

# ABLE Accounts: A Down Payment on Freedom

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## Abstract

Achieving a Better Life Experience Act (ABLE) was signed into law by President Obama on December 19, 2014. ABLE represents transformative policy change that will open new pathways to advance independence and economic self-sufficiency for individuals with significant disabilities. ABLE accounts are exempt as a resource from means-tested eligibility requirements for public benefits such as Social Security Income (SSI) and Medicaid. This article explains the critical elements of ABLE implementation and describes the impact of ABLE on future disability policy and program development.

**Key Words:** *Achieving a Better Life Experience Act; Social Security; Medicaid; policy; self-sufficiency; intellectual and developmental disabilities*

In this great and prosperous nation, everyone deserves a shot at the American Dream. With determination, focus, teamwork, and sheer willpower, we have opened a door to a brighter future that might otherwise have remained closed. That is a cause worth fighting together.—Floor statement by Representative Ander Crenshaw, original sponsor of the Achieving a Better Life Experience (ABLE) Act

The Achieving a Better Life Experience (ABLE) Act was overwhelmingly approved with bipartisan support by the U.S. Congress and signed into law by President Obama on December 19, 2014 (ABLE Act of 2014). The Act amends Section 529 of the Internal Revenue Code to allow use of tax-free savings accounts for eligible individuals with disabilities. However the ABLE Act is more than the establishment of tax-free savings accounts. ABLE represents one of the most significant pieces of legislation since passage of the Americans with Disabilities Act (ADA) 25 years ago (Americans with Disabilities Act of 1990). This article presents a context for understanding ABLE, describes critical elements of the program, and examines the potential effect of ABLE on future disability policy and program development,

particularly for people with cognitive and other significant disabilities.

Twenty-five years after the passage of the ADA, the door has been opened to a new pathway toward independence and economic self-sufficiency for individuals with disabilities (Blanck, 2014, 2015a). ABLE offers opportunities and choices both short term and longer term for individuals with disabilities to lead self-determined and self-directed lives by setting financial savings goals and having friends and family contribute resources that serve as a “down payment on freedom.”

## Disability Context

In the Findings and Purpose statement of the ADA, there is a clear objective that our nation’s goals are to ensure “equality of opportunity, full participation, independent living, and economic self-sufficiency” for people with disabilities (ADA, 1990; Blanck, Hill, Siegal, & Waterstone, 2014). Although physical and communication barriers have been mitigated (Blanck, 2015b), there has been little change in employment and economic status for working-age adults with disabilities since 1990. The April 2015 Current Population Survey (CPS) data (Bureau of Labor Statistics, 2015) indicated an unemployment rate of 10% for the civilian noninstitutional population of people

with disabilities age 16 and older, as compared to an unemployment rate of people without disabilities of half that proportion (4.9%).

An even greater variance is indicated by a 19.3% participation rate of people with disabilities in the civilian labor force, as compared to a 68.4% participation rate among people without disabilities. Among those people who do work, people with disabilities, on average, earn about \$10,000 less than people without disabilities (Stats RRTC, 2014 a, b). The poverty rate of people with disabilities nationwide, likewise, is more than double the rate of people without disabilities (Stats RRTC, 2014 a, b).

Disparities of employment and economic status are further compounded by higher costs associated with living with a disability. Economic hardship impacts quality of life choices regarding level and scope of community participation, choices of where to live, and access to transportation and healthcare (Blanck & Martinis, 2015; Organisation for Economic Co-Operation and Development, 2013). Recent reports on the financial behavior of adults with disabilities document the challenges of making ends meet, struggling with day-to-day financial management, and having less knowledge of and control of financial situations (National Disability Institute, 2014, 2015). The findings indicate that households headed by a person with a disability are twice as likely not to have a high school degree, three times more likely not to graduate from college, and almost four times more likely to be unemployed (National Disability Institute, 2015, pp. 16–17).

In 2013, more than 12 million beneficiaries (Social Security Disability Insurance-SSDI and Supplemental Security Insurance-SSI) received monthly Social Security benefits, which typically are their only or major source of income (Fremstad & Vallas, 2013). For SSI recipients, continued determination of eligibility for public benefits requires a maximum level of assets of no more than \$2,000, including education and retirement savings accounts. SSI recipients' eligibility additionally is complemented by eligibility for Medicaid and coverage of healthcare and long-term services and supports (Center on Budget and Policy Priorities, 2014). In 2012, for example, of the 1,138,121 people with intellectual and developmental disabilities, an estimated 680,610 (60%) benefited from services and supports derived from Home and Community Based Services (Larson et al., 2014). Nevertheless, for many people with

cognitive and other disabilities who receive Social Security and Medicaid Benefits, the asset limits ceiling of \$2,000 has been described as a life sentence of poverty that proves to be a disincentive to work, income production, and financial savings (Blanck, 2008).

