

INITIAL STATEMENT OF REASONS

CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM TRUST

PROBLEM AGENCY INTENDS TO ADDRESS

Pursuant to California Welfare and Institutions Code section 4882, the California ABLE Act Board (the Board) is statutorily charged with implementing the California ABLE Program Trust (the CalABLE Program or Program). In 2014, the federal ABLE Act was passed, permitting states to implement and administer ABLE programs within the guidelines set forth in section 529A of the Internal Revenue Code (IRC). In California, the Legislature enacted and the Governor signed Senate Bill (SB) 324 (Chapter 796, Statutes of 2015) and Assembly Bill (AB) 449 (Chapter 774, Statutes of 2015), which expressed approval of the Board to develop and implement the CalABLE Program, a financial savings tool for qualified people with disabilities as defined in section 529A of the IRC.

At its February 7, 2017 meeting, the Board approved emergency regulations to implement the Program; these emergency regulations became effective on February 21, 2017 and will expire on August 22, 2017. At its April 27, 2017 meeting, the Board authorized staff to begin the regular rulemaking process. The proposed regulations are identical to the emergency regulations.

The purpose of the proposed regulations is to ensure correct, efficient and streamlined administration of the Program through added clarity and consistency in the requirements for its implementation. With the proposed regulations, the Board intends to add definitions for clarity, address requirements for account enrollment, and clarify limitations on account contributions and distributions.

Through this rulemaking process, the Board proposes to amend the California Code of Regulations, title 10, by adding chapter 14 to comply with the requirements of the Welfare and Institutions Code sections 4875, 4877, 4878, 4879, 4880, 4881, and 4882, and of the Internal Revenue Code section 529A.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The benefit of the proposed regulation is to clarify and make specific provisions of Welfare and Institutions Code sections 4875, 4877, 4878, 4879, 4880, 4881, and 4882 of the Welfare and Institutions Code, and section 529A of the Internal Revenue Code, in order to implement the Program.

The Program will allow eligible people with disabilities to have greater financial security, in that they will be able to save money in a CalABLE account while continuing to receive means-tested public benefits. Previously, eligible people with disabilities were subject to asset test requirements in order to retain eligibility for means-tested programs, often resulting in a cyclical pattern of poverty from which they were unable to recover. The Program is a financial savings tool for eligible people with disabilities, allowing them an opportunity to attain financial stability.

SPECIFIC PURPOSE OF EACH SECTION – GOV. CODE SECTION 11346.2(b)(1)

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose of which it is proposed, together with

a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

TITLE 10: INVESTMENTS

CHAPTER 14: CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM TRUST

Section 9000. Existing Definitions:

Section 9000

Specific Purpose:

These definitions are adopted to ensure consistency in the meaning of the terms used in the proposed regulations.

Factual Basis:

The adoption of these definitions are necessary so that the terms as defined in Welfare and Institutions Code 4875 and the Internal Revenue Code section 529A align and are consistent with the proposed regulations.

SECTION 9001. ADDITIONAL DEFINITIONS

Section 9001(a)

Specific Purpose:

This section is adopted to clarify the definition for “ABLE Plan” or “Plan” in the proposed regulation. Any reference in the proposed regulations to an ABLE Plan or Plan means the Program administered and implemented by the state and established under the guidelines set forth in section 529A of the Internal Revenue Code.

Factual Basis:

The adoption of this definition is necessary because the federal ABLE Act permits states to implement and administer their own ABLE Plans, or Programs. Other states are also administering and implementing ABLE Programs; therefore, it is important to distinguish that in the proposed regulations, the ABLE Plan or Plan is a reference to the Program established under Welfare and Institutions Code section 4875 and section 529A of the Internal Revenue Code.

Section 9001(b)

Specific Purpose:

This section is adopted to clarify the definition for “Account Owner” in the proposed regulation.

Factual Basis:

The adoption of this definition is necessary to clarify that the Program’s account owner is also the eligible individual and the designated beneficiary of the account. The definition for Account

Owner is made consistent with the language found in section 529A(e)(1) of the Internal Revenue Code.

Section 9001(c)

Specific Purpose:

This section is adopted to clarify the definition for “Authorized Legal Representative” in the proposed regulation. Not all eligible individuals have the cognitive or intellectual capacity to establish or manage their accounts; in these situations, an authorized legal representative may act on their behalf, which makes it necessary for the proposed regulations to distinguish individuals that are authorized legal representatives.

