

SUPPORTING STATEMENT
Internal Revenue Service
Guidance under Section 529A: Qualified ABLÉ Programs
OMB # 1545-2293

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 529A of the Internal Revenue Code was enacted on December 19, 2014, under The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, as part of The Tax Increase Prevention Act of 2014 (Public Law 113-295). Section 529A provides rules under which States or State agencies or instrumentalities may establish and maintain a new type of tax-favored savings program through which contributions may be made to the account of an eligible disabled individual to meet qualified disability expenses. These accounts also receive favorable treatment for purposes of certain means-tested Federal programs.

Congress recognized the special financial burdens borne by families raising children with disabilities and the fact that increased financial needs generally continue throughout the lifetime of an individual with a disability. Section 101 of the ABLE Act confirms that one of the purposes of the Act is to “provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits” otherwise available to those individuals, whether through private sources, employment, public programs, or otherwise. Before the enactment of the ABLE Act, various types of tax-advantaged savings arrangements existed, but none adequately served the goal of promoting saving for those financial needs.

Section 529A allows the creation of a qualified ABLE program by a State (or agency or instrumentality thereof) under which a separate ABLE account may be established for an eligible individual with a disability who is the designated beneficiary and owner of that account. Generally, contributions to an ABLE account are subject to both an annual and a cumulative limit, and, when made by a person other than the designated beneficiary, are treated as non-taxable gifts to the designated beneficiary. Distributions from an ABLE account for the qualified disability expenses of the designated beneficiary are not included in the designated beneficiary’s gross income. However, the earnings portion of distributions from an ABLE account in excess of the qualified disability expenses generally is includible in the gross income of the designated beneficiary. An ABLE account may be used for the long-term benefit or short-term needs of the designated beneficiary.

2. USE OF DATA

New final regulations provide guidance regarding programs under The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act). The ABLE Act provides rules under which States or State agencies or instrumentalities may establish and maintain a tax-favored savings program through which contributions may be made to the account

of an eligible individual with a disability to meet qualified disability expenses.

IRS will use the information to verify compliance by individuals and programs with requirements under section 529A. Certain information is also used to inform designated beneficiaries of ABLE accounts of activity within their accounts. In addition, the IRS will use certain data collected in order to comply with section 529A(d)(2) which provides that, for research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual. (See Number 16, below).

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source. We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will not impact a substantial number of small entities. These regulations primarily affect states and individuals and therefore will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, the NPRM preceding the final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

1. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

A determination of eligibility must be made annually unless the qualified ABLE program adopts a different method of ensuring a designated beneficiary's continuing status as an eligible individual. Alternative methods may include, without limitation, the use of certifications by the designated beneficiary under penalties of perjury, and the imposition of different recertification frequencies for different types of impairments.

Less frequent collection of information would result in:

- (1) accounts not being established in qualified Able programs described in section 529A of the Code;
- (2) designated beneficiaries of ABLE accounts not being aware of account balances and contributions being returned from their accounts to the contributors, in situations in which the annual limit for contributions under section 529A has been exceeded; and
- (3) information regarding accounts not being portable.

2. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

3. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Shortly after the ABLE Act was enacted, the Department of the Treasury (Treasury Department) and the IRS were advised that several state legislatures were in the process of enacting enabling legislation, and ABLE programs might be in operation in some states before guidance under section 529A could be issued by the Treasury Department and the IRS. In order to prevent the lack of regulatory guidance from discouraging states to enact enabling legislation and create ABLE programs, the Treasury Department and the IRS issued Notice 2015-18, 2015-12 IRB 765 (March 23, 2015). This Notice provided that future section 529A guidance would confirm that the owner of an ABLE account is the designated beneficiary of the account, and that a person with signature authority over the account (if other than the account's designated beneficiary) may neither have nor acquire any beneficial interest in the ABLE account and must administer the account for the designated beneficiary of the account. The Notice further provided that, in the event that State legislation creating an ABLE program enacted in accordance with section 529A prior to the issuance of guidance does not fully comport with the guidance when issued, the Treasury Department and the IRS intended to provide transition relief to give the States sufficient time to implement the changes necessary to avoid the disqualification of the program and of the ABLE accounts already established

under the program..

On June 22, 2015, the Treasury Department and the IRS published a notice of proposed rulemaking (NPRM) in the Federal Register (REG-102837-15; 80 FR 35602) proposing regulations under section 529A regarding programs under the ABLA Act (2015 NPRM). The proposed regulations set forth the requirements a program established and maintained by a State, or agency or instrumentality thereof, must satisfy to be considered a qualified ABLA program under section 529A.

More than 200 written comments were received in response to the proposed regulations and a public hearing was held on October 14, 2015. Numerous commenters asked the Treasury Department and the IRS to issue interim guidance to address three requirements under the proposed regulations that they said would create significant barriers to the development of qualified ABLA programs by the States: (i) the requirement to establish safeguards to categorize distributions from an ABLA account; (ii) the requirement to request the taxpayer identification number (TIN) of every contributor to an ABLA account; and (iii) the requirement to process disability certifications with signed physicians' diagnoses.

In response to the request for interim guidance, the Treasury Department and the IRS published Notice 2015-81, 2015-49 IRB 784 (Dec. 7, 2015), advising how they intended to address these requirements in the final regulations.

