

The Achieving a Better Life Experience Act of 2011 (ABLE Act)

Another Planning Tool for Families

Frequently Asked Questions

BASICS

(1) What is the purpose of this legislation?

ANSWER: *The purpose of this legislation is to provide a tax-deferred savings vehicle for persons with disabilities. The tax-deferred savings vehicle will be housed under Section 529 of the Internal Revenue Code, which provides the framework for what is commonly referred to as the 529 Education Savings Plan.*

(2) What is a 529 Education Savings Plan?

ANSWER: *A 529 Education Savings Plan is a tax-deferred savings vehicle operated by a state or educational institution designed to help families set aside funds for future college costs. Note: A 529 Education Savings Plan is a tax-deferred savings account already in existence. This legislation will create a new type of 529 Education Savings Plan called the 529-ABLE Plan.*

(3) What is a 529-ABLE Plan?

ANSWER: *A 529-ABLE Plan is a tax-deferred savings vehicle operated by a state or educational institution designed to help families set aside funds for future costs related to the disability of the beneficiary. The eligible disability expenses are outlined in Question #8 below.*

ELIGIBILITY DETERMINATION

(4) What are the age requirements for individual beneficiaries?

ANSWER: *There is no age requirement for the beneficiary of a 529-ABLE Plan in the legislation. Individual states may impose certain age requirements.*

(5) Are 529-ABLE Plans available to any individual with a disability? How is the term disability defined?

ANSWER: *Any individual who is receiving, deemed to be, or treated as receiving supplemental security income benefits or disability benefits under Title II of the Social Security Act.*

OR

*Any individual who has a medically determined physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 month or is blind, **and** provides a copy of their diagnosis signed by a physician.*

No one who qualifies for an ABLE account is able to use that eligibility to secure supplemental security income benefits or Medicaid.

TAX QUESTIONS

(6) Do beneficiaries of 529-ABLE Plans pay any interest or taxes (federal or state) on assets accumulated within the account?

ANSWER: *There is no federal taxation on funds held in a 529-ABLE Plan. Assets can be accumulated, invested, grown and distributed free from federal taxes. Contributions to the accounts are made on an after-tax basis, but assets in the account grow tax free and are protected from tax as long as they are used to pay qualified expenses. Individual states will ultimately determine how the funds are treated for state taxation purposes.*

(7) Are there any tax benefits for those who contribute to a 529-ABLE Plan?

ANSWER: *No federal tax benefits are provided under traditional 529 Education Savings Plans or 529-ABLE Plans; however, individual states may provide tax benefits.*

ALLOWABLE EXPENSES

(8) What are the qualified expenses that the funds accumulated in a 529-ABLE Plan can be used for?

ANSWER: *Funds can be used to support the following allowable expenses:*

- **Education-** including tuition for preschool thru post-secondary education, books, supplies, and educational materials related to such education, tutors, and special education 6 services.
- **Housing-** Expenses for a primary residence, including rent, purchase of a primary residence or an interest in a primary residence, mortgage payments, real property taxes, and utility charges.
- **Transportation-** Expenses for transportation, including the use of mass transit, the purchase or modification of vehicles, and moving expenses.
- **Employment Support-** Expenses related to obtaining and maintaining employment, including job-related training, assistive technology, and personal assistance supports.
- **Health Prevention and Wellness:** Expenses for health and wellness, including premiums for health insurance, mental health, medical, vision, and dental expenses, habilitation and rehabilitation services, durable medical equipment, therapy, respite care, long term services and supports, nutritional management, communication services and devices, adaptive equipment, assistive technology, and personal assistance.
- **Other Approved Expenses-** Any other expenses which are approved by the Secretary under regulations and consistent with the purposes of this section.
- **Assistive Technology and Personal Support-** Expenses for assistive technology and personal support with respect to any item described in clauses (i) through (vi).
- **Miscellaneous Expenses-** Financial management and administrative services; legal fees; expenses for oversight; monitoring; home improvement, and modifications, maintenance and repairs, at primary residence; or funeral and burial expenses.

(9) Are there any penalties for using funds accumulated through 529-ABLE Plans for non-qualified expenses?

ANSWER: *Such distributions will be subject to a 10% penalty on the earnings portion of the non-allowable expense. In addition, all earnings would be subject to ordinary income tax.*

ASSET ACCUMULATION & BENEFITS DETERMINATION

- (10) **Can an individual with a disability work and maintain a 529-ABLE Plan?**

ANSWER: *Yes, as long as the individual meets the definition of disability irrespective of whether s/he is engaged in substantial gainful activity.*

- (11) **Can an individual with a disability contribute to these plans from wages earned?**

ANSWER: *Yes, after required taxes are paid, earnings may be contributed to the account, just as any other contribution. For administrative purposes any contributions made by someone other than the account owner are treated as if the contribution was from the account owner.*

- (12) **Do assets accumulated in 529-ABLE Plans count toward asset/income means-testing for determining eligibility into Federal benefits programs?**

ANSWER: *Assets up to \$100,000 held in 529-ABLE Plans are specifically **excluded** from the income and assets tests used to determine eligibility. This includes the current SSI eligibility requirements that prohibit beneficiaries from having over \$2000 in assets at any one time.*

- (13) **Do assets accumulated in 529-ABLE Plans count toward asset/income means-testing for determining eligibility in State benefits programs?**

ANSWER: *The bill(s) do not prohibit states from treating the accounts differently for programs funded **FULLY** with state funds.*

- (14) **Are there any limits to the amount of funds that can be contributed to an ABLE Account during a certain period of time?**

ANSWER: *Contribution limits are set by the individual state or educational institution. For example, the State of Nevada allows a total contribution limit of \$370,000 per beneficiary, while Virginia allows \$350,000.*

- (15) **Are there any restrictions on the number of 529-ABLE Plans that can be used for one individual beneficiary?**

ANSWER: *The bill does not limit the number of 529-Plans per beneficiary.*

OWNERSHIP, CONTROL & ADMINISTRATION OF ABLE ACCOUNTS

(16) Who controls the funds in an ABLE Account?