Factual Basis:

The adoption of this definition is necessary to clarify the meaning of an Authorized Legal Representative. Section 529A of the Internal Revenue Code permits an agent under a power of attorney, parent or legal guardian to establish and manage an account for an eligible individual on behalf of that eligible individual. An authorized legal representative acting on behalf of an eligible individual must have signature authority over that eligible individual.

Section 9001(d)

Specific Purpose:

This section is adopted to clarify the definition for “Cash.”

Factual Basis:

The adoption of this definition is necessary to clarify the meaning of Cash. Only certain types of cash contributions will be accepted into the account.

Section 9001(e)

Specific Purpose:

This section is adopted to clarify the definition for “Contribution.”

Factual Basis:

The adoption of this definition is necessary to clarify that any payment into the account will be considered a contribution. The account can function both as a checking account or savings account, depending on the account owner’s preference. Therefore, it is expected that the account will receive contributions from the account owner or any other individual or entity.

Section 9001(f)

Specific Purpose:

This section is adopted to clarify the definition for “Distribution.”

Factual Basis:

The adoption of this definition is necessary to clarify that any payment from the account will be considered a distribution. The account can function both as a checking account or savings

account, depending on the account owner's preference. Therefore, it is expected that the account will make distributions to pay for qualified disability expenses as defined in section 529A of the Internal Revenue Code.

Section 9001(g)

Specific Purpose:

This section is adopted to clarify the definition for "Earnings."

Factual Basis:

The adoption of this definition is necessary to clarify the formula with which earnings are calculated for each account. Earnings will be the difference between the account balance and contributions to it calculated for a particular date.

Section 9001(h)

Specific Purpose:

This section is adopted to clarify the definition for "IRC."

Factual Basis:

The adoption is necessary because it clarifies the federal code, section 529A of the Internal Revenue Code, under which the account is established.

Section 9001(i)

Specific Purpose:

This section is adopted to clarify the definition for "Nonqualified Distribution."

Factual Basis:

The adoption is necessary because it clarifies that a nonqualified distribution is any distribution from the account that does not meet the criteria for a Qualified Disability Expense as outlined in Internal Revenue Code section 529A(e)(5). This adoption also clarifies that rollover of account balances from one account into another account is not considered a nonqualified distribution. There are certain parameters that account owners must be aware of, so that distributions do not penalize their eligibility for means-tested public benefit programs. Account owners must also be aware that nonqualified distributions from the account may count as a resource for means-tested public benefits programs and jeopardize their eligibility for continuing to receive public benefits.

Section 9001(j)

Specific Purpose:

This section is adopted to clarify the definition for "Program Administrator."

Factual Basis:

The adoption is necessary because it clarifies that the Program is administered by the California ABLE Act Board. Section 4876 of the Welfare and Institutions Code established the Board which administers and implements the Program.

Section 9001(k)

Specific Purpose:

This section is adopted to clarify the definition for “Secretary.”

Factual Basis:

The adoption is necessary because it clarifies the authority, Commissioner of Social Security, or Secretary, to which the Program reports on a monthly basis. Section 529A(d) of the Internal Revenue Code requires all ABLE Programs to send monthly reports on accounts, including information on contributions, distributions, return of excess contributions, and any other additional information the Secretary may require.

Section 9000(l)

Specific Purpose:

This section is adopted to clarify the definition for “SSA.”

Factual Basis:

The adoption is necessary because it clarifies the authority, Social Security Administration, to which the Program reports on a monthly basis. Section 529A(d) of the Internal revenue Code requires all ABLE Programs to send monthly reports on distributions and account balances. The SSA requires this information on accounts for Social Security Income eligibility purposes.

SECTION 9002. ACCOUNT ENROLLMENT

Section 9002(a)

Specific Purpose:

This section is adopted to clarify the definition for “Account Owner and Designated Beneficiary.”

Factual Basis:

The adoption is necessary because it clarifies that the account owner is also the designated beneficiary. Accounts are established by meeting the criteria of the eligible individual pursuant to Section 529A(e) of the Internal Revenue Code. The account is always owned by the account owner and designated beneficiary who is an eligible individual, regardless of whether the account was established by an authorized legal representative.

Section 9002(b)(1)-(11)

Specific Purpose:

This section is adopted to clarify the definition for “Participation Agreement.”

Factual Basis:

The adoption is necessary because it clarifies the minimum requirements included in the Program participation agreement. The participation agreement establishes the contract, or terms and conditions, between the account owner and the program administrator.

