

Frequently Asked Questions About ABLE Act Accounts for People with Disabilities

by John S. Kitchen, JD, LLM

- 1. Introduction to the federal ABLE Act. p. 2**
- 2. Overview of the existing 529 college plan concept. p. 2**
- 3. Are ABLE act accounts only for education? p. 2**
- 4. What can ABLE Act accounts pay for? p. 2**
- 5. What total amount can be saved in the ABLE account? p. 2**
- 6. What total can go into the ABLE account each year? p. 3**
 - 7. First example of who will benefit. p. 3**
 - 8. Second example of who will benefit. p. 3**
- 9. How to apply and how ABLE accounts operate. p. 4**
 - 10. Can a person apply now? p. 4**
- 11. Has Congress already passed additional ABLE legislation? p. 6**
- 12. Are further proposed federal laws being considered? p. 7**

Note: This article is designed to provide research information to be used in conjunction with other research deemed necessary in the exercise of independent professional judgment. Individual circumstances also need to be discussed to determine the applicability of these materials. The author makes no warranty or guarantee concerning the accuracy or reliability of the content at this article or at other linked sites.

Question 1: Introduction to the federal ABLE Act.

Answer 1: On December 19, 2014 the ABLE Act (Section 529A of the US Internal Revenue Code of 1986, as amended) became a new federal law. The ABLE Act provides an opportunity for individuals with disabilities to have savings accounts that will support their education, health and other disability related needs. The ABLE Act is modeled after the IRC 529 college savings plans (Section 529 of the US Internal Revenue Code of 1986, as amended) that have been available since the 1990's.

Question 2: Overview of the 529 college savings plan concept to see the context.

Answer 2: 529 plans allow parents, grandparents and other loved ones to set aside after tax dollars each year, for a child's college education beginning as early as the year of the birth of a child. The money can be invested and grow without income taxes. Then when the child goes to college, the money can be spent for qualifying post-secondary education payments without income tax on the growth of the fund. This law has encouraged parents, grandparents and others to help more with college costs.

Question 3: Are ABLE Act accounts only for education?

Answer 3: No. The ABLE Act is patterned after the 529 law, and the ABLE Act account can be used for education, but also for other disability-related expenses.

Question 4: What can an ABLE Act account pay for?

Answer 4: There is a list of 12 items stated in the ABLE law describing what ABLE Act accounts can pay for:

1. Health
2. Independence
3. Quality of life purchases
4. Education
5. Housing (with some limitations)
6. Transportation
7. Employment training and support
8. Assistive technology and personal support services
9. Prevention and wellness expenses
10. Funeral and burial expenses
11. Financial management and administrative fees
12. Expenses for oversight and monitoring

Also included as permitted purchases in the ABLE Act are: "Other expenses approved by US Treasury regulations". The US Treasury has not adopted final regulations as of the date of this article (July 20, 2016) but has proposed regulations which essentially discuss tax issues and reporting requirements and do not set forth a list of permitted purchases. However, the IRS issued a Guidance on January 29, 2016, a copy of which is attached, stating that:

1. The final regulations for 529A [the ABLE Act] will be issued later this year [2016] and
2. States administering ABLE Act programs will have greatly eased State reporting and monitoring duties.

Taking the lead regarding public benefits issues, the US Social Security Administration has issued a list of permitted purchases as part of its Program Operations Manual System (POMS SI 01130.740(5)) which is somewhat differently worded than the above statutory federal ABLE Act list. The POMS list of permitted purchases follows:

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

1. Education
2. Housing
3. Transportation
4. Employment training and support
5. Assistive technology and related services
6. Health
7. Prevention and wellness
8. Financial management and administrative services
9. Legal fees
10. Expenses for ABLE account oversight and monitoring
11. Funeral and burial; and
12. Basic living expenses

Question 5: What total amount can be saved in the ABLE Act account?

Answer 5: For most people with disabilities there is a \$100,000 limit on the size of the account. This limit would apply if the person with disabilities is receiving Social Security SSI monthly payments. If the person with disabilities is receiving SSDI monthly payments, the limit is higher and depends on the State limit for 529 college plans (typically \$350,000). New Hampshire's 529 college plan limit is \$375,000.