As discussed in detail in the following sections, the ABLE Act exempts resources in an ABLE account from the means and resource testing required for continued eligibility for multiple public benefits, such as SSI, Medicaid, food, and housing rental assistance.

### **ABLE Core Components**

The ABLE bill signed into law reflected a series of compromises to lower the costs to the federal government of reduced revenues resulting from disbursement of tax-free income from investments in ABLE accounts by people with disabilities, family members, and friends. Nonetheless, the fundamental concept in the original bill remained intact for increased employment and financial independence for some and better quality of life for others.

Families rearing a child with significant disabilities, and working-age adults with disabilities, are challenged by extra daily costs related to healthcare, education, housing, technology, transportation, and employment and personal assistance. The Act permits eligible individuals and their families to establish tax exempt savings accounts that allow for disbursement of its income tax free as qualified disability expenses. The ABLE Act requires states to pass authorizing legislation to establish an ABLE program that follows federal guidelines. In 2015, 31 states have passed legislation to establish ABLE programs and more than half of that number are expected to have in place a program in 2016.

Though each state is given latitude in the development and implementation of their ABLE program, key components of the federal law will remain consistent in each state program design. These elements may be separated into five basic categories: (a) eligibility, (b) contributions, (c) distributions, (d) exemption of ABLE accounts as a resource, and (e) Medicaid payback on the death of the beneficiary.

#### **Eligibility**

The eligibility component of the federal law establishes criteria for who may be considered an

eligible individual and, therefore, a designated beneficiary of an ABLE account. The federal statute stipulates that an eligible individual is an individual who became disabled prior to age 26 and either

1. has been determined, for purposes of Social Security disability benefits or Supplemental Security Income (SSI) benefits to meet the requirements relating to disability or blindness, OR
2. has filed a qualifying *disability certification* with the Secretary of the Treasury for the taxable year (26 USC §529A(e)(1)).

A *disability certification* means a representation to the satisfaction of the Secretary of Treasury, made by the eligible individual, or the parent or guardian of the eligible individual, that

1. the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind (within the meaning of the Social Security Act), AND such blindness or disability occurred before the individual attained age 26, and,
2. includes a copy of the diagnosis relating to the individual's relevant impairment(s), signed by a qualified physician (26 USC §529A(e)(2)(A)).

Further details regarding the specifics of the *disability certification* will be included in the regulations developed by the U.S. Department of Treasury, which released on June 22, 2015.

It is not yet possible to determine with specificity the number and types of individuals that will meet the ABLE certification criteria. However, this newly passed law has the potential to benefit millions of people with disabilities, and their families.

### Contributions

Contributions to an ABLE account may only be made using after-tax dollars (26 USC §529A(b)(2)). Contributions, therefore, are not tax deductible for the purposes of federal income tax. However, in some states contributions may be eligible for tax advantaged consideration with respect to an individual's state income tax liability.

Total contributions accepted by an ABLE account in any given tax year may not exceed the annual gift tax exclusion amount (currently \$14,000), and the cumulative amount in the account is capped on par with the limitations imposed on that state's 529 qualified tuition program for educational savings (26 USC §529A(b)).

### Distributions

Distributions from an ABLE account are made for the benefit of the designated beneficiary and for the purpose of paying for qualified disability-related expenses. Qualified disability-related expenses are expenses related to the eligible individual's blindness or disability, which are made for the benefit of an eligible individual who is the designated beneficiary. The ABLE Act specifies that qualified disability-related expenses include education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses approved by the Secretary under regulations and consistent with the purposes of the law (26 USC §529A(e)(5)).

Provided the distribution is made for a qualified disability-related expense, the amount disbursed will *not* be counted as taxable income of the qualified beneficiary (26 USC §529A(c)(1)(B)). If a distribution is made for a nonqualified expense, it will be subject to tax implications, additional penalties and fees, and may affect the qualified beneficiary's eligibility for publically funded means-tested programs.

### Treatment of ABLE Account as a Resource

One critical aspect of the ABLE Act is the provision that allows for resources and funds to be held within the ABLE account, and subsequently distributed for qualified disability-related expenses, to be wholly disregarded when determining eligibility for essential supports and services provided by federally funded means-tested programs, such as Medicaid. Still, there is one exception with respect to the benefits provided through the SSI program; that is, if an individual is a designated beneficiary of an ABLE account and also receiving SSI benefits, then distributions for housing expenses are not disregarded, nor are amounts in an ABLE account in excess of \$100,000. In the circumstance in which an individual's ABLE account

balance exceeds \$100,000, the individual's SSI benefits are temporarily suspended until such time as the individual's resources within the ABLÉ account fall below \$100,000. However, this suspension does not apply for purposes of Medicaid eligibility (26 USC §529A 103(a)).