ANSWER: *In most States the person who opens the account is the account owner and controls the funds in the account.*

(17) What is the administrative process for opening and maintaining an ABLE Account?

ANSWER: *Each state will have its own process for establishing a 529-ABLE Plan. The process should be identical to the process used to establish a 529 Education Savings Plan. Each state will need to reform their current process to take into account the eligibility provisions to establish a 529-ABLE Plan.*

(18) What are the administrative fees for opening and maintaining an ABLE Account?

ANSWER: *Fees will vary by the state.*

ABLE ACCOUNTS COMPARED TO OTHER SAVINGS VEHICLES

(19) How do 529-ABLE Plans differ from other savings vehicles?

ANSWER: *Except for the special needs and pooled trusts, none of the other accounts listed below will provide benefits protection. Any funds held in a standard savings, IRA, educational savings or other type of account will be counted as income and assets against the beneficiary. This means they would NOT qualify for federal benefits until the funds were depleted. 529-ABLE Plans, like pooled trusts, require a Medicaid payback upon death of the beneficiary.*

a. How do 529-ABLE Plans differ from 529 Education Savings Accounts?

Money that is saved in 529 Education Savings Accounts must be used for education.

b. How do 529-ABLE Plans differ from IRAs?

Funds held in IRA accounts cannot be accessed until a person reaches a specific age, normally 59 1/2 years old. 529-ABLE Plan funds can be accessed throughout a beneficiary's lifetime.

c. How do the 529-ABLE Plans differ from special needs trusts?

There are different advantages and disadvantages to trusts and 529-ABLE Plans. Special Needs Trusts are regulated at the state level and need to be reviewed and updated if a family moves to another state. Special needs trusts are taxed at the

highest individual tax rate, and they can be expensive to set-up and maintain. Special needs trusts do not have contribution limits, and the allowed expenditures are not as limited as a 529-ABLE Plan. If a special needs trust is set-up as a 3rd party trust, then a Medicaid payback is not required.

d. How do 529-ABLE Plans differ from pooled trusts?

Pooled trusts are fully taxable, require set-up and maintenance costs, and are regulated at the state level. A portion of the money left in the account after the beneficiary's death stays in the account for other participants before the Medicaid payback applies. There are no contribution limits and the allowed expenditures are broader than with a 529-ABLE Plan. Set-up and maintenance of pooled trusts are generally done by disability organizations. The set-up fees can be less expensive than special needs trusts and the organizations that maintain them are familiar with how the funds can be used on behalf of the beneficiary.

(20) Can an individual have a 529-ABLE Plan and a special needs or a pooled trust?

ANSWER: *Yes, all are tools for providing disability-related supports and services to individual with a disability. Which ones work best or in combination will depend on individual circumstances.*

TREATMENT OF 529-ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS

(21) Can a 529-ABLE beneficiary currently receiving SSI benefits utilize their 529-ABLE account for qualified housing expenses?

ANSWER: *Yes, however, certain rules apply to these distributions. Under the 529-ABLE proposal, expenses for a primary residence, including rent, purchase of a primary residence or an interest in a primary residence, mortgage payments, real property taxes, and utility charges, are deemed to be qualified expenses. When distributions are used for these purposes, the distribution is not excluded from consideration when determining SSI benefits. As a result, the Social Security Administration will apply the one-third reduction rule in which one-third of the federal benefit rate (\$674 for an individual in 2011) is counted as additional income to the beneficiary. In this case, benefits would be reduced by this additional income (\$224).*

- (22) If a 529-ABLE beneficiary is receiving SSI benefits, how will assets in the beneficiary's 529-ABLE affect his/her benefits?**

ANSWER: *There is no impact on a beneficiary's federal benefits if he/she is also the beneficiary of a 529-ABLE account until his/her total combined assets, including funds in their 529-ABLE account) exceed \$102,000. In that case, if the beneficiary of a 529-ABLE account is receiving SSI benefits, the beneficiary's SSI benefits are suspended only during the period of time that his/her total assets exceed \$102,000.*

- (23) Can the beneficiary of a 529-ABLE account lose his/her Medicaid benefits?**

ANSWER: *No. The 529-ABLE proposal expressly protects the beneficiary of a 529-ABLE from losing his/her Medicaid coverage as a result of the funds held in a 529-ABLE account.*

ISSUES PERTAINING TO ACCOUNT ROLL-OVERS

- (24) Can pre-existing savings accounts already established for an individual with a disability be rolled over into a 529-ABLE Plan?**

ANSWER: *Under current law, you may use funds from a Coverdell Account and/or Uniform Gifts/Transfers to Minors Account to open a 529 Education Savings Account. This provision shall apply to the establishment of a 529-ABLE Plan. Other types of standard savings accounts don't have any up front restrictions that would prevent a roll-over. IRA and 401k accounts have provisions to allow withdrawal of money due to disability.*

- (25) Upon the death of a beneficiary, can 529-ABLE Plans be rolled over into an IRA to the spouse and/or dependents of the deceased?**

ANSWER: *529-ABLE Plan can be rolled over to another beneficiary without a taxable event if the new beneficiary is the spouse or another qualified individual. The roll-over will not count as a distribution. If the new beneficiary does not meet the eligibility criteria for a 529-ABLE Plan, the account may be rolled into a 529 Education Savings Account.*