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**JULY 9, 2024**

**AGENDA ITEM 6**

**ACTION ITEM**

**CALIFORNIA ABLE ACT BOARD**

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Resolution No. 2024-03: Approval of Changes to the Regulations for the California ABLE Program.

***Recommendation***

Staff recommends the Board adopt Resolution No. 2024-03, approving changes to the Regulations for the California ABLE Program.

***Background***

Statute authorizes the California ABLE Act Board (“Board”) to adopt regulations as it deems necessary to implement the California ABLE Program (“Program”). In April 2017, the Board adopted Program regulations which were approved by the Office of Administrative Law through the regular rulemaking process in October 2017. The CalABLE Program launched at the end of 2018.

In November 2020, final federal regulations were released in the Federal Register Vol. 85, No. 224, and have since been codified in Sections 1.529A–0 through 1.529A–8 issued under 26 United States Code 529A(g). With the release of federal regulations, certain definitions and statements within the Program regulations are now incorrect. Also, the change in Program Management Services in August 2023 has left gaps in the Program regulations. Staff is proposing changes to conform the Program regulations with federal tax regulations, a strategy that will minimize the need for future changes.

If adopted by the Board, staff will proceed with initiating the rulemaking action, which includes posting the proposed changes to the Program regulations for public comment and submittal to the Office of Administrative Law for approval.

***Presenters***

Thomas Martin, Executive Director, California ABLE Act Board

Madeline Handy, Associate Governmental Program Analyst, California ABLE Act Board

***Attachments***

- Attachment #1 – Resolution No. 2024-03
- Attachment #2 – Proposed Changes to the Regulations for the Program

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## RESOLUTION NO. 2024-03

### RESOLUTION OF THE CALIFORNIA ABLE ACT BOARD RELATING TO THE APPROVAL OF CHANGES TO THE REGULATIONS FOR THE CALIFORNIA ABLE PROGRAM

**WHEREAS**, the California ABLE Act Board (the “Board”), pursuant to section 4877(c)(8) of the Welfare and Institutions Code, may carry out the duties and obligations of the California ABLE Program (the “Program”);

**WHEREAS**, section 4882(a) of the Welfare and Institutions Code provides that the Board shall adopt regulations as it deems necessary consistent with the federal Internal Revenue Code and regulations issued pursuant to that code to ensure that the Program meets all criteria for federal tax-exempt benefits;

**WHEREAS**, the current Program regulations (“Regulations”) were approved by the California Office of Administrative Law (OAL) in October 2017;

**WHEREAS**, following the release of final regulations in the Federal Register Vol. 85, No. 224 in November 19, 2020, as well as recent changes to the Program management services, Board staff is proposing changes to the Regulations for the benefit of the Program; and

**WHEREAS**, the Executive Director is authorized to make substantive and non-substantive amendments to the Regulations based on public comment or review by OAL.

#### **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**Section 1.** The proposed changes to the Regulations for the Program are hereby approved in substantially the form submitted to the Board by Board staff. The Chair, any Deputy to the Chair, and Executive Director are each hereby authorized, for and on behalf of the Board, to file such Regulations, with the supporting documentation required by law, with the OAL and proceed with procedures required by the Administrative Procedure Act.

**Section 2.** The Chair, any Deputy to the Chair, and Executive Director are each hereby authorized and directed to take such actions, including making or causing to be made such changes to the Regulations as may be required for approval thereof by OAL, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this Resolution and the text of the Regulations in substantially the form submitted to the Board.

**Section 3.** This Resolution shall take effect immediately upon approval.

Attest: \_\_\_\_\_  
Thomas Martin, Executive Director

Date of Adoption: July 9, 2024

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## California Code of Regulations

### Title 10: Investments

#### Chapter 14: California Achieving a Better Life Experience (ABLE) Act Board Article 1: 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 and Internal Revenue Code section 529A apply wherever the same terms are used throughout this Chapter.~~

All meanings of the terms defined in Welfare and Institutions Code section 4875, Internal Revenue Code section 529A, and Title 26 of the Code of Federal Regulations section 1.529A-0 through 1.529A-8 apply wherever the same terms are used throughout this Chapter unless otherwise stated.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4875, Welfare and Institutions Code; Section 529A, Internal Revenue Code; Pub. L. 113-295, div. B, title I, §103; Sections 1.529A-0 through 1.529A-8 also issued under 26 United States Code 529A(g), 26 Code of Federal Regulations Section Pt. 1, App. 1.

