and we acknowledge that a new program with such a diversity of advocates may not be easy to regulate.

We appreciate the detailed suggested guidance for the administration of ABLÉ programs that Treasury published on June 22<sup>nd</sup>, and believe the outlined rules to be a good first effort to securing a smooth ABLÉ implementation period for the states. However, we believe that it is important for the long-term health of the program that Treasury understands that the current proposed federal rules and regulations regarding the administration of ABLÉ programs are not ideal for the efficient administration of the plan.

Specifically, our concerns center on three broad issues: (1) determination of eligibility of designated beneficiaries, (2) determination of qualified disability expenses, and (3) the limitation of one ABLÉ account per designated beneficiary. We expect there will be additional questions and concerns the states will have as ABLÉ programs are put into practice, but this letter will only focus on these three concerns in order to draw appropriate attention to their place in ABLÉ's implementation. In short, without different and clear guidance on these three issues it is our belief that ABLÉ programs will be prohibitively difficult to push forward on the state level.

### **1.) Designated Beneficiaries**

Under 529a of the IRS Code, designated beneficiaries are eligible for an ABLÉ account if they provide evidence that they receive disability benefits under the Social Security Act for a disability that occurred before the age of 26 or by filing a disability certification approved by the Secretary of US Treasury. The preamble of Treasury's proposed guidelines suggests that this

disability certification process will be chiefly administered by the states. With a wide range of states and state agencies set to administer ABLE, it is our concern that the requirements to determine eligibility will vary considerably between programs and, as a result, Treasury may be forced to take punitive action in order to align the state programs.

More importantly, the suggested certification process places the onus of determining eligibility of designated beneficiaries on the states. In speaking with our fellow state administrators, the vast majority of state entities that will manage ABLE programs have little to no expertise in the health or medical field, and even those that do are concerned with the staff requirements that a detailed certification process will place on their offices. The certification process also raises potentially serious HIPPA-related protected health information and related privacy issues. Furthermore, the guidance from Treasury provides for an annual recertification process for ABLE account holders, forcing disabled designated beneficiaries to provide updated documentation each year. Considering the difficulty that states will have in initially certifying eligibility, it is our belief that this recertification process is unduly burdensome to both the states and the beneficiary.

While we acknowledge Treasury's responsibility to ensure ABLE accounts are only being used by legitimate designated beneficiaries, we feel that it is at least equally important that the eligibility burden be lessened on the states in order make effective and efficient management of the program possible.

### **Suggestion**

In order to streamline the eligibility process, we recommend that Treasury allow for a self-certifying "check-the-box," disability certification and annual certification—where the designated beneficiary certifies (a) eligibility to receive ABLE benefits and (b) that, if requested, will provide documentation of a diagnosis before the age of 26 for a condition that is generally considered to be covered by the Act.

We echo the statements submitted by the College Savings Plans Network (CSPN) that there should be no reason to believe that a non-disabled individual will attempt to open an ABLE account, since the primary purpose of ABLE is to protect assets from disqualifying individuals from SSI and SSDI eligibility.

It is our firm belief that by streamlining this eligibility process ABLE programs will be able to provide savings services to disabled individuals more efficiently, and avoid adding undue burden to the states and Treasury. The stakeholders of this legislation have worked hard to ensure its implementation; requiring states to make significant judgements on disability eligibility will needlessly stall the ability of ABLE administrators to provide services to the disabled.

## **2.) Certification of Qualified Expenses**

It is clear from the final legislation that Congress felt the need to define qualified expenses for ABLE accounts as broadly as possible. As defined in Section 102 of the Act, qualified expenses shall include, "expenses for education, housing, transportation, employment training and support,

assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, and expenses for oversight and monitoring, funeral and burial expenses.” Furthermore, due to growing public concern that developmentally disabled individuals will be unable to effectively manage their own ABLE account, leeway has been suggested for parents or legal guardians to manage an individual beneficiary’s ABLE account if needed.

In order to avoid mismanagement of the plan, Treasury has suggested that states review and qualify expenses dispersed from ABLE accounts to verify that all expenses are executed for the benefit of the beneficiary. While this suggestion is noble in its intentions, it is logistically impossible for the states to certify every ABLE expense under such a broad definition of “qualified expenses.”

For instance, our offices are ill prepared at present to judge whether retrofitting a home is truly to the benefit of the beneficiary rather than just an improvement for the guardian who may own the home. Due to the lack of expertise and staff size, ensuring that all expenses are qualified will likely result in significant delay in disbursements which will have a serious negative impact on designated beneficiaries.

### **Suggestion**

We are not suggesting that the definition of qualified expenses under ABLE be narrowed. The purpose of the legislation has always been to provide a malleable tool for disabled individuals to use in order to meet their varying needs. We instead suggest that Treasury allow the states to presume qualification of all expenditures made through ABLE accounts and then allow for Treasury to provide regular auditing services for the program. This suggestion would put ABLE in line with the skillsets of both the states—which have expertise in managing statewide investment programs—and Treasury—which already has a significant auditing body. By making this change, we believe that the day-to-day administration of ABLE will become streamlined and better benefit the communities it is intended to serve.

