

MEMO# 28839

March 17, 2015

IRS Provides Transition Relief and Notification of Provisions Anticipated to be Included in Able Act Proposed Regulations

[28839]

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TO: PENSION MEMBERS No. 10-15

OPERATIONS MEMBERS No. 10-15

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 8-15

BROKER/DEALER ADVISORY COMMITTEE No. 12-15

TRANSFER AGENT ADVISORY COMMITTEE No. 13-15 RE: IRS PROVIDES TRANSITION RELIEF AND NOTIFICATION OF PROVISIONS ANTICIPATED TO BE INCLUDED IN ABLE ACT PROPOSED REGULATIONS

In Notice 2015-18, the IRS provides transition relief and advance notification of provisions it anticipates including in proposed regulations required by the Achieving a Better Life Experience Act of 2014 (the "ABLE Act"). [\[1\]](#) As you may recall, the ABLE Act creates a new section 529A of the Internal Revenue Code (IRC) to permit states to establish and maintain a new type of tax-advantaged savings program -- a qualified ABLE program -- under which contributions may be made to an ABLE account that is established for the purpose of meeting the qualified disability expenses of the designated disabled beneficiary who is a resident of that state. If a state does not wish to establish and maintain its own qualified ABLE program, it may enter into a contract with another state to provide its residents with access to a qualified ABLE program. [\[2\]](#) The ABLE Act directs the Secretary of the Treasury to issue regulations or other guidance to implement section 529A no later than June 19, 2015.

According to the Notice, Treasury and the IRS have been advised that several state legislatures are in the process of enacting enabling legislation in order to ensure that their citizens have the ability to create ABLE accounts during 2015 and, while Treasury and the IRS are currently working on guidance, it is anticipated that ABLE programs may be in operation in some states before such guidance is issued.

Transition Relief

The Notice states that Treasury and the IRS do not want the lack of guidance to discourage states from enacting their enabling legislation and creating ABLE programs. Therefore, in the Notice, Treasury and the IRS assure states that enact legislation creating an ABLE program in accordance with IRC section 529A, and those individuals creating ABLE accounts in accordance with such legislation, that such states and individuals will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the guidance when it is issued. Further, the Notice states that Treasury and the IRS intend to provide transition relief to ensure that the state programs and accounts meet the requirements in the guidance, including providing sufficient time after the guidance is issued for changes to be implemented.

Provisions Anticipated to be Included in Future Guidance

In the Notice, Treasury and the IRS state that, although section 529A was modeled on section 529 of the IRC, there are a few significant differences between the statutory provisions governing section 529 qualified tuition programs and those governing section 529A ABLE programs. As such, Treasury and IRS advise that the section 529A guidance, when issued, may differ in various ways from the proposed regulations promulgated under section 529. In particular, Treasury and IRS anticipate that, consistent with the provisions of the ABLE Act, the guidance will provide that the owner of an ABLE account is the designated beneficiary of the account. [3] Additionally, Treasury and the IRS anticipate that the guidance will provide that, with regard to the ABLE account of a designated beneficiary who is not the person with signature authority over that account, the person with signature authority over the account of the designated beneficiary may neither have nor acquire any beneficial interest in the account and must administer that account for the benefit of the account's designated beneficiary.

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endnotes

[1] Notice 2015-18 is available at: www.irs.gov/pub/irs-drop/n-15-18.pdf.

[2] For a description of the ABLE Act, see [Memorandum](#) to Tax Members No. 36-14, Pension Members No. 53-14, Accounting/Treasurers Members No. 20-14, 529 Plan Members No. 21-14 Bank, Trust and Retirement Advisory Committee No. 501-14, Transfer Agent Advisory Committee No. 78-14, International Members No. 48-14 [28594], dated December 18, 2014.

[3] IRC section 529 generally permits the account owner to be a different individual than the beneficiary.

should not be considered a substitute for, legal advice.