

# A Primer on ABLE Accounts

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## ABLE National Resource Center

The ABLE National Resource Center (ABLE NRC) is the leading, comprehensive source of objective, independent information about federal and state-related ABLE programs and activities, including guidance on tax-advantaged ABLE savings accounts. Their mission is to educate, promote, and support the positive impact ABLE can make on the lives of millions of Americans with disabilities and their families.

## Introduction

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act is found in section 529A of the Internal Revenue Code and became a law in December 2014 (P.L. 113-295). Proposed ABLE regulations were published by the Department of the Treasury on June 22, 2015 with a comment period lasting through September 21, 2015 and a public hearing in October, 2015. As this is written, final regulations are not yet published.

The IRS has stated in comments that the proposed regulations can be relied upon while we await publication of the final regulations: “Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on these proposed regulations.”

As this is written, over 70,000 individuals have established an ABLE account in one of the more than 42 states plus the District of Columbia that have established and maintained active ABLE programs. Over \$470 million in assets are in ABLE (529A) accounts.

## Key Lessons

1. **An ABLE account is a tax-advantaged savings account for individuals with disabilities.** The individual with a disability is the account owner and any income earned by the account is not taxed. Contributions to the account can be made by any person (the account beneficiary, family, friends, Special Needs Trust, or Pooled Trust) and must be made using post-taxed dollars. Contributions are not tax deductible for purposes of federal taxes; however, some states may allow for state income tax deductions or credits for contributions made to an ABLE account.
2. **An individual does not have to be receiving Social Security benefits to qualify for an ABLE account.** An individual may qualify for an ABLE account even if they are not receiving a benefit from the Social Security Administration. An individual may open an ABLE account at any age, as long as the onset of disability was before the individual’s 26<sup>th</sup> birthday.
3. **Saving in an ABLE account preserves eligibility for means-tested benefits.** Prior to the enactment of the ABLE Act, various types of tax-advantaged savings arrangements existed, but none adequately served the goal of promoting savings for individuals who receive means-tested benefits. The ABLE Act states that funds in the ABLE account will not affect eligibility for federally funded means-tested benefits such as SSI and Medicaid. When the ABLE account balance over \$100,000 is combined with other resources and exceeds the SSI resource limit, SSI payments are suspended but Medicaid continues. SSI payments may be reinstated when countable resources are reduced below the SSI resource limit. ABLE savings of any amount do not impact Medicaid, Medicare, FAFSA, HUD, SNAP, or SSDI benefits.
4. **Any “person” may contribute to an ABLE account on behalf of the account owner.** A family member, friend, or the person with a disability may contribute to an ABLE account. The term “person”

also includes a trust, estate, partnership, association, company, or corporation. Funds may also be rolled over from a 529 college savings account into the ABLE account. Contributions do not count as income when contributed by third parties.

- 5. Distributions for qualified disability expenses, including those for food and housing expenses, do not count as income nor reduce a SSI payment.** The ABLE account is owned by the individual with a disability. The Social Security Administration has clarified that food and housing-related expenses are acceptable expenses which may be paid directly from an ABLE account, without a reduction in SSI due to “in kind support and maintenance” from others.

## Qualifying For and Opening an ABLE Account

The ABLE Act limits eligibility to a person who has a disability with an age of onset of disability before turning 26 years of age. If a person meets this age requirement and they are also receiving benefits under SSI and/or SSDI, they are automatically eligible to establish an ABLE account. If a person is not a recipient of SSI and/or SSDI but still meets the age of onset disability requirement, they could still be eligible to open an ABLE account, provided they meet Social Security’s definition and criteria. The criteria include significant functional limitations and a letter of disability certification from a licensed physician, a M.D. or D.O. A person does not have to be younger than 26 to be eligible for an ABLE account. A person may open an ABLE account at any age; they simply must have had a disability onset before their 26th birthday.

### PRACTICE TIP

It is recommended that an ABLE account be opened as early as possible, which allows the funds to grow tax free for a longer period of time. A parent or guardian may open an ABLE account for a person who is under the age of 18.

There is no “one-size fits all” when it comes to choosing an ABLE program to open. With over 40 ABLE plans to choose from, it is important to know how to find a plan that best meets the needs of the person and their family. As an objective national leader on the ABLE Act and ABLE accounts, ABLE National Resource Center provides guidance, tools, and best practices to assist with comparing, opening, and effectively utilizing an ABLE account.

## The Effect on Means-Tested Benefits

Millions of individuals with disabilities and their families depend on a wide variety of public benefits for income, health care, food, and housing assistance. Eligibility for these public benefits (SSI, SNAP, Medicaid) require meeting a means/resource test that restricts eligibility to individuals who report less than \$2,000 in cash savings, retirement funds, and other items of significant value. To remain eligible for these public benefits, an individual must meet certain criteria. For the first time in public policy, the ABLE Act recognizes the extra and significant costs of living with a disability. These include costs related to raising a child with significant disabilities or for a working-age adult with disabilities, accessible housing, transportation, personal assistance services, assistive technology, and health care not covered by insurance, Medicaid, or Medicare. For the first time, eligible individuals and their families are allowed to establish ABLE savings accounts that largely do not affect their eligibility for SSI, Medicaid, and means-tested programs such as FAFSA, HUD and SNAP/food stamp benefits.

