

MEMO# 29358

September 18, 2015

ICI Files Comment Letter with IRS on Proposed ABLE Act Regulations

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TO: ABLE ACT WORKING GROUP

TRANSFER AGENT ADVISORY COMMITTEE No. 49-15 RE: ICI FILES COMMENT LETTER WITH IRS ON PROPOSED ABLE ACT REGULATIONS

As you may recall, in July, the Internal Revenue Service (“IRS”) published for comment regulations intended to implement Section 529A of the Internal Revenue Code, the ABLE Act. [\[1\]](#) On September 11th, the Institute circulated a draft of its comment letter to members for their review. Earlier today the Institute finalized its letter and filed it with the IRS. [\[2\]](#) This letter, which is substantively similar to the draft we circulated, is briefly summarized below.

Summary of the Institute’s Letter

The Institute’s letter supports the proposed regulations and commends the IRS for its thorough and thoughtful consideration of the variety of implementation issues arising under the ABLE Act. The letter notes that our interest in the regulations derives from the fact that our members are expected to work with the states on implementing their ABLE Act program. As a result, we recommend that the Commission remain cognizant of the fact that, as financial institutions, our members do not have experience or expertise in receiving or reviewing sensitive medical information from accountholders along the lines of what would be required under the ABLE Act. Also, their current operating systems may not be able to accommodate some of the regulations’ requirements without expensive system redesign. To ensure the successful implementation of the ABLE Act, we recommend that the IRS do everything possible to keep the programs’ administration as cost-effective and efficient as possible. With this as the background for our comments, the Institute’s letter recommends that the IRS:

- Clarify whether a “contracting state” can contract with multiple state programs or is limited to one program;
- Incorporate greater flexibility into the regulations’ “earnings ratio” provisions;
- Permit designated beneficiaries to self-certify their residency requirement and their eligibility to open and maintain an account;
- Permit persons with signatory authority over an account to designate a successor with

authority over the account in the event of death or incapacity;

- Place the reporting responsibilities relating to qualified disability expenses on the designated beneficiary;
- Simplify the provisions relating to the return of excess contributions;
- Clarify that transferring funds from a program's investment account to a linked liquid program account (so the beneficiary can access such funds through a check or debit card) is not considered a change in investment direction or a pledging of interest in the account;
- Clarify how post-death distributions are to be reported;
- Delete a provision requiring the tracking of earnings associated with particular contributions; and
- Delete a requirement that programs obtain the TINs of all contributors.

Our basis for each of these recommendations is discussed in detail in the letter.

Request for the IRS to Issue Interim Guidance

In addition to the Institute's comment letter, on September 4th we filed a shorter letter with the IRS recommending that it issue interpretive guidance on three issues arising under the Act. These issues are:

1. Satisfying the eligibility determination for ABLE Act accounts;
2. Determining the use of proceeds withdrawn from an account; and
3. The IRS's proposed requirements for programs to obtain TINs on all contributors to an account.

As noted in our letter, we recommend that the IRS issue this guidance during the pendency of the regulations' adoption to avoid delaying the states' implementing their programs while the IRS completes its current rulemaking. The comments in our letter echoed those provided by the states through the College Savings Plan Network to the IRS regarding the pressing need for such interim guidance. A copy of this letter is also attached.

Tamara K. Salmon
Associate General Counsel

[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) No. 29144, dated July 6, 2015, which summarized the IRS's proposal.

[2] See Institute [Memorandum](#) No. 29329, dated September 11, 2015, which summarized the Institute's draft letter and included the letter as an attachment.