### **3.) One ABLE account per designated beneficiary**

Currently, the Act limits the amount of ABLE accounts to one (1) ABLE account per designated beneficiary. However, recognizing that individuals, particularly military families, may move frequently from one state to another, the rules allow for rollovers or program-to-program transfers – requiring that the ABLE account from which amounts were rolled from be closed as of the 60<sup>th</sup> day from distribution of funds. While we fully agree and commend Treasury and IRS for recognizing our military families, it is unclear what the repercussions, if any, would be on the second or subsequent state(s) if a designated beneficiary represented that there were no other ABLE accounts and in fact there was one. Or, alternatively, the original ABLE account was not closed on the 60<sup>th</sup> day from distribution. Moreover, it is unclear as to what impact, if any, the funds to be transferred would have on the designated beneficiary during the potential 60-day transition period.

*Suggestion*

We would respectfully request that Treasury clarify that there is either no repercussions for the second or subsequent state(s) other than the tax implications to the designated beneficiary, or, if there is any repercussion, to simply identify what that may be and provide guidance as to how states may be able to confirm, prior to opening an ABLE account, whether or not there are any additional ABLE accounts owned by the designated beneficiary. Furthermore, with respect to the assets held during the transition period, we would agree with CSPN that these assets should not impact any benefits that the designated beneficiary receives.

We would like to thank Treasury again for their commitment to making an efficient rollout of ABLE programs possible and look forward to a continued dialogue in order to ensure all issues regarding the administration of the program are addressed. We would also like to offer our offices to assist Treasury in any capacity they may need in coming to a final decision on rules and regulations.

Sincerely,



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Michael Frerichs, State Treasurer  
Illinois



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Seth Magaziner, State Treasurer  
Rhode Island



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Beth Pearce, State Treasurer  
Vermont

Congress of the United States  
Washington, DC 20515

October 2, 2015

The Honorable Jacob Lew  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220-0001

Dear Secretary Lew,

We write in support of the recommendations put forth by Vermont State Treasurer Beth Pearce and the Vermont Developmental Disabilities Council concerning the implementation of the ABLE Savings Program, as recently authorized by the Achieving a Better Life Experience Act.

We strongly support the ABLE Savings Program as a new savings vehicle for disabled individuals and their families. It has the potential to enhance economic self-sufficiency among a population that is disproportionately low-income, and that often has greater than average household expenses.

As you can see in the attached correspondence, Treasurer Pearce (and her colleagues from Illinois and Rhode Island) and the Vermont Developmental Disabilities Council have three concerns regarding Treasury's draft guidance on the implementation of this important program.

The guidelines delegate the disability certification process to the state agencies implementing the ABLE Savings Program. It is likely that many of these agencies will not have prior experience in disability determinations or in maintaining health-related information under the Health Insurance Portability and Accountability Act. This could create duplicative disability determination processes within a state – as would be the case in Vermont - and participant eligibility criteria that vary considerably between states. Our constituents instead recommend that users be able to self-identify as being eligible, based on an existing state or federal disability determination. This approach would be more customer-friendly and would more efficiently use state government resources.

Our constituents are similarly concerned about the efficacy of the state designated agencies having to certify "qualified expenses." In order to strike a reasonable balance between the need for accountability and the need for administrative ease, they propose Treasury allow states to presume qualification of expenditures, and to provide regular auditing of the program.

Lastly, they express several concerns regarding the rollover of ABLE accounts, especially after a participant passes away, and make several recommendations regarding this matter.

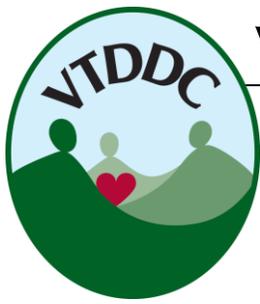
Thank you for giving these concerns and recommendations the serious consideration they deserve. If we can provide further evidence of our support, please do not hesitate to contact us.

Sincerely,

  
PATRICK LEAHY  
United States Senator

  
BERNARD SANDERS  
United States Senator

  
PETER WELCH  
United States Representative



## Vermont Developmental Disabilities Council

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**Mailing Address:**

103 South Main Street

Waterbury, VT 05671-0206

*Temporarily Located at 322 Industrial Lane, Berlin, VT*

**Phone:** 1-802-828-1310

**Toll Free:** 1-888-317-2006

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September 21, 2015

(REG-102837-15)

Room 5203

Internal Revenue Service

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

To whom it may concern:

To whom it may concern:

I am sending this letter on behalf of the Vermont Developmental Disabilities Council to comment on the above referenced draft regulations for the operation of ABLE Savings Programs under the Stephen Beck, Jr., Achieving a Better Life Experience [ABLE] Act of 2014.

The Vermont Developmental Disabilities Council [VTDDC] is a state-wide board that works to increase public awareness about critical issues affecting people with developmental disabilities and their families. Created under the federal Developmental Disabilities Assistance and Bill of Rights Act, VTDDC is one of 56 state and territorial councils charged with building capacity and advocating for systems change that empowers individuals with developmental disabilities to participate as equal members of society. By law, the majority of our members must have a developmental disability or be a family member to a person with a developmental disability.

VTDDC was an active participant in the coalition of disability groups seeking enabling legislation for a Vermont ABLE Savings Program during the 2014-15 legislative session. Through H. 402, the Vermont legislature has charged the Vermont State Treasurer with establishing a Vermont ABLE Program. The Treasurer is further charged with convening an ABLE Task Force with broad stakeholder representation which will provide input into the design of the Vermont ABLE Program. I serve as VTDDC representative on this Task Force.