##### 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 or entity who may establish and/or act on behalf of the Account Owner with respect to the Account. Only those individuals or entities who self-certify under penalty of perjury that they are authorized by 26 CFR 1.529A-2(1)(i)(B)-(C) to establish an Account on behalf of an Account Owner are permitted to act as an Authorized Legal Representative.
- ~~(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.~~

- (d) “CFR” means the Code of Federal Regulations.
- (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) (e) “IRC” means the Internal Revenue Code of 1986, as amended.
- (f) “Nonqualified Distribution” means a Distribution that is not used for Qualified Disability Expenses or is not a Rollover.
- (i) “Nonqualified Distribution” means a disbursement that is not used for Qualified Disability Expenses or is not a rollover to another qualified ABLE program or account.
- (g) “Program Administrator” means the entity chosen by the California ABLE Act Board to provide administration, recordkeeping, and other services to the Plan.
- (j) “Program Administrator” means the California ABLE Act Board.
- (k) “Secretary” means the Secretary of the United States Treasury.
- (h) “Sibling” has the same definition as 26 CFR 1.529A-1(12).
- (i) (i) “SSA” means the Social Security Administration.
- (j) “Tax Regulations” means the federal regulations issued by the U.S. Department of the Treasury and the Internal Revenue Service under IRC section 529A.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875 and 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code; Pub. L. 113-295, div. B, title I, §103; Sections 1.529A-0 through 1.529A-8 also issued under 26 United States Code 529A(g), 26 Code of Federal Regulations Section Pt. 1, App. 1.

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

IRC section 529A and the Tax Regulations limit the amount that can be contributed annually to an Account. Annual Contribution limits may change periodically and can differ depending on an Account Owner’s employment status and other factors. Maximum Account balance limits, which limit Contributions based on the balance of an Account, also apply in accordance with IRC section 529A and the Tax Regulations.

- (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; Pub. L. 113-295, div. B, title I, §103; Sections 1.529A-0 through 1.529A-8 also issued under 26 United States Code 529A(g), 26 Code of Federal Regulations Section Pt. 1, App. 1.

#### **Section 9004. Change of Designated Beneficiary Changes of Designated Beneficiary, Program-to-Program Transfers, and Rollovers**

- ~~(a) **Changes of Designated Beneficiary, Program-to-Program Transfers, and Rollovers.** Account Owners or Authorized Legal Representatives may (1) change the Designated Beneficiary of the Account during the current Designated Beneficiary's lifetime, (2) direct a Program-to-Program Transfer, and (3) direct a Rollover as described in IRC section 529A and the Tax Regulations. Changes of Designated Beneficiary to non-Siblings, Program-to-Program Transfers to non-Siblings and Rollovers to non-Siblings are not permitted under the Plan. Individuals may also roll over funds from an existing IRC section 529 account in accordance with IRC section 529 and the Tax Regulations.~~
- ~~(b) **Change of Designated Beneficiary Effective Upon Death.** In addition to a lifetime change of Designated Beneficiary as specified in Section 9004(a), a change of Designated Beneficiary may also take effect upon the death of the current Designated Beneficiary as described in IRC section 529A and the Tax Regulations. In this case, the successor Designated Beneficiary must still be named during the lifetime of the current 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; Pub. L. 113-295, div. B, title I, §103; Sections 1.529A-0 through 1.529A-8 also issued under 26 United States Code 529A(g), 26 Code of Federal Regulations Section Pt. 1, App. 1.

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

- (a) **Qualified Distributions.** Any Distribution that is (1) used to pay the Qualified Disability Expenses of the Account Owner as defined by 26 CFR 1.529A-1(b)(15) or (2) a Rollover is a Qualified Distribution.
- (b) **Nonqualified Distributions.** Any Distribution that is not (1) used to pay the Qualified Disability Expenses of the Account Owner as defined by 26 CFR 1.529A-1(b)(15) or (2) a Rollover is a Nonqualified Distribution. The earnings portion of Nonqualified Distributions may be subject to federal and state income tax and added tax penalties. Additionally, a Nonqualified Distribution may impact benefit eligibility and benefit amounts.
- ~~(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) and IRC section 529A.~~
- ~~(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. 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; Pub. L. 113-295, div. B, title I, §103; Sections 1.529A-0 through 1.529A-8 also issued under 26 United States Code 529A(g), 26 Code of Federal Regulations Section Pt. 1, App. 1.

### **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~~9006. Account Information**

- (a) 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.
- (b) 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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