

Treasury Regulations

Part 1 — INCOME TAX (Sections 1.0-1 to 1.9300-1T)

Treasury Regulation § 1.529A-2 Qualified ABLE Program.

This regulation was added by T.D. 9923, 85 FR 74034 (Nov. 19, 2020), and has not been amended.

1.529A-2(a) **In General.** — A qualified ABLE program is a program established and maintained by a State, or an agency or instrumentality of a State, that satisfies all of the requirements of this section and under which--

1.529A-2(a)(1) — An ABLE account may be established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;

1.529A-2(a)(2) — A designated beneficiary is limited to only one ABLE account at a time except as otherwise provided in paragraph (c)(3) of this section;

1.529A-2(a)(3) — Any person may make contributions to such an ABLE account, subject to the limitations described in paragraph (g) of this section; and

1.529A-2(a)(4) — Distributions (other than returns of contributions as described in paragraph (g)(4) of this section) may be made only to or for the benefit of the designated beneficiary of the ABLE account.

1.529A-2(b) **Established and maintained by a State or agency or instrumentality of a State--**

1.529A-2(b)(1) **Established.** — A program is established by a State or its agency or instrumentality if the program is initiated by State statute or regulation or by an act of a State official or agency with the authority to act on behalf of the State.

1.529A-2(b)(2) **Maintained—**

1.529A-2(b)(2)(i) **In General.** — A program is maintained by a State or an agency or instrumentality of a State if--

1.529A-2(b)(2)(i)(A) — The State or its agency or instrumentality sets all of the terms and conditions of the program, including but not limited to who may contribute to the program, who may be a designated beneficiary of the program, and what benefits the program may provide; and

1.529A-2(b)(2)(i)(B) — The State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising the implementation of decisions relating to the investment of assets contributed under the program. Factors that are relevant in determining whether a State or its agency or instrumentality is actively involved in the administration of the program include, but are not limited to: whether the State or its agency or instrumentality provides services to designated beneficiaries that are not provided to persons who are not designated beneficiaries; whether the State or its agency or instrumentality establishes detailed operating rules for administering the program; whether officials of the State or its agency or instrumentality play a substantial role in the operation of the program, including selecting, supervising, monitoring, auditing, and terminating the relationship with any private contractors that provide services under the program; whether the State or its agency or instrumentality holds the private contractors that provide services under the program to the same standards and requirements that apply when private contractors handle funds that belong to the State or its agency or instrumentality or provide services to the State or its agency or instrumentality; whether the State or its

agency or instrumentality provides funding for the program; and whether the State or its agency or instrumentality acts as trustee or holds program assets directly or for the benefit of the designated beneficiaries. For example, if the State or its agency or instrumentality exercises the same authority over the funds invested in the program as it does over the investments in or pool of funds of a State employees' defined benefit pension plan, then the State or its agency or instrumentality will be considered actively involved on an ongoing basis in the administration of the program.

1.529A-2(b)(2)(ii) **Multiple States, Agencies, Or Instrumentalities.** — A program may be maintained by two or more States or the agencies or instrumentalities of two or more States if the program meets the requirements of paragraph (b)(2)(i) of this section for each of the States represented. If a State or an agency or instrumentality of a State participates in such a consortium of States or agencies or instrumentalities of States, the consortium's program is considered to be the program of each State represented.

1.529A-2(b)(3) **Community Development Financial Institutions (CDFIs).** — In addition to having the ability to contract with private contractors as provided in paragraph (b)(2)(i)(B) of this section, a State or its agency or instrumentality or qualified ABLE program may contract with one or more Community Development Financial Institutions (CDFIs) (as defined in 12 U.S.C. 4702(5) and 12 CFR 1805.104) to perform some or all of the services described in paragraphs (b)(2)(i)(A) and (B) of this section.

1.529A-2(c) **Establishment Of An ABLE Account And Signature Authority--**

1.529A-2(c)(1) **Establishment Of The ABLE Account--**

1.529A-2(c)(1)(i) **In General.** — A qualified ABLE program must provide that an ABLE account may be established only for an eligible individual.