The Council would first like to acknowledge and thank the Treasury for its diligence and responsiveness in developing draft regulations for this new program. As you know, individuals and families have long awaited

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Congressional action on ABLE. The Treasury is to be commended for developing this draft in record time. Moreover, by placing in regulation a broad interpretation of qualifying expenses, including basic living expenses, the Treasury has shown sensitivity to the tremendous variability in the lived experiences and needs of people with disabilities.

In this same vein, we would like to take this opportunity to ask that the Treasury reconsider three points where the draft regulations appear to be out-of-sync with the realities faced by the individuals and families who will be opening ABLE accounts.

### **Qualifying Beneficiaries**

Under the proposed regulations, responsibility for verifying eligibility status for an ABLE account rests with the state program, which in Vermont would be the State Treasurer. We believe this responsibility is misplaced on three counts: First, it places an unrealistic expectation on an office with limited staff resources and no prior experience in reviewing health-related eligibility. Second, it raises potentially serious concerns about the maintenance of protected health information – again, something that a Treasurer’s office is not typically set up to do. Third, in adding an intermediary responsible for reviewing an individual’s documentation, the regulations fail to norm ABLE Savings Programs with other tax-advantaged benefits where surety is a matter between the individual and the Internal Revenue Service.

The regulations further state that documentation for recertification must be presented annually. In light of the fact that many developmental or acquired disabilities are life long, we believe that this is unduly burdensome to both program administrators and consumers.

Suggestion: We urge the Treasury to allow for a self-certifying system whereby the beneficiary or his/her guardian asserts appropriate edibility and takes responsibility for maintaining documentation to this effect. Treasury has the capacity to audit ABLE Accounts by cross-checking eligible individuals with records maintained by the Social Security Administration [SSA]; or, in the case were an individual has certified eligibility based on a physician–signed diagnosis of disability or blindness, to ask for presentation of appropriate documentation on an occasional basis. Since an equal and more flexible benefit is already widely available to individuals and families under the existing 529 College Savings Program, there is no incentive to establish an ABLE Account unless someone genuinely meets eligibility requirements and intends to use the program as designed.

### **Rollover of an ABLE account to a family member**

The proposed regulations provide that a qualified ABLE program permit a change of designated beneficiary as long as the change is made prior to the death of the former designated beneficiary and as long as the successor is both eligible for the program and a sibling or step-sibling of the original beneficiary. Because of the genetic nature of some disabilities, it will not be unusual for a family to have more than one child eligible to have an ABLE Savings Account. This option reasonably allows a family with more than one child with a disability to retain a relatively small asset that the family has built over time, protecting it from a Medicaid claim against the deceased individual’s modest estate.

However, as written, the regulations impose the burden of making this decision on the individual or guardian before the time of death. In the case of an unexpected death, this would be impossible. Even worse, in cases

where an individual has engaged hospice care or is on life support, this regulation would have the unintended and macabre consequence of forcing a financial decision during a time of tremendous emotional stress.

Suggestion: The regulations should permit a reasonable bereavement period after an individual beneficiary dies during which the guardian, executor, or court may transfer the account to a qualifying sibling or step-sibling. We suggest that a reasonable bereavement period would be one year.

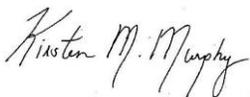
### **Qualifying expenses**

Again, we commend the Treasury for taking a broad view of expenses that “related to the blindness or disability of the designated beneficiary of the ABLE account and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life.” However, we are concerned that once again the proposed regulations rely on the state program to act as an intermediary in establishing “safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions.” We believe that the proposed rules again fail to strike a reasonable balance between the need for accountability and the need for administrative ease. Moreover, depending upon the safeguards imposed by individual states, this regulation has the potential to hold ABLE beneficiaries and their administrative agents to significantly higher reporting standard than is the norm for other tax-advantaged programs.

Suggestion: The Social Security Administration [SSA] already has in place the appropriate mechanisms to monitor how distributions are used through routine reporting and occasional audit. The SSA already requires recipients of social security to report within 10 days after any month in which changes affecting eligibility for or the amount of SSI benefits occur. As suggested by the College Savings Plan Network in their letter of August 21, 2015, individual notice to the SSA could be expanded to include details regarding the use of ABLE distributions, with the understanding that such reporting may trigger further inquiry. In this way, responsibility for record keeping and for a good faith effort in utilizing ABLE funds as contemplated in statute rests with the individual or guardian.

We appreciate the opportunity to propose these changes and look forward to hearing further guidance from the Treasury on this important initiative. Please feel free to contact me for any follow up information or discussion.

Sincerely,



Kirsten M. Murphy  
Senior Policy Analyst and Planner

cc. John Hall, President, Vermont Developmental Disabilities Council  
Karen Schwartz, Executive Director, Vermont Developmental Disabilities Council  
Beth Pearce, Vermont State Treasurer

VERMONT BANKERS ASSOCIATION, INC.