On October 10, 2019, the Treasury Department and the IRS published an NPRM in the Federal Register (REG-128246-18; 84 FR 54529) to address the TCJA modifications to section 529A (2019 NPRM). The proposed regulations confirmed that the employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in section 529A(b)(2)(B)(ii) are met and for maintaining adequate records for that purpose. In addition, to minimize burdens for the designated beneficiary and the qualified ABLA program, the proposed regulations provided that ABLA programs may allow a designated beneficiary or the person acting on his or her behalf to certify, under penalties of perjury, that he or she is a designated beneficiary described in section 529A(b)(7) and that his or her contributions of compensation do not exceed the limit set forth in section 529A(b)(2)(B)(ii).

4. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

5. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

6. JUSTIFICATION OF SENSITIVE QUESTIONS

Section 529A(e)(1) requires that a disability certification with respect to certain individuals be filed with the Secretary. Section 529A(e)(2) provides that the disability certification includes a certification to the satisfaction of the Secretary that the individual meets disability criteria of §1.529A-2(e)(1)(i) through (e)(1)(iii).

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Individual Master File (IMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under Treas/IRS 24.030 Individual Master File. The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems

7. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information in this final regulation are in §§1.529A-2, 1.529A-5, 1.529A-6 and 1.529A-7. The collection of information flows from sections 529A(d)(1), (d)(2), (d)(3), (e)(1) and (e)(2) of the Code. Section 529A(d)(1) requires qualified ABLE programs to provide reports to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

The estimate for qualified ABLE programs to collect verification that an eligible individual has no other existing ABLE account before that program can permit the establishment of an ABLE account for that eligible individual is based on 13,970 accounts and assumes that the time needed to collect such verification from the account holder, and save the notice electronically for retrieval in the future if necessary is 15 minutes. (13,970 x .25 hrs. = 3,492 hrs.)

The estimate for qualified ABLE programs to issue notices of return of excess contribution to contributors other than the designated beneficiary is based on 13,970 accounts and assumes that [2%] of accounts may have such excess contributions returned. Further, we are assuming that the time needed to produce a notice to the designated beneficiary and save the notice electronically for retrieval in the future if necessary is 15 minutes. (279 x .25 hrs. = 70 hrs.)

The estimate for collection of information by an individual to be included under §1.529A-2(e)(1)(A) is based on 13,970 accounts and assumes that qualified ABLE programs will require [67%] of accounts to be verified. Further, we are assuming that the time needed for the individuals to collect such information and submit it to the program is 30 minutes per respondent. (9,360 x .5 hrs. = 4,680 hrs.)

The estimate for collection of information by an individual to be included in a disability certification under §1.529A-2(e)(1)(B) is based on 13,970 accounts and assumes that [33%] of accounts may require such certification. Further, we are assuming that the time needed for the individuals to collect such information and submit it to the program is .5 hrs. per respondent. (4,610 x .5 hrs. = 2,305 hrs.)

The estimate for qualified ABLE programs to collect information needed to provide account holders information under § 1.529A-2(i) that is not included in annual statements is based on 13,970 accounts and assumes that [.5%] of account holders may request such information and assumes that the time needed to collect such information for the account holder is 6 minutes. (70 x .1 hrs. = 7 hrs.)

The estimate for qualified ABLE programs to collect information needed to provide for account holder information being transferred to a subsequent qualified ABLE program under § 1.529A-2(k) is based on 13,970 accounts and assumes that [5%] of account holders may request such information and assumes that the time needed to collect such information for the account holder is 15 minutes. (698 x .25 hrs. = 175 hrs.)

Respondents- 14,020
 Total burden hrs.- 10,729

Authority	Description	Annual Responses	Hours per Response	Total Burden
1.529A-2	collect verification	13,970	.25	3,492
1.529A-2	issue notices of return of excess contribution to contributors	279	.25	70
1.529A-2	included under §1.529A-2(e)(1)(A)	9,360	.5	4,680
1.529A-2	disability certification under §1.529A-2(e)(1)(B)	4,610	.5	2,305
1.529A-2	provide account holders information under § 1.529A-2(i)	70	.1	7
1.529A-2	transferred to a subsequent qualified ABLE program under § 1.529A-2(k)	698	.25	175
Totals		28,987		10,729

The associated filing burden for Form 5498-QA and Form 1099-QA is reported in 1545-2262.

ABLE ACT Paper Media Filing Season 2019:

Form Number	Title	Total Paper Media (Austin TX, Kansas City MO)
5498-QA	ABLE Account Contribution Information	13,970
1099-QA	Distributions from ABLE Accounts	7,643

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-2293 to this regulation.

1.529A-2

Please continue to assign OMB number 1545-2262 to this regulation.

1.529A-5, 1.529A-6, 1.529A-7.

8. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection

9. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

This collection of information concerns third-party disclosures, so there are no costs to the federal government.

10. REASONS FOR CHANGE IN BURDEN

This is a new collection request. We are making this submission for new OMB approval.

11. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

Section 529A(d)(2) provides that, for research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual. Collection of such information by the IRS is anticipated to be collected through receipt of information included on Forms 1099-QA and 5498-QA.

12. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

13. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.