1.529A-2(c)(1)(i)(A) — The ABLE account may be established by the eligible individual;

1.529A-2(c)(1)(i)(B) — The ABLE account may be established by a person selected by the eligible individual; or

1.529A-2(c)(1)(i)(C) — If an eligible individual (whether a minor or adult) is unable to establish his or her own ABLE account, an ABLE account may be established on behalf of the eligible individual by the eligible individual's agent under a power of attorney or, if none, by a conservator or legal guardian, spouse, parent, sibling, grandparent of the eligible individual, or a representative payee appointed for the eligible individual by the Social Security Administration (SSA), in that order.

1.529A-2(c)(1)(ii) **Authority.** — A qualified ABLE program may accept a certification, made under penalties of perjury, from the person seeking to establish an ABLE account as to the basis for the person's authority to establish the ABLE account, and that there is no other person with a higher priority, under paragraphs (c)(1)(i)(A), (B), and (C) of this section, to establish the ABLE account.

1.529A-2(c)(2) **Signature authority--**

1.529A-2(c)(2)(i) **Signatory.** — In general, the designated beneficiary will have signature authority over his or her ABLE account. However, if an individual other than the designated beneficiary establishes the account in accordance with paragraph (c)(1)(i)(B) or (C) of this section, such individual will have signature authority.

1.529A-2(c)(2)(i)(A) — At any time, the designated beneficiary may remove and replace any person with signature authority over the designated beneficiary's ABLE account. The replacement may be the

designated beneficiary or any other person selected by the designated beneficiary.

1.529A-2(c)(2)(i)(B) — The designated beneficiary may designate a successor to the person with signature authority. In the absence of any designation of a successor by the designated beneficiary, a person with signature authority over the designated beneficiary's ABLE account may designate a successor, consistent with the ordering rules in paragraph (c)(1)(i)(C) of this section.

1.529A-2(c)(2)(ii) **Co-signatories.** — A qualified ABLE program may permit an ABLE account to have co-signatories, consistent with paragraph (c)(1)(i)(C) of this section. If cosignatories are permitted, all of the other provisions of this paragraph (c)(2) continue to apply, and references to the *signatory* refer to the co-signatories acting separately or jointly, as determined by that qualified ABLE program.

1.529A-2(c)(2)(iii) **Authority Over Sub-Accounts.** — The person with signature authority over the ABLE account may appoint and from time to time may remove, replace, or name a successor for any person with signature authority over a sub-account described in paragraph (c)(3)(iii) of this section.

1.529A-2(c)(3) **Only One ABLE Account--**

1.529A-2(c)(3)(i) **In General.** — Except as provided in paragraph (c)(3)(ii) of this section, a designated beneficiary is limited to one ABLE account at a time, regardless of where located. To ensure that this requirement is met, a qualified ABLE program must obtain a verification, signed under penalties of perjury by the person establishing the ABLE account, that the individual establishing the ABLE account neither knows nor has reason to know that the eligible individual already has an existing ABLE account (other than an ABLE account that will terminate with the rollover or program-to-program transfer of its assets into the new ABLE account) before that program can permit the establishment of an ABLE account for that eligible individual. In the case of a rollover, the ABLE account from which amounts were distributed must be closed as of the 60th day after the date of the distribution in order to allow the account receiving the rollover to be treated as an ABLE account.

1.529A-2(c)(3)(ii) **Treatment Of Additional Accounts.** — If an individual is the designated beneficiary of an ABLE account established in accordance with paragraph (c)(1) of this section, no other account subsequently established for that individual under a qualified ABLE program (additional account) will be an ABLE account. The preceding sentence does not apply to an additional account, and that additional account is an ABLE account, if--

1.529A-2(c)(3)(ii)(A) — The additional account is established for the purpose of receiving a rollover or program-to-program transfer;

1.529A-2(c)(3)(ii)(B) — All of the contributions to the additional account are returned in accordance with the rules that apply to the return of excess contributions and excess aggregate contributions under paragraph (g)(4) of this section; or

1.529A-2(c)(3)(ii)(C) — All amounts in the additional account are transferred to the designated beneficiary's preexisting ABLE account and any excess contributions and excess aggregate contributions are returned in accordance with the rules that apply to the return of excess contributions and excess aggregate contributions under paragraph (g)(4) of this section.

