

## Text of the Proposed Emergency Regulations for the California ABLÉ Program

### California Code of Regulations

**Title 10: Investments**

**Division 1: California Achieving a Better Life Experience (ABLE) Act Board**

**Chapter 14: California Achieving a Better Life Experience (ABLE) Program Trust**

#### **Section 9000. Existing Definitions**

All meanings of the terms defined in Welfare and Institutions Code section 4875, Internal Revenue Code section 529A, and any federal regulations implementing Internal Revenue Code section 529A apply wherever the same terms are used throughout this Chapter.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4875, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

#### **Section 9001. Additional Definitions.**

The following definitions shall also apply wherever the terms are used throughout this Chapter:

- (a) "ABLE Plan" or "Plan" means the qualified ABLE program established and maintained by the State of California, in accordance with Internal Revenue Code section 529A.
- (b) "Account Owner" means the Eligible Individual for whom the Account is established. The Account Owner is the Designated Beneficiary.
- (c) "Authorized Legal Representative" means a person who may act on behalf of the Account Owner with respect to the account if the Account Owner (1) is unable to exercise signature authority over his or her account, or (2) chooses not to exercise signature authority over his or her account. The Authorized Legal Representative may be a parent or legal guardian of the Account Owner or may be a person granted a valid durable power of attorney to manage banking and investment matters on behalf of the Account Owner and to take all necessary actions on behalf of the Account Owner with respect to the account.
- (d) "Cash" includes checks, money orders, funds transferred through rollover distributions, payroll deduction plans, automatic contribution plans, and electronic fund transfers.
- (e) "Contribution" means cash deposited into an account.
- (f) "Distribution" means any disbursement from an account.
- (g) "Earnings" means the total account balance on a particular date minus the contributions to the account as of that date.

- (h) "IRC" means the Internal Revenue Code of 1986, as amended.
- (i) "Nonqualified Distribution" means a disbursement that is not used for Qualified Disability Expenses or is not a rollover to another qualified ABLE program.
- (j) "Program Administrator" means the California ABLE Act Board.
- (k) "Rollover" means a distribution or transfer from or to an account or another qualified ABLE program for a designated beneficiary to or from an account or another qualified ABLE program for the same designated beneficiary or for another designated beneficiary who is an Eligible Individual and a Member of the Family of the current designated beneficiary.
- (l) "Secretary" means the Secretary of the United States Treasury.
- (m) "SSA" means the Social Security Administration.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875 and 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

#### **Section 9002. Account Enrollment**

- (a) **Account Owner and Designated Beneficiary.** A person may open an account if that person is an Eligible Individual who is both the Account Owner and the Designated Beneficiary.
- (b) **Participation Agreement.** An Eligible Individual or the Eligible Individual's Authorized Legal Representative must submit a completed and signed Participation Agreement in order to open an Account. The Participation Agreement governs the Account Owner's use of the Account. The Participation Agreement shall include, at a minimum, the following terms and conditions:
  - (1) Representations and warranties regarding eligibility, intentions as to account use, and understanding of the investment options selected.
  - (2) Acknowledgement regarding contribution limits.
  - (3) Treatment of withdrawals, transfers, and excess contributions.
  - (4) Acknowledgement of risks, including no guarantees on returns or account value, no proxy rights on investments, future legislative changes, and future ABLE Plan changes.
  - (5) Potential for Medicaid/Medi-Cal recapture upon death of beneficiary.
  - (6) Dispute resolution.
  - (7) Indemnification and hold harmless of the ABLE Plan for any breaches of representations or factual misstatements.
  - (8) Governing law, venue, and jurisdiction.

- (9) Certification that the person seeking to open an account does not have another qualified ABLE program account in any state (except in the case of a Rollover). An Account Owner may not have more than one qualified ABLE program account in existence in any state at the same time. A qualified ABLE program account previously opened and closed in any state does not prohibit the subsequent creation of an ABLE Account for the same Account Owner.
- (10) Certification that the person seeking to open an account is an Eligible Individual as defined in IRC section 529A, and evidence of eligibility, such as a disability certification as defined in IRC section 529A, can and will be submitted upon request.
- (11) Other terms and conditions that may be required by the Program Administrator.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875, 4877, 4878, and 4879, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