VBA

September 21, 2015

CC:PA:LPD:PR (REG-102837-15),  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

To whom it may concern:

On June 22, 2015, the IRS published proposed rules concerning Qualified ABLE programs. Section 529A of the enabling legislation provides rules under which States or State agencies or instrumentalities may establish and maintain a new type of tax-favored savings program through which contributions may be made to the account of an eligible disabled individual to meet qualified disability expenses.

The Vermont Bankers Association, which represents all of the state and federally chartered banks doing business in Vermont, would like to offer the following comments for the IRS's consideration.

Under the proposed rules a state is allowed to contract with a Community Development Financial Institution that in the IRS's words commonly serve disabled individuals and their families. Having attended several hearings in our state legislature and at least one organizational meeting the message from some in the disabled community is they would like to have a program that is locally delivered. Many have indicated a desire to work with their local financial institution rather than a single entity charged with overseeing the program. Representing banks who are deeply committed to their customers and the communities they serve, we support those wishes. We believe the delivery of this program should be as user friendly and convenient as possible. Local banks stand ready to work with the state in making sure the ABLE program is successfully implemented.

The issue of qualified beneficiaries is the second item we would like to comment on. It is our understanding potential beneficiaries are able to qualify for ABLE by either already having qualified to receive disability benefits under the Social Security Act for a disability that occurred before the age of 26 or through a disability certification process that is approved by the Treasury Secretary. The proposed guidelines suggest that this disability certification process will be chiefly administered by the states. With a wide range of states and state agencies set to administer ABLE, we are concerned the standards

around this qualification process may vary considerably between programs and, as a result, Treasury may be forced to take action in order to align the state programs.

Despite the best efforts of individuals within those state entities who will manage the ABLE program, many do not have the capacity to establish and maintain certifications processes, and as the rules contemplate, annual recertification of ABLE users. Small states such as Vermont lack the resources and expertise to manage such an initiative.

While we understand the need to eliminate any possible fraud and ensure ABLE is only being used by the appropriate beneficiaries, the VBA would suggest utilizing a check the box approach. A self certification system where the beneficiary certifies (a) eligibility to receive ABLE benefits and (b) that, if asked, they can provide documentation of a diagnosis before the age of 26 for a condition that is generally considered to be covered by the Act would seem to be a reasonable alternative. Requiring states to make significant judgements on disability eligibility will needlessly stall the ability of ABLE administrators to provide services to the disabled.

The final item we would like to comment on is the certification of qualified expenses. Congress broadly defined qualified expenses to include: expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, and expenses for oversight and monitoring, funeral and burial expenses. There also appears to be some flexibility for parents or legal guardians to manage an individual beneficiary's ABLE plan if needed.

In order to avoid mismanagement of the plan, Treasury has suggested that states review and qualify expenses made through ABLE, in order to check if all expenses are truly assisting the beneficiary and not just the guardian. Such an approach would seem to be completely unworkable. States do not have the expertise nor the staff to review every single expenditure to determine if they qualify. We would suggest the state be allowed to pre-qualify all expenditures made through ABLE accounts with Treasury providing auditing services to ensure the program is functioning as intended.

On behalf of the banking industry in Vermont, thank you for taking our comments under consideration as you move toward finalizing the rules for the ABLE program.

Sincerely,

Christopher D'Elia  
President

Tracking number 1jz-8I93-I50e

# ABLE Act: An Essential Step to True Inclusion!

By Nicole LeBlanc

The Steven Beck Jr, Achieve a Better Life Experience Act was signed into law on December 19, 2014. The ABLE Act is a bill that advocates, families and others alike have been working on for 6 years.



## So what is the ABLE ACT?

The ABLE Act will allow people with disabilities and their families to set up tax free savings accounts to pay for basic daily living expenses like housing, education, transportation, healthcare, job training, wellness, and personal support services. While at the same time maintain eligibility for Medicaid, and SSI.

These new accounts established under the ABLE Act are similar to a “529” account (college savings account). To set up an account a person must have become disabled before age 26. This law also increases work incentives for people with disabilities by allowing them to save money, something that we haven’t really been able to do because of the \$2,000 asset limit in Medicaid and Supplemental Security Income-SSI. There is also a rule that when a person with a disability passes away any money left in the account will go back to the Medicaid program. On March 10, the IRS gave a

green light to move forward on setting up ABLE Act programs. Each state is going to have to pass a bill in order to set up these accounts that says who will run the ABLE Act program. GMSA has been working with the DD Council to get legislators to pass a Vermont Bill to set up the Vermont ABLE Act program.

In the long run this is going to hopefully increase the number of people working because it will give parents peace of mind that their son or daughter will be able to keep state benefits while working.



I often hear stories of businesses and parents limiting their sons or daughters’ work opportunities

because they are afraid they will lose their SSI and Medicaid. I see this bill leading to greater self-sufficiency among people with disabilities. It’s long overdue that we be given equal opportunity to get ahead and be part of the middle class in this society in terms of economic status. For more information go to the National Down Syndrome Society:

<http://goo.gl/HRQPUX>



**Issue Number: IR-2015-130**

## **New IRS Guidance to Simplify ABLE Program Administration**

WASHINGTON — The Internal Revenue Service today announced three changes to the proposed rules for new tax-favored Achieving a Better Life Experience (ABLE) accounts for eligible disabled individuals that will be included in the final regulations when issued. These changes will make it easier for states to offer and administer ABLE programs.