1.529A-2(c)(3)(iii) **Sub-accounts.** — A qualified ABLE program may establish an ABLE account (primary account) that may include multiple sub-accounts. The person with signature authority over the ABLE account, at any time and from time to time, may create one or more sub-accounts, may transfer funds in the ABLE

account to one or more of the sub-accounts, and may close one or more of the sub-accounts, to facilitate the acquisition of certain goods or services for the designated beneficiary. Each sub-account may have a different person with signature authority over that sub-account, appointed in accordance with the rules of paragraph (c)(2)(iii) of this section, and that person's authority is limited to making distributions from that sub-account. The primary account and the sub-accounts collectively constitute a single ABLE account and therefore must be aggregated for all purposes, including without limitation the limit on the number of permissible changes in investment direction under paragraph (l) of this section, the contribution limits under paragraphs (g)(2) and (3) of this section, the computation of gross income and other tax provisions, and the reporting requirements.

1.529A-2(c)(3)(iv) Investment Options. — A qualified ABLE program may offer different investment options within each ABLE account without violating the only-one-ABLE-account rule in this paragraph (c)(3). For example, an ABLE account may include a cash fund as well as one or more stock or bond funds.

1.529A-2(c)(4) Beneficial Interest. — A person other than the designated beneficiary with signature authority over the ABLE account of the designated beneficiary may neither have nor acquire any beneficial interest in the ABLE account during the lifetime of the designated beneficiary and must administer the ABLE account for the benefit of the designated beneficiary of the account.

1.529A-2(d) Eligible Individual--

1.529A-2(d)(1) Documentation—

1.529A-2(d)(1)(i) In General. — Whether an individual is an eligible individual is determined for each taxable year of that individual, and that determination applies for the entire year. A qualified ABLE program must specify the documentation that an individual must provide, both at the time an ABLE account is established and thereafter, in order to ensure that the designated beneficiary of the ABLE account is, and continues to be, determined an eligible individual. For purposes of determining whether an individual is an eligible individual, a disability certification as described in paragraph (e)(1) of this section will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification or a disability certification has been deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program will file in accordance with the filing requirements under §1.529A-5(c)(2)(iv).

1.529A-2(d)(1)(ii) Safe Harbor. — A qualified ABLE program may establish that an individual is an eligible individual if the person establishing the ABLE account certifies under penalties of perjury—

1.529A-2(d)(1)(ii)(A) — The basis for the individual's status as an eligible individual (entitlement to benefits based on blindness or disability under title II or XVI of the Social Security Act, or a disability certification described in paragraph (e)(1) of this section);

1.529A-2(d)(1)(ii)(B) — That the individual is blind or has a medically determinable physical or mental impairment as described in paragraph (e)(1)(i) of this section;

1.529A-2(d)(1)(ii)(C) — That such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday);

1.529A-2(d)(1)(ii)(D) — If the basis of the individual's eligibility is a disability certification, that the individual has received and agrees to retain a written diagnosis as described in paragraph (e)(1)(iii) of this section, accompanied by the name and address of the diagnosing physician and the date of the written diagnosis;

1.529A-2(d)(1)(ii)(E) — The applicable diagnostic code from those listed on Form 5498-QA (or in the instructions to such form) identifying the type of the individual's impairment;

1.529A-2(d)(1)(ii)(F) — That the person establishing the account is the individual who will be the designated beneficiary of the account or is the person authorized under paragraph (c)(1)(i) of this section to establish the account; and

1.529A-2(d)(1)(ii)(G) — If required by the qualified ABLE program, the information provided by the diagnosing physician as to the categorization of the disability that may be used to determine, under the particular State's program, the appropriate frequency of required recertifications.

1.529A-2(d)(2) **Frequency Of Recertification--**

1.529A-2(d)(2)(i) **In General.** — 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.

1.529A-2(d)(2)(ii) **Considerations.** — In developing its rules on recertification, a qualified ABLE program may take into consideration whether an impairment is incurable and, if so, the likelihood that a cure may be found in the future. For example, a qualified ABLE program may provide that the initial certification will be deemed to be valid for a stated number of years, which may vary with the type of impairment. Even if the qualified ABLE program imposes an enforceable obligation on the designated beneficiary or other person with signature authority over the ABLE account to promptly report changes in the designated beneficiary's condition that would result in the designated beneficiary's failing to satisfy the definition of an eligible individual, the designated beneficiary will be considered an eligible individual until the end of the taxable year in which the change in the designated beneficiary's condition occurred. A qualified ABLE program that is compliant with the rules regarding recertification will not be considered to be noncompliant solely because a designated beneficiary fails to comply with this enforceable obligation.