SECTION 9003. LIMITATIONS ON CONTRIBUTIONS

Section 9003(a)

Specific Purpose:

This section is adopted to clarify the definition for the “Annual Contribution Limit.”

Factual Basis:

The adoption is necessary because it clarifies that the annual contribution limits for the accounts established under the Program pursuant to section 529A of the Internal Revenue Code. Annual contributions cannot exceed the maximum allowable amount in accordance with the federal gift tax exclusion limits set in section 2505 of the Internal Revenue Code.

Section 9003(b)

Specific Purpose:

This section is adopted to clarify the definition for “Maximum Account Balances.”

Factual Basis:

The adoption is necessary because it clarifies that the accounts are subject to a maximum account balance, which is established under section 529(b)(6) of the Internal Revenue Code. The maximum account balance is the same as the maximum account balance of the State’s 529 qualified tuition program, currently at \$475,000.

Section 9003(c)

Specific Purpose:

This section is adopted to clarify the definition for “Excess Contributions.”

Factual Basis:

The adoption is necessary because it clarifies that excess contributions that set the account above the set limits will not be accepted by the program administrator pursuant to section 4879 of Welfare and Institutions Code and section 529A(h) of the Internal Revenue Code.

Section 9003(d)

Specific Purpose:

This section is adopted to clarify the definition for “Return of Excess Contributions.”

Factual Basis:

The adoption is necessary because it clarifies the way excess contributions will be handled by the program administrator pursuant to section 4879 of Welfare and Institutions Code. Excess contributions will jeopardize the account owner’s eligibility for means-tested public benefits, as

the program administrator is required to report to the Social Security Administration information on account balances. Additionally, for account owners who also receive Social Security Income as well as other state and local means-tested public benefits, there is a \$100,000 maximum account balance limit. If the account balance is more than \$100,000, eligible individuals will lose their Social Security Income and/or other benefits until the account balance is below the limit, at which point eligibility for benefits is reinstated.

SECTION 9004. CHANGE OF DESIGNATED BENEFICIARY

Section 9004(a)

Specific Purpose:

This section is adopted to clarify the definition for “Change of Designated Beneficiary.”

Factual Basis:

The adoption is necessary because it clarifies the parameters for a change of designated beneficiary between accounts. Pursuant to section 529A(c)(1)(C) of the Internal Revenue Code, the account may undergo a change of ownership from one eligible individual to another, pending the new eligible individual meets all eligibility.

Section 9004(b)

Specific Purpose:

This section is adopted to clarify the definition for “Change Through Rollover Distribution.”

Factual Basis:

The adoption is necessary because it clarifies the parameters for a change in designated beneficiary through a rollover distribution. A rollover from one ABLE Program to another is permitted in section 529A(c)(1)(C) of the Internal Revenue Code. A change in designated beneficiary can also be accomplished through a rollover pursuant to section 529A(c)(1)(C) of the Internal Revenue Code, where the new account owner is an eligible individual and a member of the family of the original account owner.

SECTION 9005. QUALIFIED DISTRIBUTIONS

Section 9005(a)

Specific Purpose:

This section is adopted to clarify the definition for “Qualified Distributions.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of qualified distributions pursuant to section 4875(l) of Welfare and Institutions Code and section 529A of the Internal Revenue Code. Not all expenses are qualified, therefore, it is important to be specific as to the parameters of a qualified distribution.

Section 9005(b)

Specific Purpose:

This section is adopted to clarify the definition for “Nonqualified Distributions.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of nonqualified distributions which are subject to tax penalties pursuant to Revenue and Taxation Code section 17140.4 and Internal Revenue Code section 529A(c)(3)(A). Account owners will pay taxes on nonqualified distributions, plus an additional 10 percent tax penalty.

SECTION 9006. ROLLOVER DISTRIBUTIONS

Section 9006(a)

Specific Purpose:

This section is adopted to clarify the definition for “Rollover Distributions Generally.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of rollover distributions generally to specify that account owners may complete one rollover every 12 months pursuant to section 529A(c)(1)(C)(iii) of the Internal Revenue Code.

Section 9006(b)

Specific Purpose:

This section is adopted to clarify the definition for “Rollover Distribution Deposit Timeframe.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of rollover distribution deposit timeframe to specify the parameter for rollovers from one ABLE Program into another. Pursuant to section 529A(c)(1)(C)(i) of the Internal Revenue Code, there is a 60-day grace period for rollovers, wherein the account owner may have two accounts to complete the rollover.