States, program administrators and other interested commenters identified the three areas for change this summer during a 90-day comment period and at an Oct. 14 public hearing on the proposed implementation regulations. The new law, enacted last December, authorizes states to offer specially designed ABLE accounts to people who become disabled before age 26.

[Notice 2015-81](#), posted today on [IRS.gov](http://IRS.gov), fully describes these changes. They include:

- ***Categorization of distributions not required:*** ABLE programs need not include safeguards to determine which distributions are for qualified disability expenses, nor are they required to specifically identify those used for housing expenses. Commenters noted that such a requirement would be unduly burdensome and that, in any case, the eventual use of a distribution may not be known at the time it is made. Designated beneficiaries will still need to categorize distributions when determining their federal income tax obligations.
- ***Contributors' TINs not required:*** ABLE programs will not be required to request the taxpayer identification numbers (TINs) of contributors to the ABLE account at the time when the contributions are made, if the program has a system in place to reject contributions that exceed the annual limits. However, if an excess contribution is deposited into a designated beneficiary's ABLE account, the program will need to request the contributor's TIN. For most people, the TIN is their Social Security number (SSN).
- ***Disability diagnosis certification permitted:*** Designated beneficiaries can open an ABLE account by certifying, under penalties of perjury, that they meet the qualification standards, including their receipt of a signed physician's diagnosis if necessary, and that they will retain that diagnosis and provide it to the program or the IRS upon request. This means that eligible individuals with disabilities will not need to provide the written diagnosis when opening the ABLE account, and ABLE programs will not need to receive, retain, or evaluate detailed medical records.

Until the final regulations are issued, taxpayers may rely on the guidance in [Notice 2015-81](#). More information on ABLE accounts, including the [proposed regulations](#) issued in June, can be found at [www/irs.gov/TaxBenefitforDisability:IRCSection529A](http://www/irs.gov/TaxBenefitforDisability:IRCSection529A).

Recognizing the special financial burdens faced by families raising children with disabilities, ABLE accounts are designed to enable people with disabilities and their families to save for and pay for disability-related expenses. Contributions totaling up to the annual gift tax exclusion amount, currently \$14,000, may be made to an ABLE account each year (subject to a cumulative limit), and distributions, including earnings, are tax-free to the designated beneficiary if used to pay qualified disability expenses. These expenses can include housing, education, transportation, health, prevention and wellness, employment training and support, assistive technology and personal support services and other disability-related expenses.

## SI 01130.740 Achieving a Better Life Experience (ABLE) Accounts

Weblink: <https://secure.ssa.gov/apps10/poms.nsf/lrx/0501130740>

**CITATIONS:** [Public Law 113–295](#) The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) – Enacted December 19, 2014

### A. What is an ABLE Account?

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged account that can be used to save funds for the disability-related expenses of the account's designated beneficiary, who must be blind or disabled by a condition that began prior to the individual's 26th birthday.

An ABLE program can be established and maintained by a State or a State agency directly or by contracting with a private company (an instrumentality of the State). An eligible individual can open an ABLE account through the ABLE program of the individual's State of residence. If an eligible individual's State of residence does not have an ABLE program but has contracted with another State, the eligible individual can open an ABLE account through that other State's ABLE program.

An eligible individual can be the designated beneficiary of only one ABLE account, which must be administered by the ABLE program of the State in which he or she lives or, if the designated beneficiary lives in a contracting State, by the ABLE program of the State with which the State of the individual's residence has contracted. If the designated beneficiary of an ABLE account moves to another State, then the individual must transfer his or her ABLE account to the new State of residence or, if the new State of residence is a contracting State, to the ABLE program of the State with which the new State of residence has contracted.

Upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of any outstanding qualified disability expenses, are used to reimburse

the State(s) for certain Medical Assistance (Medicaid) benefits the designated beneficiary received.

## **B. Definition of terms**

### **1. Designated beneficiary**

The designated beneficiary is the eligible individual who established and is the owner of the ABLE account. To be an eligible individual, he or she must be:

- a. eligible for Supplemental Security Income (SSI) based on disability or blindness that began before age 26;
- b. entitled to Disability Insurance Benefits (DIB), Childhood Disability Benefits (CDB), or Disabled Widow's or Widower's Benefits (DWB) based on disability or blindness that began before age 26; or
- c. someone who has certified, or whose parent or guardian has certified, that he or she:
  - o has a medically determinable impairment meeting certain statutorily specified criteria; or,
  - o is blind; and,
  - o the disability or blindness occurred before age 26.

**NOTE:** No inference regarding disability under the Social Security Act may be drawn from a disability certification.

### **2. Contributions**

A contribution is the deposit of funds into an ABLE account. Any person can contribute to an ABLE account. (Note that "person," as defined by the Internal Revenue Code, includes an individual, trust, estate, partnership, association, company, or corporation.) However, the Internal Revenue Service (IRS) limits the total annual contributions any ABLE account can receive from all sources to the amount of the per-donee gift-tax exclusion in effect for a given calendar year. For 2016, that limit is \$14,000.

### **3. Distributions**

A distribution is the withdrawal or issuance of funds from an ABLE account. The designated beneficiary or the person with signature authority determines when distributions are made. Distributions may be made only to or for the benefit of the designated beneficiary.