1.529A-2(d)(3) **Loss Of Qualification As An Eligible Individual.** — If the designated beneficiary of an ABLE account ceases to be an eligible individual, then for each taxable year in which the designated beneficiary is not an eligible individual, the account will continue to be an ABLE account, the designated beneficiary will continue to be the designated beneficiary of the ABLE account (and will be referred to as such), and the ABLE account will not be deemed to have been distributed. However, beginning on the first day of the designated beneficiary's first taxable year for which the designated beneficiary does not satisfy the definition of an eligible individual, additional contributions to the designated beneficiary's ABLE account must not be accepted by the qualified ABLE program. In addition, no expense incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of §1.529A-1(b)(8)(i) or §1.529A-2(e)(1)(i), whichever had applied, is a qualified disability expense even if the individual is an eligible individual for the rest of the year under paragraph (d)(1)(i) of this section. If the designated beneficiary subsequently again satisfies the definition of an eligible individual, contributions to the designated beneficiary's ABLE account again may be accepted, subject to the contribution limits under section 529A, and expenses that are incurred thereafter may meet the definition of a qualified disability expense in §1.529A-1(b)(15) and paragraph (h) of this section.

1.529A-2(e) **Disability Certification--**

1.529A-2(e)(1) **In General.** — Except as provided in paragraph (e)(3) of this section or in additional guidance

described in paragraph (e)(4) of this section, a disability certification with respect to an individual, that will be deemed filed with the Secretary as provided in paragraph (d)(1)(i) of this section, and is deemed satisfactory to the Secretary, is a certification signed under penalties of perjury by the individual, or by another individual establishing the ABLE account for the individual, that--

1.529A-2(e)(1)(i) — Certifies that the individual--

1.529A-2(e)(1)(i)(A) — Has a medically determinable physical or mental impairment that results in marked and severe functional limitations (as defined in paragraph (e)(2) of this section), and that--

1.529A-2(e)(1)(i)(A)(1) — Can be expected to result in death; or

1.529A-2(e)(1)(i)(A)(2) — Has lasted or can be expected to last for a continuous period of not less than 12 months; or

1.529A-2(e)(1)(i)(B) — Is blind (within the meaning of section 1614(a)(2) of the Social Security Act);

1.529A-2(e)(1)(ii) — Certifies that such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); and

1.529A-2(e)(1)(iii) — Includes a certification that the individual has obtained and will continue to retain a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)) and including the name and address of the diagnosing physician and the date of the diagnosis.

1.529A-2(e)(2) Marked And Severe Functional Limitations. — For purposes of paragraph (e)(1) of this section, the phrase *marked and severe functional limitations* means the standard of disability in the Social Security Act for children claiming Supplemental Security Income for the Aged, Blind, and Disabled (SSI) benefits based on disability (see 20 CFR 416.906), but without regard to age or to whether the individual engages in substantial gainful activity. Specifically, this is a level of severity that meets, medically equals, or functionally equals the severity of any listing in appendix 1 of subpart P of 20 CFR part 404. See 20 CFR 416.906, 416.924 and 416.926a. Such phrase also includes any impairment or standard of disability identified in future guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). Consistent with the regulations promulgated by the SSA, the level of severity is determined by taking into account the effect of the individual's prescribed treatment. See 20 CFR 416.930.

1.529A-2(e)(3) Compassionate Allowance List. — Conditions listed in the “List of Compassionate Allowances Conditions” maintained by the SSA are deemed to meet the requirements of section 529A(e)(1)(B) regarding the filing of a disability certification, if the condition was present and produced marked and severe functional limitations before the date on which the individual attained age 26. To establish that an individual with such a condition satisfies the definition of an eligible individual, the individual must identify the condition and certify to the qualified ABLE program both the presence of the condition and its resulting marked and severe functional limitations prior to age 26, in a manner specified by the qualified ABLE program.

1.529A-2(e)(4) Additional Guidance. — Additional guidance on conditions deemed to meet the requirements of section 529A(e)(1)(B) may be identified in future guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter.