In terms of state-funded programs, the federal law does not have the authority to disregard resources in the ABLÉ account from eligibility criteria related to programs that are funded on the state and local levels. Presently, the broader disability community is urging state legislators to include this type of disregard in their respective state legislation.

### **Medicaid Payback Provision**

Upon the death of the designated beneficiary, the remaining resources in the deceased beneficiary's ABLÉ account are to be used to pay for medical assistance expenses incurred by the individual after establishment of the account. For purposes of this provision, the state is considered a creditor of an ABLÉ account and not a beneficiary (26 USC §529A(f)).

### **Developing a State ABLÉ Program**

The ABLÉ Act, as originally signed into law in December 2014, placed responsibility with each state to develop and design an ABLÉ program for qualified state residents. A state has a second option: to contract with another state that has established an ABLÉ program to also serve the non-state residents. The basic framework of a state's program will be subject to the legislative process, and no state will be able to establish a program without first passing their state ABLÉ legislation. In December 2015, the passage of the Protecting Americans from Tax Hikes Act eliminated the residency requirement under ABLÉ. What this means is that eligible individuals with disabilities may choose to select opening an ABLÉ account that best fits their particular needs from available state programs across the country. Despite this legislative change, many states will be moving forward to develop and implement their own programs within the parameters of federal law.

### **Recommendations for ABLÉ Program Design and Implementation**

The following recommendations are offered to assist states in designing and implementing an

ABLÉ program that encourages participation and maximizes potential benefits to qualified beneficiaries.

### **Designate Program Administrator and Ensure Consistency With Federal ABLÉ Act**

It is important that proposed state legislation assign a program administrator or an oversight and evaluation body. In many cases, states will elect to place the ABLÉ program under the authority of the state Treasurer's office due to their role in management of the 529 College Savings Plans Program. However, it is important that federal definitions and stated requirements for certification of eligibility and disbursements for qualified disability expenses are adopted, as well as annual contribution limits per account.

### **Disregard for ABLÉ Resources for State Program Eligibility Determination**

Many people with disabilities rely on federally funded *and* state funded programs to assist in maintaining their independence in the community and increasing their overall quality of life. It is recommended that proposed state legislation disregard resources in an ABLÉ account from determining eligibility for federal- and state-funded programs and benefits. Though the federal law allows for a disregard with respect to federally funded programs and benefits, it does not protect a qualified beneficiary from the potential of becoming ineligible for state-funded programs as a result of the resources in an ABLÉ account.

### **State-Level Tax Incentive**

To encourage the opening of accounts and incentivize contributions to ABLÉ accounts, states may consider allowing contributions to be tax deductible for the purposes of the contributor's state income tax liability. Provisions that offer additional encouragement to open an ABLÉ account and maximize contributions for the future disbursement of qualified disability expenses would increase the strength and cost effectiveness of the overall program.

### **Financial Literacy Component**

As obvious as it may seem, allowing people with disabilities themselves the opportunity to save for their future is a transformative concept in U.S. disability policy and law (Blanck, 2008, 2014).

Research shows that self-determination and the right to make one’s own life choices are key elements for a meaningful and independent life (Blanck & Martinis, 2015). ABLE brings this concept into reality.

Nonetheless, it is important to ensure that beneficiaries have the tools to manage their newly established financial accounts. In an effort to ensure responsible management of these accounts and to bolster financial independence and self-determination, states should consider including a financial literacy and education component in their ABLE legislation. A financial literacy component provides education for the establishment of knowledge, skills, and behaviors that enable a qualified beneficiary to make responsible and effective financial decisions on a daily basis and over time.

### Guiding Principles

In addition, the following 10 guiding principles are offered to help frame the functionality, usability, and sustainability of the ABLE program.