#### **4. Person with signature authority**

A person with signature authority can establish and control an ABLÉ account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. The person with signature authority must be the designated beneficiary's parent, legal guardian, or agent acting under power of attorney. For SSI purposes, we always consider the designated beneficiary to be the owner of an ABLÉ account, regardless of whether someone else has signature authority over it.

#### **5. Qualified disability expenses**

Qualified disability expenses (QDEs) are expenses related to the blindness or disability of the designated beneficiary and that are for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, the following types of expenses:

- Education;
- Housing;
- Transportation;
- Employment training and support;
- Assistive technology and related services;
- Health;
- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for ABLÉ account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses

#### **6. Rollover**

A rollover is the distribution of all or some of the funds from one ABLÉ account to the ABLÉ account of a member of the original, designated beneficiary's family. For the purposes of a rollover, a member of the designated beneficiary's family means a sibling, which includes step-siblings and half-siblings, whether by blood or by adoption.

#### **7. ABLÉ Program**

An ABLÉ program is the program established and maintained by a State (or agency or instrumentality thereof) through which the residents of that State, or the residents of a contracting State, can open ABLÉ accounts.

## **8. Qualified disability expense (QDE) for housing**

Housing expenses for purposes of an ABLE account are the same as they are for in-kind support and maintenance purposes, except that they do not include food. QDEs for housing are payments for:

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

## **C. When to exclude ABLE account contributions, balances, earnings, and distributions**

### **1. Exclude contributions**

Exclude contributions to an ABLE account from the income of the designated beneficiary. This includes rollovers from a family member's ABLE account to an SSI recipient's ABLE account.

**NOTE:** Do not deduct contributions from the countable income of the person who makes the contribution. The fact that a person uses his or her income to contribute to an ABLE account does not mean that income is not countable for SSI purposes. For example, a recipient or deemor can have contributions automatically deducted from his or her paycheck and deposited into an ABLE account. In this case, include the income used to make the ABLE-account contribution in the recipient or deemor's gross wages.

### **2. Exclude ABLE account earnings**

The funds in an ABLE account are invested and can accrue interest, earn dividends, and otherwise appreciate in value. Such earnings increase the account's balance. Exclude any earnings an ABLE account receives from the income of the designated beneficiary.

### **3. Exclude up to and including \$100,000 of balance**

Exclude up to and including \$100,000 of the balance of funds in an ABLÉ account from the resources of the designated beneficiary.

#### **4. Do not count ABLÉ account distributions as income**

A distribution from an ABLÉ account is not income but is a conversion of a resource from one form to another. See [SI 01110.600B.4](#). Do not count distributions from an ABLÉ account as income of the designated beneficiary, regardless of whether the distributions are for non-housing QDEs, housing QDEs, or non-qualified expenses.

#### **5. Exclude retained distributions for non-housing related qualified disability expenses (QDE)**

Exclude from the designated beneficiary's countable resources a distribution for a QDE other than housing if it is retained beyond the month received.

This exclusion applies for as long as:

- the designated beneficiary maintains, makes contributions to, or receives distributions from the ABLÉ account;
- the distribution is unspent; and
- the distribution is identifiable. (**NOTE:** Excludable funds commingled with non-excludable funds must be identifiable to be excluded. See [SI 01130.700A](#).)

**NOTE :** Apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLÉ account.

##### **a. Example of an excluded distribution**

Eric takes a distribution of \$500 from his ABLÉ account in June 2016 to pay for a health-related QDE. His health-related expense is not due until September, so Eric deposits the distribution into his checking account in June. The distribution is not income in June. Eric maintains his ABLÉ account at all relevant times, and the distribution is both unspent and identifiable until Eric pays his health-related expense in September. We therefore exclude the \$500 from Eric's countable resources in July, August, and September. See [SI 01130.700](#) for instructions on identifying when excluded funds have been commingled with non-excluded funds.

##### **b. Example of an excluded QDE purchase**

Fred takes a distribution of \$1,500 from his ABLÉ account in September 2016 to buy a QDE - a wheelchair. The wheelchair is an excluded resource in October and continuing, because it is an individual's personal property required for a medical condition. See [SI 01130.430](#) for instructions on household goods, personal effects, and other personal property.

## **D. When to count ABLE account balances and distributions**

### **1. Count ABLE account balance amounts over \$100,000**

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

#### **a. Rule for indefinite benefit suspension and continuing eligibility for Medicaid during periods of excess resources attributable to an ABLE account**

A special rule applies when the balance of an SSI recipient's ABLE account exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit-- whether alone or in combination with other resources. When this happens, the recipient is put into a special SSI suspension period where:

- we suspend the recipient's SSI benefits without time limit (as long as he or she remains otherwise eligible);
- the recipient retains continued eligibility for Medical Assistance (Medicaid); and
- the individual's eligibility does not terminate after 12 continuous months of suspension.

We will reinstate the recipient's regular SSI eligibility for any month in which the individual's ABLE account balance no longer causes the recipient to exceed the resource limit and he or she is otherwise eligible.

**NOTE:** Updated instructions will be issued when additional procedures related to this special suspension status are complete. Due to the limitation on contributions described in this section at [SI 01130.740B.2](#), there will be no SSI recipients in this suspension status for several years (until individuals have been able to contribute more than \$100,000 to an ABLE account).