1.529A-2(e)(5) Restriction On Use Of Certification. — No inference may be drawn from a disability certification

described in this paragraph (e) for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

1.529A-2(f) **Change Of Designated Beneficiary--**

1.529A-2(f)(1) **In General.** — A qualified ABLE program must permit a change in the designated beneficiary of an ABLE account made during the life of the designated beneficiary. At the time when the change becomes effective, the successor designated beneficiary must be an eligible individual. However, a qualified ABLE program may limit the change in designated beneficiary to a member of the family as defined in §1.529A-1(b)(12) of the current designated beneficiary.

1.529A-2(f)(2) **Change Effective Upon Death.** — A qualified ABLE program may permit a change in the designated beneficiary of an ABLE account, made during the life of the designated beneficiary, to take effect upon the death of the designated beneficiary. The amount to be transferred pursuant to such a beneficiary designation is first subject to the payment of any qualified disability expenses incurred before the designated beneficiary's death but not yet paid and those described in paragraph (o) of this section, and is subject to the provisions of §1.529A-4.

1.529A-2(g) **Contributions—**

1.529A-2(g)(1) **Permissible Property.** — Except in the case of a program-to-program transfer or a change in designated beneficiary to a new designated beneficiary who is an eligible individual and a member of the family of the former designated beneficiary, contributions to an ABLE account may be made only in cash. A qualified ABLE program may allow cash contributions to be made in the form of a check, money order, credit card, electronic transfer, after-tax payroll deduction, or similar method.

1.529A-2(g)(2) **Annual Contributions Limit—**

1.529A-2(g)(2)(i) **In General.** — Except as provided in paragraph (g)(2)(ii) of this section, a qualified ABLE program must provide that no contribution to an ABLE account will be accepted to the extent such contribution, when added to all other contributions (whether from the designated beneficiary or one or more other persons) to that ABLE account made during the designated beneficiary's taxable year causes the total of such contributions during that year to exceed the amount in effect under section 2503(b) for the calendar year in which the designated beneficiary's taxable year begins. See paragraph (k)(2) of this section for purposes of applying the rules in this paragraph (g)(2) to rollovers, program-to-program transfers, and designated beneficiary changes.

1.529A-2(g)(2)(ii) **Additional Contributions By An Employed Designated Beneficiary--**

1.529A-2(g)(2)(ii)(A) **In General.** — An employed designated beneficiary defined in paragraph (g)(2)(iii)(A) of this section may contribute amounts up to the limit specified in paragraph (g)(2)(ii)(B) of this section in addition to the amount specified in paragraph (g)(2)(i) of this section. Although a designated beneficiary's contributions subject to this compensation income limit do not have to be made from that compensation income, any contribution of the designated beneficiary's compensation income made directly by the designated beneficiary's employer is a contribution made by the designated beneficiary. Once the designated beneficiary has made contributions equal to the limit described in paragraph (g)(2)(ii)(B) of this section, additional contributions by the designated beneficiary may be made if permissible under paragraph (g)(2)(i) of this section.

1.529A-2(g)(2)(ii)(B) **Amount Of Additional Permissible Contribution.** — Any additional contribution made by the designated beneficiary pursuant to paragraph (g)(2)(ii)(A) of this section is limited to the

lesser of—

1.529A-2(g)(2)(ii)(B)(1) — The designated beneficiary's compensation as defined by section 219(f)(1) for the taxable year; or

1.529A-2(g)(2)(ii)(B)(2) — An amount equal to the applicable poverty line, as defined in paragraph (g)(2)(iii)(B) of this section, for a one-person household for the calendar year preceding the calendar year in which the designated beneficiary's taxable year begins.

1.529A-2(g)(2)(iii) **Additional Definitions.** — In addition to the definitions in §1.529A-1(b), the following definitions also apply for the purposes of this section—

1.529A-2(g)(2)(iii)(A) — *Employed designated beneficiary* means a designated beneficiary who is an employee (including an employee within the meaning of section 401(c)), with respect to whom no contribution is made for the taxable year to—

1.529A-2(g)(2)(iii)(A)(1) — A defined contribution plan (within the meaning of section 414(i)) with respect to which the requirements of sections 401(a) or 403(a) are met;

1.529A-2(g)(2)(iii)(A)(2) — An annuity contract described in section 403(b); and

1.529A-2(g)(2)(iii)(A)(3) — An eligible deferred compensation plan described in section 457(b).

