

<https://www.federalregister.gov/articles/2015/06/22/2015-15280/guidance-under-section-529a-qualified-able-programs#p-240>

## § 1.529A-2 Qualified ABLE program.

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(d) *Eligible individual*—(1) *In general.* Whether an individual is an eligible individual (as defined in § 1.529A-1(b)(9)) is determined for each taxable year, 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 for that individual and thereafter, in order to ensure that the designated beneficiary of the ABLE account is, and continues to be, an eligible individual. For purposes of determining whether an individual is an eligible individual, a disability certification will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification (as described in paragraph (e) of this section) 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).

(2) *Frequency of recertification*—(i) *In general.* A qualified ABLE program may choose different methods of ensuring a designated beneficiary's status as an eligible individual and may impose different periodic recertification requirements for different types of impairments. (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. 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 eligible individual, the program also may provide that a certification is valid until the end of the taxable year in which the change in the designated beneficiary's condition occurred.

(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. Additionally, no amounts incurred during that year and each subsequent year in which the designated beneficiary does not satisfy the definition of an eligible individual will be qualified disability expenses. If the designated beneficiary subsequently again becomes 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 incurred that meet the definition of a qualified disability expense will be qualified disability expenses.

(e) *Disability certification*—(1) *In general.* Except as provided in paragraph (e)(3) of this section or additional guidance described in paragraph (e)(4) of this section, a disability certification with respect to an individual is a certification signed under penalties of perjury by the individual, or by the other individual establishing (or with signature authority over) the ABLE account for the individual, that—

(i) The individual—

(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) Can be expected to result in death; or

(2) Has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) Is blind (within the meaning of section 1614(a)(2) of the Social Security Act);

(ii) 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

(iii) Includes 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\(r\)](#)).

(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](#)). 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](#), but without regard to age. (*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 of the Social Security Administration, the level of severity is determined by taking into account the effect of the individual's prescribed treatment. (*See* [20 CFR 416.930](#).)

(3) *Compassionate allowance list.* Conditions listed in the “List of Compassionate Allowances Conditions” maintained by the Social Security Administration ([at www.socialsecurity.gov/compassionateallowances/conditions.htm](http://www.socialsecurity.gov/compassionateallowances/conditions.htm)) are deemed to meet the requirements of section 529A(e)(1)(B) regarding the filing of a disability certification, if the condition was present before the date on which the individual attained age 26. To establish that an individual with such a condition meets 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 onset prior to age 26, in a manner specified by the qualified ABLE program.

(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.

(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.

(f) *Change of designated beneficiary.* A qualified ABLE program must permit a change in the designated beneficiary of an ABLE account, but only during the life of the designated beneficiary. At the time of the

change, the successor designated beneficiary must be an eligible individual.

(g) *Contributions*—(1) *Permissible property*. Except in the case of program-to-program transfers, contributions to an ABLE account may only be made 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, or similar method.

(2) *Annual contributions limit*. 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 to exceed the amount in effect under section 2503(b) for the calendar year in which the designated beneficiary's taxable year begins. For this purpose, contributions do not include rollovers or program-to-program transfers.

(3) *Cumulative limit*—(i) *In general*. A qualified ABLE program maintained by a State or its agency or instrumentality 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 include contributions to any prior ABLE account maintained by any State or its agency or instrumentality for the same designated beneficiary or any prior designated beneficiary.

(ii) *Safe harbor*. A qualified ABLE program maintained by a State or its agency or instrumentality satisfies the requirement in paragraph (g)(3)(i) of this section if it refuses to accept any additional contribution to an ABLE account once the balance in that account reaches the limit established by that State under section 529(b)(6). Once the account balance falls below such limit, additional contributions again may be accepted, subject to the limits under this paragraph (g)(3)(i) of this section.

(4) *Return of excess contributions and excess aggregate contributions*. If an excess contribution as defined in § 1.529A-1(b)(10) or an excess aggregate contribution as defined in § 1.529A-1(b)(11) is allocated to or deposited into the ABLE account of a designated beneficiary, a qualified ABLE program must return that excess contribution or excess aggregate contribution, including all net income attributable to that excess contribution or excess aggregate contribution,

as determined under the rules set forth in § 1.408-11 (treating an IRA as an ABLE account and returned contributions under section 408(d)(4) as excess contributions or excess aggregate contributions), to the person or persons who made that contribution. An excess contribution or excess aggregate contribution must be returned to its contributor(s) on a last-in-first-out basis until the entire excess contribution or excess aggregate contribution, along with all net income attributable to such contribution, has been returned. Returned contributions must be received by the contributor(s) on or before the due date (including extensions) for 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(e) for 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.