#### **Example — excess resources — recipient is suspended but retains eligibility for Medicaid**

Paul is the designated beneficiary of an ABLE account with a balance as of the first of the month of \$101,000. Paul's only other countable resource is a checking account with a balance of \$1,500. Paul's countable resources are \$2,500 and therefore exceed the SSI resource limit. However, since Paul's ABLE account balance is causing him to exceed the resource limit (i.e., his countable resources other than the ABLE account are less than \$2,000), Paul's SSI eligibility is suspended and his cash benefits stop, but he retains eligibility for Medicaid.

#### **b. Ineligibility due to excess resources other than an ABLE account**

The special suspension rule does not apply when:

- the balance of an SSI recipient's ABLE account exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit;
- but the resources other than the ABLE account alone would make the individual ineligible for SSI, due to excess resources

When this happens, suspend the recipient's SSI benefits using the payment status code N04. While in N04, the recipient loses eligibility for Medical Assistance (Medicaid) and the individual's SSI eligibility will terminate 12 months later if the suspension continues during this period. Reinstate the recipient's regular SSI eligibility and Medicaid benefits for any month in which the individual's ABLE account balance and other resources no longer cause the recipient to exceed the resource limit.

**Example — combination of resources — recipient loses SSI eligibility**

Christine is the designated beneficiary of an ABLE account with a balance as of the first of the month of \$101,000. Christine's only other countable resource is a checking account with a balance of \$3,000. Christine's countable resources are \$4,000 and therefore exceed the SSI resource limit.

However, because her ABLE account balance is not the cause (i.e., her countable resources other than the ABLE account are more than \$2,000), the special rule does not apply, and Christine is not eligible for SSI because of excess resources. Christine's SSI benefits are suspended using payment status N04, and her Medicaid benefits will stop.

**c. Ineligibility for other reasons**

If an individual is ineligible for any reason other than excess resources in an ABLE account, the special suspension status does not apply. Suspend the individual's SSI eligibility using normal procedures.

**Example – ineligibility for a reason other than excess resources in an ABLE account**

In April, Sam has a first of the month resource balance in his ABLE account of \$102,500. However, Sam also has excess deemed income in April and will be N01 despite the excess funds in his ABLE account. Before the end of April, Sam leaves the U.S. and does not return until July 1. Sam will be N03 for May, June and July. If Sam still has excess resources in his ABLE account effective August 1 and is otherwise SSI eligible, he will go into the special ABLE resource suspension status and be eligible for Medicaid.

**2. Count as a resource retained distributions for housing-related QDEs or expenses that are not QDEs**

A distribution from an ABLE account is not income, but is a conversion of a resource from one form to another. See [SI 01110.600B.4](#).

Count as a resource a distribution for a housing-related QDE or for an expense that is not a QDE if the distribution is retained into the month following the month of receipt. If the distribution is spent within the month of receipt it has no effect on eligibility. However, apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account

**Example – retained housing QDE is a resource**

Amy takes a distribution of \$500 from her ABLE account in May to pay her rent for June. She deposits the \$500 into her checking account in May, and withdraws \$500 in cash on June 3rd and pays her landlord. This distribution is a housing-related QDE and part of her checking account balance as of the first of June, which makes it a countable resource for the month of June.

**E. How to verify, document, and record ABLE account balances**

**1. Obtain evidence of the ABLE account**

Whenever a recipient or deemor alleges being the designated beneficiary of an ABLE account, obtain evidence that provides the following information:

- the name of the designated beneficiary;
- the State ABLE program that is administering the account;
- the name of the person who has signature authority (if different from the designated beneficiary);
- the unique account number assigned by the State to the ABLE account;
- the account opened date;
- the first-of-the-month account balance or information sufficient to derive a first-of-the-month balance.

If the available evidence doesn't provide this information, contact the appropriate ABLE program to obtain it.

**2. Document the evidence**

Fax the evidence into the electronic folder (EF) or Non-disability Repository for Evidentiary Documents (NDR eD). If you contact the ABLE program directly, document the information you received on a Report of Contact (DROC) in MSSICS or on a Report of Contact (SSA-5002) in non-MSSICS claims.

**3. Record the account on a MSSICS “Other Resource” page**

Record the account information and balance on a MSSICS Other Resource (ROTH) page. There is an ABLÉ account drop down under "Type." See MS INTRANETSSI 013.032 for instructions on completing this screen.

**NOTE:** The designated beneficiary of an ABLÉ account is always the owner of the account for SSI purposes.

## **F. How to verify, document, and record ABLÉ account distributions**

### **1. When to develop**

Only verify a distribution when a recipient or deemor alleges retaining, or other evidence indicates he or she retained, all or part of a distribution into months following the month of receipt. Since distributions do not count as income, the distribution is only material in determining whether the recipient's countable resources exceed the limit.

### **2. Verify the distribution**

Obtain evidence showing the amount of any distributions, the dates taken, and who received them (for example, whether it was paid directly to a vendor). Obtain and accept the recipient or deemor's allegation as to whether a distribution was or will be used for:

- a QDE other than housing;
- a housing QDE; or
- an expense that is not a QDE.