1.529A-2(g)(2)(iii)(B) — *Applicable poverty line* means the amount provided in the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) for the State of residence of the employed designated beneficiary. If the designated beneficiary lives in more than one State during the taxable year, the applicable poverty line is the poverty line for the State in which the designated beneficiary resided longer than in any other State during that year.

1.529A-2(g)(2)(iii)(C) — *Excess compensation contribution* means the amount by which the amount contributed during the taxable year of an employed designated beneficiary to the designated beneficiary's ABLE account exceeds the limit in effect under section 529A(b)(2)(B)(ii) and paragraph (g)(2)(ii)(B) of this section for the calendar year in which the taxable year of the employed designated beneficiary begins.

1.529A-2(g)(2)(iv) **Example.** — The provisions of paragraph (g)(2)(ii) of this section may be illustrated by the following example: In 2020, A, an employed designated beneficiary as defined in paragraph (g)(2)(iii)(A) of this section, lives in Hawaii. A's compensation, as defined by section 219(f)(1), for 2020 is \$20,000. The poverty line for a one-person household in Hawaii was \$14,380 in 2019. Because A's compensation exceeded the applicable poverty line amount, A's additional permissible contribution in 2019 is limited to \$14,380, the amount of the 2019 applicable poverty line.

1.529A-2(g)(2)(v) **Ensuring Contribution Limit Is Met—**

1.529A-2(g)(2)(v)(A) **Responsibility.** — 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) and paragraph (g)(2)(ii) of this section are met and for maintaining adequate records for that purpose.

1.529A-2(g)(2)(v)(B) **Certification.** — A qualified ABLE program may allow a designated beneficiary (or the person acting on his or her behalf) to certify, under penalties of perjury, and in the manner specified by the qualified ABLE program that--

1.529A-2(g)(2)(v)(B)(1) — The designated beneficiary is an employed designated beneficiary; and

1.529A-2(g)(2)(v)(B)(2) — The designated beneficiary's contributions of compensation are not excess compensation contributions.

1.529A-2(g)(3) **Cumulative Limit--**

1.529A-2(g)(3)(i) **In General.** — A qualified ABLE program must provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by that State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions on behalf of a designated beneficiary include contributions to any prior ABLE account maintained by any State or its agency or instrumentality for the same designated beneficiary, or any former designated beneficiary to the extent his or her ABLE account funds were transferred to the designated beneficiary's ABLE account. The transfer of a designated beneficiary's ABLE account from one qualified ABLE program to another with a lower cumulative limit will not violate this rule, but qualified ABLE programs must prohibit subsequent contributions under this general rule. For purposes of this paragraph (g)(3), contributions do not include rollovers, program-to-program transfers or a designated beneficiary change to a new designated beneficiary who is an eligible individual and member of the family of the former designated beneficiary as defined in §1.529A-1(b)(12).

1.529A-2(g)(3)(ii) **Safe Harbor.** — A qualified ABLE program maintained by a State or its agency or instrumentality satisfies the requirement under section 529A(b)(6) if it refuses to accept any additional contribution to an ABLE account (except as provided to the contrary in paragraph (g)(3)(i) of this section) while the balance in that account equals or exceeds the limit established by that State under section 529(b)(6). Nevertheless, without regard to the categories of transfers that caused the account balance to exceed the State limit, once the account balance falls below that limit, additional contributions, subject to the annual contributions limit under paragraph (g)(2) of this section and the limit established by such State under section 529(b)(6), again may be accepted.