Question 6: Are there any limitations on what can go into the ABLE Act account each year?

Answer 6: Yes. The limit on how much can go into an ABLE Act account each year is \$14,000. Each beneficiary can have only one ABLE Act account and the total going into it each year is \$14,000 from all sources. Only cash can go in.

Question 7: What is an example of when people would want to set up an ABLE Act account?

Answer 7: One example would be parents setting up an ABLE account for a young child with disabilities upon disability onset with \$14,000. Then the parents repeat that \$14,000 gift

each year up to \$100,000 (including gains from investments in the ABLE account at any given time). So, if the disability occurred at birth and disability was determined to be present at birth then \$14,000 a year times 5 years equals \$70,000 when the child with disabilities is 5 years older. Because the interest, dividends and capital gains in the ABLE account are not taxed on the parents' 1040, there may be a significant growth in the investments on the \$70,000. That increase might with luck reach near the \$100,000 limit at the end of the five years of gifting. So, before that happened, the fund could start to be used for the items listed in the federal statute. If instead a more modest \$3,500 is put in each year (that's \$291 a month), you get the same result over a longer period of time.

This scenario is consistent with the Congressional testimony of the co-sponsors and what public witnesses who testified talked about. One of the public witnesses, Robert D'Amerlio, testified his way:

"...My story is about a middle class family... I am a data center manager...and Christi is a realtor... Like many families across the nation, our family is an autism family – both of my sons are affected, Christopher more severely than his brother... An ABLE account would enable families like mine to save... the ABLE Act is about fairness. If Christi and I can use a college savings account to provide for our daughter Lindsey's future, why can't we use something similar to take care of Nicholas and Christopher?"

Question 8: What would be another example where a person would set up an ABLE Act account?

Answer 8: A second scenario for an ABLE Act account would be an adult with disabilities who has a part time job. Let's say that Jane Jones is a veteran with disabilities. Her finances are constrained, but she is a saver. She could put 10% of her earned income into an ABLE Act account as a rainy day fund. She wants independence and a plan to face unexpected future needs.

Another public witness, Chase Phillips, testified before Congress this way: "This...legislation will afford...individuals with disabilities the opportunity to experience the "American Dream"... keep three to six months worth of expenses in cash reserves in preparation for life's unexpected turns.

Question 9: How do people apply for an ABLE Act account, and how does the program operate?

Answer 9: ABLE Act accounts are established by the eligible individual or their guardian and are maintained by "a State or agency or instrumentality thereof..." This is similar to the 529 college savings plan law. Most states have 529 accounts. Typically the State Treasurer (with an advisory committee) is in charge. A contracting financial Institution helps operate the program (Fidelity in New Hampshire). There can only be one ABLE account for a person with disabilities. The person with disabilities must have had the onset of disability prior to reaching the age of 26. The disability standard is the same as the Social Security definition. A disability certification must be provided to the US Treasury Department. There are also additional reporting and accountability requirements, including a notice of establishment of the account to

the US Treasury Department, a separate accounting for each beneficiary and also monthly electronic distribution statements to the US Social Security Administration sharing purchases and account balances. There are penalties for making purchases not allowed, or for having more assets in the account than allowed (usually \$100,000). The account may not be used to secure any loan. There is a limited roll over opportunity to benefit the same beneficiary in a different plan or another beneficiary with disabilities who is a sibling or a stepsibling (without tax at the time of the rollover). As in 529 college savings accounts, contributions to ABLE Act accounts are made with after-income-tax dollars. Income taxes are not levied on deposits while held in the ABLE account. If only approved purchases are made from the ABLE account, then there is no income tax paid on the ABLE account generated income. Annual contributions are limited to \$14,000.00 per year per beneficiary from any number of people. Only cash contributions are allowed. The contribution is considered a completed gift. The State of residence is considered a creditor and entitled to make a claim after the beneficiary dies.

Question 10: Can a person apply now?