### **3. Exclude retained distributions for QDEs other than housing**

Exclude from the designated beneficiary's countable resources any retained distribution or part of a distribution for a QDE other than housing per [SI 01130.740C.5](#) in this section.

#### **Example of a retained QDE other than housing**

Elizabeth takes a distribution of \$500 from her ABLÉ account in May to pay for a health-related QDE she expects to pay in September. She deposits the distribution into her checking account in May and withdraws it in September to pay the health-related QDE. We would exclude the \$500 from Elizabeth's countable resources from June through September. Starting in June, the technician documents the deposit on the RFIA page inputting \$500 as the "excluded amount." She selects "Other" as the exclusion reason and inputs "ABLÉ QDE distribution" as the "other reason."

## 4. Count retained distributions for housing QDEs and expenses that are not QDEs

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

### Example of a retained QDE for housing

Amy takes a distribution of \$500 from her ABLÉ account in May to pay her rent for June. She deposits the \$500 into her checking account in May, and withdraws \$500 in cash on June 3rd and pays her landlord. This distribution, which is a housing-related QDE, is part of her checking account balance as of the first of the month in June, which makes it a countable resource for the month of June.

## 5. Record the amount excluded on the appropriate resource page

ABLE account distributions are the conversion of a resource from one form to another. Accordingly, they continue to be a resource if retained into the month following the month of receipt. A retained QDE distribution is excluded from resources per [SI 01130.740F.3](#) in this section.

Depending on how and where they are retained, record the amount in the "amount excluded" field of the appropriate resource page in MSSICS with a reason of "ABLE QDE distribution."

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To Link to this section - Use this URL:  
<http://policy.ssa.gov/poms.nsf/lnx/0501130740>

SI 01130.740 - Achieving a Better Life Experience (ABLE) Accounts -  
12/18/2015  
Batch run: 12/18/2015  
Rev:12/18/2015

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#### **External Link Disclaimer**

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10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-110 and should be submitted on or before January 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-31327 Filed 12-11-15; 8:45 am]

BILLING CODE 8011-01-P

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2015-0059]

### Advance Notification Regarding Reporting by State ABLÉ Programs Under Section 529A of the Internal Revenue Code

**AGENCY:** Social Security Administration.  
**ACTION:** Notice; request for comments.

**SUMMARY:** This notice provides advance notification to State Achieving a Better Life Experience (ABLE) programs of the general types of information we anticipate requiring that the State programs include in their monthly electronic reports of ABLE account balances and distributions. We are also requesting information from the public and State ABLE programs about these general types of information and whether these electronic reports should include any other information.

**DATES:** Comments must be received by January 13, 2016.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. No matter which method you choose, please state that your comments refer to Docket No. [SSA-2015-0059] so that we may associate your comments with the correct document.

**Caution:** You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. **Internet:** We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number [SSA-2015-0059]. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. **Fax:** Fax comments to (410) 966-2830.

3. **Mail:** Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Eric Skidmore, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 597-1833. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background:** The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014, as part of the Tax Increase Prevention Act of 2014 (Public Law 113-295). The ABLE Act permits a State, or an agency or instrumentality of a State, to establish and maintain a new type of savings program, called an ABLE program. Under an ABLE program, contributions can be made to a tax-advantaged ABLE account that is established for the purpose of providing secure funding for disability-related expenses on behalf of the account's designated beneficiary that will supplement but not supplant benefits provided through other sources. The designated beneficiary of an ABLE account, who is also the owner of the account, must have been disabled or blind prior to his or her attaining age 26. The ABLE Act further provides that the Social Security Administration will exclude the first \$100,000 in an ABLE account—for any period when the designated beneficiary maintains, makes contributions to, or receives distributions from his or her ABLE

account—for purposes of the Supplemental Security Income (SSI) program. We shall also exclude distributions for qualified non-housing-related disability expenses for purposes of the SSI program.

Section 529A(d)(4) of the Internal Revenue Code provides that “States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.” Before accepting these electronic reports, we will enter into a data exchange agreement with each State. This agreement will specify the content, format, and the security and privacy requirements for these reports. However, we recognize that general guidance in advance of entering into these agreements may be helpful to the States as they design their ABLE programs, and we do not want uncertainty concerning these reports to delay the States’ implementing their programs. Therefore, we are issuing this advance notice to inform State ABLE programs of the general types of information we anticipate requesting they include in their monthly reports of ABLE account balances and distributions.

**NOTICE:** We currently anticipate that our data exchange agreements will require that the States provide in their monthly electronic reports information, concerning each ABLE account:

- Name of the designated beneficiary;
- Social Security number of the designated beneficiary;
- date of birth of the designated beneficiary;
- name of the person who has signature authority (if different from the designated beneficiary);
- unique account number assigned by the State to the ABLE account;
- account opened date;
- account closed date;
- balance as of the first moment of the month (that is, the balance as of 12:00 a.m. local time on the first of the month);
- date of each distribution in the reporting period; and
- amount of each distribution in the reporting period.

Dated: December 4, 2015.

**Carolyn W. Colvin,**

Acting Commissioner of Social Security.

[FR Doc. 2015-31351 Filed 12-11-15; 8:45 am]

BILLING CODE 4191-02-P

<sup>11</sup> 17 CFR 200.30-3(a)(12) and (59).