



## IRS ISSUES FINAL ABLE REGULATIONS

On November 19, 2020, the Internal Revenue Service (IRS) published the [final regulations for the ABLE Act](#) in the federal register under Section 529a of the IRS code. The rules provide guidance to states in their management of state ABLE plans and to people with disabilities and their families regarding the use of and contributions to ABLE accounts as a tax-favored savings program. The final rule reconfirms that ABLE accounts are to “secure funding for qualified disability-related expenses on behalf of designated beneficiaries with disabilities that **will supplement not supplant benefits otherwise available to those individuals whether through private sources, employment, public programs or otherwise.**”

The IRS regulations provide a transition period of at least two years for ABLE plans to implement the regulations which gives the IRS an opportunity to address concerns and issues through notices or other guidance. Certain select provisions from the final regulations are summarized below.

### KEY TAKEAWAYS FROM IRS FINAL RULE:

- General Guidance
- ABLE Account Eligibility
- Contributions into an ABLE Account
- Distributions / Qualified Disability Expenses (QDEs)
- ABLE Account Rollovers
- ABLE Account Owner’s Death & Treatment of Remaining Funds

### GENERAL GUIDANCE

1. A person who meets ABLE eligibility is allowed one ABLE account.
2. An ABLE account can be used for long-term benefit or short-term needs of the designated beneficiary through distributions for qualified disability expenses (QDEs).

### ABLE ACCOUNT ELIBILITY

3. The term “eligible individual” includes those individuals whose SSA entitlement to benefits was suspended due to excess income or resources.
4. The standard of disability eligibility, under section 529A, is applied without regard to either the individual’s age or whether the individual is engaged in substantial gainful activity.
5. The priority for opening an account is as follows in this order:
  - a. eligible individual with a disability

- b. individual selected by the eligible individual (note: An eligible individual with legal capacity may delegate responsibility for another person to establish, or to serve as the person with signature authority over the account.)
  - c. individual's agent under a power of attorney, conservator or legal guardian
  - d. a spouse, parent, sibling or grandparent
  - e. representative payee (individual or organization).
6. A person may self-certify that they are authorized to open the ABLE account and there is no other person with higher priority to establish the account. The state ABLE program can accept the certification.
7. The account cannot be established as a custodial Uniform Gift to Minors Act (UGMA) account or Uniform Transfer to Minors Act (UTMA) account.
8. For those who have not received SSI and/or SSDI prior to age 26, a disability certification may be obtained and signed by a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine and, for some purposes, a doctor of podiatric medicine, a doctor of optometry or a chiropractor. They may not be signed by a licensed psychologist, clinical therapist or certified vocational rehabilitation counselor. The final regulations include the criteria of what must be included in the certification.
9. There is the flexibility for allowing ABLE sub-accounts with a different signatory or co-signatories which can be used for different types of expenditures/distributions.
10. An eligible individual with legal capacity may delegate signature authority over the ABLE account to any other person. The eligible individual may remove and replace from time to time the individual with signature authority and name a successor signatory. The regulations also allow a person with signature authority to name a successor signatory, consistent with the ordering rule above, if the designated beneficiary lacks the legal capacity to do so.
11. A state ABLE program may limit its program to its own state residents or have no residency requirements, allowing eligible individuals with disabilities from any state to open an ABLE account. The regulations also do not require a state to establish or participate in an ABLE plan.
12. The final rule retains the approach of the 2015 proposed regulations that a state ABLE plan must annually determine continuing eligibility of an ABLE account owner. Flexibility is offered states to adopt methods for recertification including, but not limited to, certification by the designated beneficiary under penalty of perjury.
13. Consistent with the proposed regulations, when medical improvement occurs and there is a loss of eligibility, the ABLE account remains an ABLE account. Contributions may continue throughout that calendar year. However, unlike the proposed regulations, distributions made on any date after the loss of eligibility (i.e., medical improvement) are not qualified disability expenses.