Section 9006(c)

Specific Purpose:

This section is adopted to clarify the definition for “Rollover Documentation.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of rollover documentation so that during a rollover, the account balance clearly indicates the portions that are contributions and earnings. Account contributions are currently limited to \$14,000 annual per gift tax exclusion law; for account owners receiving Social Security Income and other state and local means-tested public benefits, there is also a \$100,000 cap on contributions and earnings, implying a need to clarify during a rollover which parts of the account balance is considered contributions and earnings.

Section 9006(d)

Specific Purpose:

This section is adopted to clarify the definition for “Closure of Accounts.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of closure of accounts to specify the number of days the account can remain open after a rollover. Pursuant to section 529A of the Internal Revenue Code, an account owner may only have one account at a time.

Section 9006(e)

Specific Purpose:

This section is adopted to clarify the definition for “Execution of New Participation Agreement.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of execution of new participation agreement. The account owner, or the authorized legal representative acting on behalf of an account owner, must agree to the terms and conditions in the participation agreement, which is a contract between the account owner, or the authorized legal representative acting on behalf of the account owner, allowing the program manager to fulfill the responsibilities of providing account management and recordkeeping services.

SECTION 9007. ACCOUNT INFORMATION

Section 9007(a)

Specific Purpose:

This section is adopted to clarify the definition for “Quarterly Report to Designated Beneficiary.”

Factual Basis:

The adoption is necessary because it clarifies the minimum requirements to be included in a quarterly report sent to the account owner from the Program. Due to the nature of growth seen in investments, quarterly reporting is the ideal way to report to account owners.

Section 9007(b)

Specific Purpose:

This section is adopted to clarify the definition for “Information Security.”

Factual Basis:

The adoption is necessary because it clarifies the meaning of information security as it relates to the accounts. The Program is charged with ensuring that information pertaining to the accounts is kept secure within the parameters of the Information Practices Act of 1977.

ECONOMIC IMPACT ASSESSMENT PER GOV. CODE SECTION 11346.3(b)

Purpose:

The proposed regulations provide the framework for the California ABLE Program Trust. This regulatory action is required by Welfare and Institutions Code section 4882, as added by AB 449 (Chapter 774, Statutes of 2015), effective January 1, 2016.

Creation or Elimination of Jobs within the State of California:

Pursuant to Welfare and Institutions Code sections 4875 through 4884, the proposed regulations are designed for the California ABLE Act Board to implement and administer the Program. The Program is designed for qualified people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. Therefore, no jobs will be created or eliminated in the State of California.

Creation of New or Elimination of Existing Businesses within the State of California:

Pursuant to Welfare and Institutions Code sections 4875 through 4884, the proposed regulations are designed for the California ABLE Act Board to implement and administer the Program. The Program is designed for qualified people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. Therefore, no new businesses will be created or existing businesses will be eliminated in the State of California.

Expansion of Businesses or Elimination of Businesses Currently Doing Business within the State of California:

Pursuant to Welfare and Institutions Code sections 4875 through 4884, the proposed regulations are designed for the California ABLE Act Board to implement and administer the Program. The Program is designed for qualified people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. Therefore, no existing businesses will be expanded and no existing businesses currently doing business in the State of California will be eliminated.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

Pursuant to Welfare and Institutions Code sections 4875 through 4884, the proposed regulations are designed for the California ABLE Act Board to implement and administer the Program. The Program is designed for qualified people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. CalABLE account funds will be used for qualified disability expenses which include expenses that help maintain or improve the account owner's quality of life.

OTHER REQUIRED SHOWINGS – GOV. CODE 11346.2(b)(2)-(4)

Studies, Reports, or Documents Relied Upon – Gov. Code Section 11346.2(b)(2):

The California ABLE Act Board did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

Reasonable Alternatives Considered Or Agency's Reasons for Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(3)(A):

No other alternatives were presented to or considered by the California ABLE Act Board.

Reasonable Alternatives That Would Lessen the Impact On Small Businesses – Gov. Code Section 11346.2(b)(3)(B):

The California ABLE Act Board has not identified any alternatives that would lessen any adverse impact on small business.

Evidence Relied Upon To Support the Initial Determination That the Regulations Will Not Have A Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(5)(A):

The proposed regulations would not have a significant adverse economic impact on any business because it is designed for eligible people with disabilities to save money in a CalABLE account.

Analysis of Whether the Regulations Are an Efficient and Effective Means of Implementing the Law in the Least Burdensome Manner – Gov. Code Section 11346.3(e)

The regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.