1. The opening of an ABLE account should be simple, similar to the ease of opening a 529 College Savings Account, and should be time and cost sensitive.
2. The certification process to prove eligibility should be simple and time sensitive and not delay the opening of an account.
3. Review of disbursements for a qualified disability expense should be through the regular course of the Internal Revenue Service (IRS) review of selected individual tax returns and not delay the use of funds from an account when needed to cover a disability-related expense.
4. Qualified disability expenses should not be based on primarily a medical model or a model of medical necessity (Blanck, 2014; Logue & Blanck, 2010). Broad interpretation of allowable qualified disability expenses should be based on “quality of life” improvements, even when others may receive peripheral benefits.
5. Public benefits and programs should not consider ABLE accounts when determining access and scope of benefits for ABLE account owners. ABLE accounts should not supplant other public obligations.
6. Administrative requirements on states in opening accounts, managing disbursements, and regular reporting should be kept simple to keep down administrative costs.
7. The U.S Department of the Treasury and the IRS should be the responsible parties for monitoring certification of eligibility and disbursements for qualified disability-related expenses. Procedures to be established should minimize, to the extent possible, burdens on federal or state agencies.
8. State and federal interests are served by focus on quality program implementation, including evaluation of costs, simplicity of establishing an account, time sensitive administration, customer service, choices responsive to customer needs, protection of privacy, and management of the security of the accounts.
9. Treasury and the IRS should create a formal or informal advisory group that meets regularly to consider continued quality improvement suggestions. The advisory group should comprise key stakeholders, including the disability community, state program administrators, and financial service companies managing ABLE investments.
10. Development of a “National Resource Center for ABLE,” supported through a multiyear engagement by public funders, such as the U.S. Administration on Community Living, with engagement of Treasury and the Social Security Administration, and in partnership with the disability community and financial institutions, should be endorsed. As discussed in the final section, this effort already has begun as spearheaded by the National Disability Institute and its partners. The National Center must lead and coordinate efforts to make the ABLE program accessible, useable, and sustainable. It should conduct evaluation research, create educational programs, and develop best practices with the goal of advancing policy and practice. It needs to identify and analyze local, state, and national laws, policies, and financial practices that promote ABLE, as well as the employment, economic independence, and community participation of people with disabilities. Last, the National Center should develop and disseminate education, technical assistance, and training

material about ABLE to an array of public and private stakeholders (for comparison, see Blanck & Martinis, 2015).

### **Disability Policy Effect for Individuals With Cognitive Disabilities**

There are multiple reasons to believe that the disability policy impact of ABLE will be transformative at the individual and systems levels. For individuals with intellectual and developmental disabilities and their families, for instance, there are at least five reasons to recognize the power and potential of ABLE.

First, in an unprecedented manner, the U.S. Congress has recognized that families raising a child with a disability, and working-age adults with disabilities, have additional and significant costs associated with living with a disability. Across the political spectrum, members of Congress endorsed fundamental changes to the tax code designed to encourage savings accounts that allow investments to grow tax free to provide financial relief to individuals with disabilities and their families, as well as incentives for employment and economic self-sufficiency.

A second transformative disability policy change is the approach to determine eligibility for opening an ABLE account. In establishing eligibility criteria for non-Social Security beneficiaries, the criteria decouples the dual pronged test of severe disability and inability to work that currently exists to determine eligibility for SSI and SSDI (e.g., “paying people with disabilities not to work”). To be eligible to open an ABLE account, the individual does not need to meet the “inability to work” criteria of Social Security. This is a significant breakthrough in attitudes and for shaping ways to structure the SSI program in the future. A post-ADA generation of youth and young adults with disabilities want to work and advance their self-sufficiency (Ali, Schur, Kruse, & Blanck, 2011; Schur, Kruse, & Blanck, 2013).

A third area of significant policy effect is the exclusion of ABLE accounts from being counted as a resource in determining eligibility for federal means-tested programs and benefits. The current limit of assets at a \$2,000 level to remain eligible for SSI and Medicaid benefits creates disincentives to work, income production, saving, and longer term financial goals attitudes and behavior. The asset limit has not changed in 30 years

and represents a significant barrier to encouraging and supporting people with disabilities to become a part of the labor force and in the economic mainstream.

The ABLE account is “a down payment on freedom,” opening pathways to active community inclusion and participation, and to employment and financial independence; all of which may be examined empirically by the proposed National Resource Center mentioned earlier. Whether for short-term needs related to uncovered healthcare costs, or for longer term objectives to own a home and purchase accessible transportation and computer technology for work, or to plan for retirement, an ABLE account becomes a flexible rainy-day fund and a means to plan for a better quality of life experience.

A fourth area of effect is on a governmental program systems level. The option of establishing and managing resources in an ABLE account should change the nature of person-centered planning across multiple major public funding streams, including the Individuals with Disabilities Education Act (IDEA), the Workforce Innovation and Opportunity Act (WIOA), and Home and Community-Based Services waivers under Medicaid. For the first time, people with disabilities and their family members and friends may plan longer term about a quality of life with higher goals for education and employment, independent living, community participation, and advancing economic self-sufficiency. New options are available to save from wages when employed, in an ABLE account, and to seek support from and partnership with family and friends to help meet an individual set of savings goals.