## CONTRIBUTIONS INTO AN ABLE ACCOUNT

14. Contributions to an ABLE account are subject to an annual limit (set at the federal level) and a cumulative limit (set by individual states).
15. If or when the state cumulative limit is reached, contributions may resume when a distribution causes the account balance to fall below the limit, subject to the annual and cumulative limits.

16. Funds contributed to and growing in an ABLE account are not considered an “asset” and are not allowed to impact eligibility for a federal means-tested public benefit such as Social Security or Medicaid.
17. Contributions to an ABLE account may be made by any person and by “trusts and tax-exempt organizations.”
18. ABLE contributions may be made by a corporation or an employer. Contributions made by an employer to the account of its employee or of a family member of the employee are subject to the rules governing taxation of compensation.
19. ABLE contributions may be made in the form of cash, check, money order, credit card payment and/or after-tax payroll deductions.
20. Contributions made by the ABLE account owner under the Tax Cuts and Jobs Act of 2017 (ABLE to Work) do not have to be made from compensation income, but must be contributed by the account owner, up to their earnings or the previous year’s federal poverty rate (FPL) for the person’s state of residence.

### DISTRIBUTIONS / QUALIFIED DISABILITY EXPENSES (QDES)

21. Distributions from an ABLE account for coverage of qualified disability expenses **are not included in a designated beneficiary’s gross income.**
22. The definition of “qualified disability expenses” does not require an expense “only benefit the individual.” The IRS declines to provide an exhaustive list of expenses that are qualified. It also declines to provide a list of expenses that will not satisfy the standard. Whether or not an expense is a QDE depends upon each ABLE account owner’s unique circumstances and whether the expense is for maintaining or improving the health, independence or quality of life of the ABLE account owner.
23. QDEs paid by the 60<sup>th</sup> day, following the end of the calendar year, will be treated as if they had been paid in the immediately preceding taxable year.
24. States are not required to establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and unqualified distributions. The account owner is not required to report withdrawals to the ABLE program or IRS, however, the distribution must be categorized in order to determine federal income tax obligations.
25. Moving funds from an ABLE investment fund into an ABLE cash fund to process a distribution is not a change in investment direction.

### ABLE ACCOUNT ROLLOVERS

26. The annual contribution limit on an ABLE account does not include ABLE plan to ABLE plan transfers or rollovers.
27. The ability to rollover a 529 college savings account into a 529A (ABLE) account will sunset in 2026. From that point forward, this change will impact those who have a 529 college savings account who acquire a disability prior to age 26 that prevents them from using those funds to go to college/trade programs. Having assets (e.g., a 529 college savings account) in their name may also impact ability to qualify for public means-tested benefits.

28. The IRS Code does not provide for a tax-free transfer from an ABLE account to a qualified tuition account under Section 529 because such a distribution would not be for a qualified disability expense.

#### **ABLE ACCOUNT OWNER'S DEATH & TREATMENT OF REMAINING FUNDS**

29. Upon the death of an ABLE account owner, the ABLE account is subject to federal estate tax as well as payment of outstanding QDEs and any state claim.
30. The state is not required to file a Medicaid reimbursement claim and there is no state ABLE plan obligation to determine whether claims could be filed by multiple states.
31. A successor designated beneficiary may be named during the lifetime of the ABLE account owner that will take effect upon the death of the designated ABLE account owner. Assets in the ABLE account are payable to the estate if no beneficiary is named.

#### **GIFT AND TRANSFER TAX CONSEQUENCES**

32. Neither gift tax nor generation skipping transfer tax applies to transfers of an ABLE account by rollover, program to program transfer or change in beneficiary to another eligible individual who is a sibling or step-sibling of the beneficiary.

### **READ THE FULL FINAL IRS ABLE RULE:**

[federalregister.gov/documents/2020/11/19/2020-22144/  
guidance-under-section-529a-qualified-able-programs](https://www.federalregister.gov/documents/2020/11/19/2020-22144/guidance-under-section-529a-qualified-able-programs)