1.529A-2(g)(4) **Return Of Excess Contributions, Excess Compensation Contributions, And Excess Aggregate Contributions.** — If an excess contribution as defined in §1.529A-1(b)(9), an excess compensation contribution as defined in paragraph (g)(2)(iii)(C) of this section, or an excess aggregate contribution as defined in §1.529A-1(b)(10) is deposited into or allocated to the ABLE account of a designated beneficiary, a qualified ABLE program must return that excess contribution, excess compensation contribution, or excess aggregate contribution, including all net income attributable to that contribution, as determined under the rules set forth in §1.408-11 (treating references to an IRA as references to an ABLE account and references to returned contributions under section 408(d)(4) as references to excess contributions or excess aggregate contributions), to the person or persons who made that contribution. Each excess contribution, excess compensation contribution, and excess aggregate contribution must be returned to its contributor(s) on a last-in-first-out basis until the entire excess, along with all net income attributable to such excess, has been returned. In the case of an excess compensation contribution, the employed designated beneficiary, or the person acting on the employed designated beneficiary's behalf, is responsible for identifying any excess compensation contribution and for requesting the return of the excess compensation contribution. Returned contributions must be received by the contributor(s) on or before the due date (including extensions) of the Federal income tax return of the designated beneficiary for the taxable year in which the excess contribution or excess aggregate contribution was made. See §1.529A-3(a) for Federal income tax considerations for the contributor(s). If an excess contribution or excess aggregate contribution and the net income attributable to the excess contribution or excess aggregate contribution are returned to a contributor other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return. No notification is required if amounts are rejected by the qualified ABLE program before they are deposited into or allocated to the designated beneficiary's ABLE account.

1.529A-2(g)(5) **Restriction Of Contributors.** — A qualified ABLE program may allow the designated beneficiary, from time to time, to restrict who may make contributions to the designated beneficiary's ABLE account.

1.529A-2(h) **Qualified Disability Expenses--**

1.529A-2(h)(1) **In General.** — Qualified disability expenses are expenses incurred that relate to the blindness or disability of the designated beneficiary of the ABLE account and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life. See §1.529A-1(b)(15). Such expenses include, but are not limited to, expenses related to the designated beneficiary's education, housing, transportation, employment training and support, assistive technology and related services, personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses, as well as other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter. Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit an individual with a disability.

1.529A-2(h)(2) **Example.** — The following example illustrates this paragraph (h): B, an individual, has a medically determined mental impairment that causes marked and severe limitations on B's ability to navigate and communicate. A smart phone would enable B to navigate and communicate more safely and effectively, thereby helping B to maintain B's independence and to improve B's quality of life. Therefore, the expense of buying, using, and maintaining a smart phone that is used by B would be a qualified disability expense.

1.529A-2(i) **Separate Accounting.** — A program will not be treated as a qualified ABLE program unless it provides separate accounting for each ABLE account. Separate accounting requires that contributions for the benefit of a designated beneficiary and any earnings attributable thereto must be allocated to that designated beneficiary's ABLE account. Whether or not a program provides each designated beneficiary an annual account statement showing the total account balance, the investment in the account, the accrued earnings, and the distributions from the account, the program must give this information to the designated beneficiary upon request.

1.529A-2(j) **Program-To-Program Transfers.** — A qualified ABLE program may permit a change of qualified ABLE program or a change of designated beneficiary by means of a program-to-program transfer as defined in §1.529A-1(b)(13). In that event, subject to any contrary provisions or limitations adopted by the qualified ABLE program, rules similar to the rules of §1.401(a)(31)-1, Q&A-3 and 4 (which apply for purposes of a direct rollover from a qualified plan to an eligible retirement plan) apply for purposes of determining whether an amount is paid in the form of a program-to-program transfer.

1.529A-2(k) **Carryover Of Attributes--**

1.529A-2(k)(1) **In General.** — Upon a rollover, program-to-program transfer, or change of designated beneficiary, all of the attributes of the former ABLE account relevant for purposes of calculating the investment in the account are applicable to the recipient ABLE account. The portion of the rollover or transfer amount that constituted investment in the account from which the distribution or transfer was made is added to investment in the recipient ABLE account. In addition, the portion of the rollover or transfer amount that constituted earnings of the account from which the distribution or transfer was made is added to the earnings of the recipient ABLE account.

1.529A-2(k)(2) **Annual Contribution Limit.** — Upon a rollover or program-to-program transfer, for purposes of applying the annual contribution limit under paragraph (g)(2) of this section to the transferee account, annual contributions to the designated beneficiary's transferor ABLE account during the taxable year in which the rollover or program-to-program transfer occurs are included. However, upon a change of designated beneficiary, or upon a

rollover or program-to-program transfer to the ABLE account of a different designated beneficiary who is both a member of the family as defined in §1.529A-1(b)(12) and an eligible individual, no amounts contributed to the prior designated beneficiary's ABLE account are included when applying the annual contribution limit under paragraph (g)(2) of this section.