In the absence of the current challenge to stay under the resource limit of multiple means-tested federal benefits and programs (often called the “income cliff”), there will be hope, interest, and enthusiasm for discovering and setting life-changing goals and objectives, at all stages of the life course. These discussions must be considered as part of development of individual education plans, individual plans for employment, and individual support plans about how to identify pathways to independence and the skills and supports needed to realize those goals and objectives. Public resources must not be reduced by the establishment of an ABLE account as a program objective. Indeed, to the contrary, the program is an investment in American human capital of the future. ABLE implementation,

therefore, must define complementary opportunities to be achievable with the additional private resources available and growing with an ABLE account.

A fifth reason to explore the future effect of ABLE is that the beneficiary of the ABLE account is the account owner. This responsibility for informed financial decision-making with an ABLE account places responsibilities on multiple public funding systems to teach and support individuals with significant disabilities the knowledge and skills to create and manage a budget, set and manage savings goals, and track disbursements for qualified disability-related expenses. Such knowledge and skills are critical elements of self-determination to make informed choices and self-direct an individual budget. The presumption should be that the account owner is capable of making informed decisions, rather than an automatic transfer of decision-making responsibility to a third party trustee or guardian. ABLE implementation provides added momentum to build systems and capacity for supported decision-making as part of individual program plans for youth in transition and working-age adults (Blanck & Martinis, 2015).

### **Conclusion**

To begin to accelerate development of ABLE programs across the country and to educate individuals with disabilities and their families on the benefits of establishing an ABLE account, the National Disability Institute, in collaboration with other national disability organizations, has established an ABLE National Resource Center. As mentioned earlier, the ABLE Center is a clearinghouse on information about federal and state-level ABLE implementation efforts. It serves as a facilitator between the disability sector and government and financial service companies to accelerate the design and availability of ABLE accounts to meet the needs of individuals with disabilities and their families. The Center provides education about the opportunities available through the establishment of ABLE accounts to save and plan for a better economic future. It educates and informs financial service companies on the needs and interests of the disability community for ABLE account product choices, advises on product development and marketing

and outreach strategies, and provides consumer feedback on products and services.

The Center additionally educates government about consumer needs for achieving a better life experience, the management of accounts, and the relationship of ABLE accounts to other public benefits and services. Importantly, it works to educate the public and relevant stakeholders about the positive effect of ABLE accounts on an individual and systems level, including documentation and dissemination of individual success stories on accounts opened, dollars invested, program expenses and outcomes achieved.

The proposed regulations for ABLE were released on June 22, 2015, by the Treasury Department and the IRS. The proposed rules further explain to states how to move forward with defining their structure and approach to operate an ABLE account program. Public comments were accepted by Treasury and the IRS, and a public hearing was held. The proposed regulations attempt to strike a balance between the needs of people with disabilities to open an ABLE account and begin to save funds that will be used in the future to improve independence and quality of life experiences with the accountability of government at a state and federal level to manage the program and report on participation and tax-free disbursements for qualified disability expenses. The community of individuals with cognitive disabilities and their families must continue to be informed and engaged in ABLE program design and implementation. People with disabilities and their families can play an important role in educating state legislators and state Treasurers' offices to learn about the benefits of an ABLE program that is designed to be responsive to the diverse needs of the disability community. It is also crucial to continue to engage state Vocational Rehabilitation, Medicaid, Education, and Developmental Disability agencies to begin to think about promoting ABLE accounts as part of individual program plan development.

Eligible individuals with disabilities need to receive training and support to make informed decisions about whether an ABLE account would benefit them. Depending on individual circumstances, an individual may benefit from an ABLE account in addition to a Special Needs Trust. Councils on Developmental Disabilities may consider piloting financial literacy programs that build knowledge and skills for potential ABLE

account owners. Families and the disability service delivery system must be involved with ABLE implementation as consistent with the ADA's Olmstead "Integration Mandate" to advance independence and economic self-sufficiency (Blanck et al., 2014). It is possible that over the next 5 years, more than 5 million ABLE accounts will be established, with 2016 as the first year for early adopter states to begin to accept requests to establish ABLE accounts.

In addition, an array of program evaluation activities is needed to educate stakeholders about who chooses to open ABLE accounts, how their disbursements are used to advance independence, and the overall effect of the ABLE program on their quality of life experience in education, employment, and community participation. Our prediction is that the ABLE program's net and lasting benefit to individuals with disabilities, society, and the economy will be greater than the benefit of tax-free income from contributions to ABLE accounts.

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