### **Section 9003. Limitations on Contributions**

- (a) **Annual Contribution Limit.** IRC section 529A limits the amount that can be contributed annually to an ABLE Account to the federal gift tax exclusion. This limit is applied per account from all sources. The annual limit may increase as the federal gift tax exclusion increases.
- (b) **Maximum Account Balances.** IRC section 529A limits the total amount of contributions to an ABLE Account. The account balance may not exceed the amount established by the State in accordance with IRC section 529(b)(6) regarding qualified tuition programs. Accounts that have reached the maximum account balance may continue to accrue earnings and, if the account balance falls below the permitted maximum account balance, contributions may recommence.
- (c) **Excess Contributions.** The Program Administrator will not knowingly accept contributions that would cause an account to exceed the annual contribution limit or permitted maximum account balance.
- (d) **Return of Excess Contributions.** Contributions shall be returned to the extent that the amount of the contribution would cause the aggregate amount held for a Designated Beneficiary to exceed the annual contribution limit or permitted maximum account balance.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4877 and 4879, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

### **Section 9004. Change of Designated Beneficiary**

- (a) **Change of Designated Beneficiary.** An Account Owner may change the beneficiary designated at any time as long as the individual is an Eligible Individual and a Member of

the Family of the current Designated Beneficiary. The individual designated to be the new beneficiary shall become the new Account Owner after completing the account enrollment process under section 9001.

- (b) **Change Through Rollover Distribution.** A change of Designated Beneficiary may also be accomplished at any time by means of a rollover from a different account within the Plan or another qualified ABLE program. The individual designated to be the new beneficiary must be an Eligible Individual and a Member of the Family of the current Designated Beneficiary, and shall become the new Account Owner after completing the account enrollment process under section 9001.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

### **Section 9005. Qualified Distributions**

- (a) **Qualified Distributions.** Distributions from an account must be used to pay for Qualified Disability Expenses as defined in Welfare and Institutions Code section 4875(l), IRC section 529A, and any implementing federal regulations.
- (b) **Nonqualified Distributions.** Any withdrawal that is not (1) used to pay the Qualified Disability Expenses of the Account Owner or (2) rolled over to another qualified ABLE program for the same beneficiary or for another Eligible Individual who is also a Member of the Family of the beneficiary is a Nonqualified Distribution. The earnings portion of Nonqualified Distributions may be subject to federal and state income tax and an additional 10% federal tax. Additionally, Nonqualified Distribution may impact benefit eligibility and benefit amounts.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875, 4877, and 4878, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

### **Section 9006. Rollover Distributions**

- (a) **Rollover Distributions Generally.** An Account Owner may direct a rollover once in every rolling twelve-month period for the same Account Owner.
- (b) **Rollover Distribution Deposit Timeframe.** A distribution that is made for purposes of a rollover must be deposited to the different account within the Plan or another qualified ABLE program within 60 days of the distribution. Failure to deposit a rollover distribution within 60 days will result in the distribution being treated as a Nonqualified Distribution.
- (c) **Rollover Documentation.** A rollover directly to or from another qualified ABLE program must be accompanied by a written statement from the applicable qualified

ABLE program identifying the portion of the rollover that represents contributions and the portion that represents earnings. Failure to provide this information may result in the deposit being treated as earnings.

- (d) **Closure of Accounts.** The account from which funds are rolled over for the same Account Owner must be closed within 60 days after the distribution.
- (e) **Execution of New Participation Agreement.** Any rollover to a new account not yet established under the ABLE Plan shall not be effective until the Eligible Individual or the Eligible Individual's Authorized Legal Representative has submitted a completed and signed Participation Agreement for the new account and the account has been established by the Program Administrator.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

### **Section 9007. Account Information**

- (a) **Monthly Report.** IRC section 529A requires the Program Administrator to provide certain information to the SSA on a monthly basis. Based on guidance from the SSA and any federal regulations implementing IRC section 529A, the reportable information for each account may include the Designated Beneficiary's name, social security number, date of birth, person with signature authority (if not the beneficiary), unique account numbers, account opening or closing date, account balance as of 12:00 a.m. Pacific Time on the first of every calendar month for the previous month's account balance, and the date and amount of each distribution in the previous month.
- (b) **Quarterly Report to Designated Beneficiary.** Each Account Owner will receive a quarterly statement from the ABLE Plan with, at a minimum, the following information:
  - (1) Contributions to each investment option during that quarter and aggregate contributions, if any, for the year-to-date.
  - (2) Distributions from each investment option during that quarter.
  - (3) The total value of the Account at the end of the quarter.
- (c) **Demographic Information.** The Program Administrator may request, gather, and maintain demographic information regarding Account Owners, such as gender, ethnicity, geographic location, language, and general income level, in order to improve the administration of, and services provided by, the ABLE Plan. An Account Owner may voluntarily provide such information in a manner approved by the Program Administrator.
- (d) **Information Security.** Any information compiled pursuant to this section and Welfare and Institutions Code section 4875 et seq. shall be maintained by the Board and protected consistent with the requirements of the Information Practices Act of 1977 (Civil Code section 1798 et seq.).

Note: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4877 and 4881, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

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