The legislation explains further that an ABLE account will, with private savings, “secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, Medicaid, SSI, the beneficiary’s employment and other sources.”

**PRACTICE TIP**

An ABLE account may make it possible for a person to save regularly and continue eligibility for means tested benefits.

## Contributions to the ABLE Account

The total annual contributions by all participating individuals, including family and friends, for a calendar year is \$15,000. The amount may be adjusted periodically to account for inflation. Under current tax law, \$15,000 is the maximum amount that individuals can make as a gift to someone else and not report the gift to the IRS (the current gift tax exclusion). The total limit, over time, that could be made to an ABLE account will be subject to the individual state and the limit for education-related 529 savings accounts. States have set limits for total allowable ABLE savings. State ABLE limits range from \$235,000 to \$529,000. In consideration of the annual contribution limit per calendar year, accounts may reach the state limit over time.

However, for individuals with disabilities who are recipients of SSI, the ABLE Act sets some further limitations. If and when the ABLE account balance, when combined with other resources, exceeds \$100,000 by the SSI resource limit, the beneficiary's SSI monthly payment would be suspended. In time, if or when resources over \$100,000 no longer exceed the resource limit, benefits are reinstated without a time limit. This special rule does not apply if non-ABLE resources alone are over the limit. It is important to note that while the beneficiary's eligibility for the SSI cash benefit is suspended, this has no effect on their ability to receive or be eligible to receive medical assistance through Medicaid.

An employed ABLE account owner who does not participate in an employer-sponsored retirement account may make an additional contribution up to the lesser of: (1) the ABLE account owner's compensation for the tax year, or (2) the poverty line amount of \$12,490 (2020) in the continental U.S., \$14,380 in Hawaii, and \$15,600 in Alaska.

**PRACTICE TIP**

It is recommended that third parties contribute directly into the ABLE account versus providing the contribution to the ABLE account owner. For example, family who wish to assist an ABLE account owner with securing a new apartment could deposit funds directly into the ABLE account, without reduction in SSI payment. SSI payments made by a family member directly to the housing provider or to a SSI recipient would otherwise result in a reduction in SSI payments due to in kind support and maintenance.

### Here are a few other key issues to consider when contributing to an ABLE account:

It is important to coordinate with the ABLE account owner and/or their Authorized Legal Representative around contributions into the ABLE account in order to maximize the contributions that are being made and not unintentionally and adversely impact a strategy for contributions that may already be in place for the calendar year.

1. Using IRS tax credits such as the Earned Income Tax Credit or Savers Credit may result in a refund, which may be saved in an ABLE account.
2. A Special Needs Trust or Pooled Trust is a "person" under the law and may contribute to an ABLE account.
3. Benefits may be directly deposited into an ABLE account, if there is not a representative payee.
4. ABLE NRC does not recommend direct deposit when funds are being used for recurring monthly

expenses because the contribution limit may be reached quickly, preventing further deposits for the calendar year, even though the ABLE funds have been spent down within that same calendar year.

## Distributions from an ABLE Account

A “qualified disability expense” (QDEs) means any expense related to the designated beneficiary as a result of living a life with disabilities. QDEs may include education, food, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services, and other expenses that help improve health, independence, and/or quality of life.

### PRACTICE TIP

If an expense is a questionable expense, it is recommended that it be not be paid from ABLE funds. Non-QDEs are subject to taxation on the earnings portion of the QDE. This may also have an effect on means-tested benefits.

## Conclusion

The ABLE Act created tax-free savings accounts for individuals with a disability that began before age 26. By making tax-free savings accounts available to cover qualified disability-related expenses (including education, housing, and transportation), this law aimed to ease financial strains faced by individuals with disabilities. Additionally, individuals can have savings beyond \$2,000 to provide them with financial stability or to save for items or services never possible in the past. Funds contributed into an ABLE account do not negatively impact a person’s eligibility for public benefits, such as Medicaid. Funds in an ABLE account do not replace benefits provided through private insurances, the Medicaid program, the Supplemental Security Income program, the beneficiary’s employment and other sources. *Instead*, ABLE funds supplement these benefits.

## Additional Resources

- [ABLE National Resource Center](#)
- [Federal Guidance](#): Treasury/IRS, SSA, CMS, HUD, USDA
- [ABLE Account, Special Needs, and Pooled Trust Comparison Chart](#)
- ABLE Act
  - » [H.R.647 - ABLE Act of 2014](#)
  - » [§529A. Qualified ABLE programs](#)
- ABLE IRS NPRM from Federal Register (6/22/15) Guidance Under Section 529A: [Qualified ABLE Programs](#)
- [2017 ABLE Act Amendments \(Able to Work Act\)](#)
- [Guidance on Re-contributions, Rollovers, and Qualified Higher Education Expenses Under Section 529](#)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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