1.529A-2(k)(3) Investment Direction Limit. — Upon a rollover or program-to-program transfer, the number of investment directions by the designated beneficiary include the number of investment directions made prior to the rollover or program-to-program transfer during the same taxable year for purposes of paragraph (l) of this section. However, upon a change of designated beneficiary, or upon a rollover or program-to-program transfer to the ABLE account of a different designated beneficiary who is both a member of the family as defined in §1.529A-1(b)(12) and an eligible individual, the number of investment directions made for the prior designated beneficiary's ABLE account are not included in determining the number of investment directions made for the new designated beneficiary's ABLE account in that same year.

1.529A-2(l) Investment Direction. — A program will not be treated as a qualified ABLE program unless it provides that the designated beneficiary of an ABLE account established under such program may direct, whether directly or indirectly, the investment of any contributions to the program (or any earnings thereon) no more than two times in any calendar year. Such an investment direction does not include (i) a request to transfer any part of the account balance from an investment option to a cash equivalent option to effectuate a distribution; or (ii) the automatic rebalancing of the assets of an ABLE account to maintain the asset allocation level chosen when the account was established or by a subsequent investment direction.

1.529A-2(m) No Pledging Of Interest As Security For A Loan. — A program will not be treated as a qualified ABLE program unless the terms of the program, or a State statute or regulation that governs the program, prohibit any interest in the program or any portion thereof from being used as security for a loan. For this purpose, the program administrator's advance of funds to satisfy a withdrawal request during the period between the sale of an asset in the ABLE account (whose value is sufficient to satisfy the withdrawal request) and the clearing or settlement of that sale, does not constitute a loan, pledge, or grant of security for a loan. Similarly, the use of checking accounts or debit cards to facilitate a qualified ABLE program's ability to make distributions will not be treated as a pledge or grant of security for a loan during the period between the use of the check or debit card and the clearing or settlement of that transaction, provided that the ABLE program does not advance funds to a designated beneficiary in excess of the amount in the designated beneficiary's ABLE account.

1.529A-2(n) No Sale Or Exchange. — A qualified ABLE program must ensure that no interest in an ABLE account may be sold or exchanged.

1.529A-2(o) Post-Death Payments. — A qualified ABLE program must provide that a portion or all of the balance remaining in the ABLE account of a deceased designated beneficiary must be distributed to a State that files a claim against the designated beneficiary or the ABLE account itself with respect to benefits provided to the designated beneficiary under that State's Medicaid plan established under title XIX of the Social Security Act. The payment of such claim (if any) will be made only after providing for the payment from the designated beneficiary's ABLE account of the designated beneficiary's funeral and burial expenses (including the unpaid balance of a pre-death contract for those services) and all outstanding payments due for his or her other qualified disability expenses, and will be limited to the amount of the total medical assistance paid for the designated beneficiary after the establishment of the ABLE account over the amount of any premiums paid, whether from the ABLE account or otherwise by or on behalf of the designated beneficiary, to a Medicaid Buy-In program under any such State Medicaid plan. The establishment of the ABLE account is the date on which the ABLE account was established or, if earlier, the date on which was established any ABLE account for the same designated beneficiary from which amounts were rolled over or transferred to the ABLE account, but in no event earlier than the date on which the designated beneficiary became the designated beneficiary of the

account from which amounts were transferred. After the expiration of the applicable statute of limitations for filing Medicaid claims against the designated beneficiary's estate, a qualified ABLE program may distribute the balance of the ABLE account to the successor designated beneficiary or, if none, to the deceased designated beneficiary's estate. A State law prohibiting the filing of such a claim against either the ABLE account or the designated beneficiary's estate will not prevent that State's program from being a qualified ABLE program.

1.529A-2(p) **Reporting Requirements.** — A qualified ABLE program must comply with all applicable reporting requirements, including without limitation those described in §§1.529A-5 through 1.529A-7.

1.529A-2(q) **Applicability Date.** — This section applies to calendar years beginning on or after January 1, 2021. See §1.529A-8 for the provision of transition relief.

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