Answer 10: Yes. The ABLE Act itself provides that it shall “apply to taxable years beginning after December 31, 2014 [so as to be in effect for the tax year 2015]”. The US Department of the Treasury is required by the ABLE Act to issue regulations “not later than 6 months after the date of the enactment of this Act [December 19, 2014], which means by June 19, 2015. The federal ABLE Act is in effect now and, like the 529 college savings account, the ABLE Act accounts can be established by each State and run from the clear language of the federal law if the State has passed its law as well. A State’s program may be made available to residents of other States. The **Ohio** ABLE Act program was the first State to launch its ABLE Act program on June 1, 2016.

The States which have passed state ABLE laws and have launched programs (as of July 20, 2016) are:

1. **Ohio (launched on June 1, 2016 as a national program)**
2. **Tennessee (launched on June 13, 2016 as a national program)**
3. **Nebraska (launched June 30, 2016 as a national program)**
4. **Florida (launched on July 1, 2016 as a Florida residents only program)**

The States which have passed State ABLE laws, but have not announced launch dates are:

- | | |
|-----------------------|--------------------------|
| 1. Alabama | 12. Iowa |
| 2. Arizona | 13. Kansas |
| 3. Arkansas | 14. Kentucky |
| 4. California | 15. Louisiana |
| 5. Colorado | 16. Maryland |
| 6. Connecticut | 17. Massachusetts |
| 7. Delaware | 18. Michigan |
| 8. Georgia | 19. Minnesota |
| 9. Hawaii | 20. Missouri |
| 10. Illinois | 21. Montana |
| 11. Indiana | 22. Nevada |

23. New Hampshire
24. New Jersey
25. New Mexico
26. New York
27. North Carolina
28. North Dakota
29. Oklahoma
30. Oregon
31. Pennsylvania
32. Rhode Island

33. South Carolina
34. South Dakota
35. Texas
36. Utah
37. Vermont
38. Virginia
39. Washington
40. West Virginia
41. Wisconsin

The State which has an ABLE Bill pending but has not passed a State ABLE law is:

1. Alaska

The States that have not passed ABLE enabling laws and have no bills pending are:

1. Idaho
2. Maine
3. Mississippi
4. Wyoming

Question 11: Has Congress passed additional ABLE legislation?

Answer 11: Yes, on December 18, 2015 additional ABLE legislation was passed into law as part of the Consolidated Appropriations Act of 2016 (P.L. 114-113 H.R. 2029). This new law eliminates the requirement that ABLE accounts be established only in the ABLE account owner's State of residence. This new law allows people in one State to enroll in the ABLE program established by another State. This a change which was also made in the 529 college Plans after they were first only allowed in offered in the State of residence.

Question 12: Are further proposed Federal being considered?

Answer 12: Yes. There are three bills currently pending before Congress to expand on the ABLE Act concept. Copies of the three bills are attached. All have major support but all have budget concerns to overcome. According to the National Down Syndrome Society:

1. The **ABLE Age Adjustment Act** bill (HR 4813/S2704) would raise the age of onset of disability requirement from 26 years old to 46 years old (halfway to retirement age). This would enable more individuals who become disabled later in life to take advantage of the benefits of ABLE accounts.

2. The **ABLE Financial Planning Act** bill (HR 4794/S2703) would enable ABLE beneficiaries to roll over regular 529 accounts to 529A ABLE accounts up to the annual maximum contribution, and would also allow for a reverse-rollover if the beneficiary ceases to have a disability. This bill would be particularly helpful for families who set up 529 accounts before receiving a child's diagnosis, or for people who incur life-changing events that render them unable to go to college.

3. The **ABLE to Work Act** bill (HR 4795/S 2702) would enable ABLE beneficiaries who work and earn income to save additional amounts in their 529A ABLE account above the current annual maximum contribution (\$14,000, tied to the Federal Gift Tax) and to be eligible for the Saver's Credit, an existing federal tax credit that low and middle-income individuals can currently claim when they make contributions to a retirement account. Specifically, an ABLE beneficiary who earns income from a job (and does not have another retirement account) could save up to the Federal Poverty Level (currently \$11,770) in addition to the \$14,000 annual maximum contribution.

JSK 07/16