

INITIAL STATEMENT OF REASONS

CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM TRUST

Title 10, Chapter 14, Article 1, Sections 9000, 9001, 9003, 9004, 9005, 9006

INTRODUCTION

The California ABLE Act Board (the “Board”) is organized and operated pursuant to sections 4875 through 4885 of the California Welfare and Institutions Code. In 2018, the California ABLE Program Trust (the “CalABLE Program” or “Program”) was launched. The Program provides children and adults who developed a disability prior to age 26 the opportunity to save money in a tax-advantaged account without affecting eligibility for public disability benefits.

PROBLEM STATEMENT

Pursuant to California Welfare and Institutions Code section 4882, the California ABLE Act Board (the “Board”) is statutorily charged with implementing the California ABLE Program Trust (the “CalABLE Program” or “Program”). In 2014, the federal ABLE Act was passed, permitting states to implement and administer ABLE programs within the guidelines set forth in section 529A of the Internal Revenue Code (IRC). In California, the Legislature enacted and the Governor signed Senate Bill 324 (Chapter 796, Statutes of 2015) and Assembly Bill 449 (Chapter 774, Statutes of 2015), which expressed approval of the Board to develop and implement the CalABLE Program, a financial savings tool for qualified people with disabilities as defined in section 529A of the IRC.

Statute authorizes the Board to adopt regulations as it deems necessary to implement the CalABLE Program. In April 2017, the Board adopted Program regulations which were approved by the Office of Administrative Law through the regular rulemaking process in October 2017. The CalABLE Program launched in December 2018.

In November 2020, final Federal Regulations were released in the Federal Register Vol. 85, No. 224, and have since been codified in Sections 1.529A–0 through 1.529A–8 issued under 26 United States Code 529A(g). The Federal Regulations clarified details in section 529A of the IRC. With the release of the Federal Regulations, certain definitions and statements within the current regulations are now inaccurate. The purpose of the proposed changes to the regulations is to correct these inaccuracies and ensure the regulations are evergreen should the IRC or Federal Regulations be updated.

Additionally, processes such as changing the Designated Beneficiary and conducting a Rollover were described in the regulations prior to Program implementation. A change in Program Management Services also occurred in August 2023, leaving gaps in the regulations. The purpose of the proposed changes to the regulations is to address the gaps in the regulations found during implementation of the Program.

Finally, the purpose of the proposed changes to the regulations is to add clarity by removing unnecessary language.

Through this rulemaking process, the Board proposes to amend the California Code of Regulations, Title 10, Chapter 14, Article 1 to comply with the requirements of the Welfare and

Institutions Code sections 4875 through 4885, the Internal Revenue Code section 529A, and Title 26 of Federal Regulations section 1.529A-0 through 1.529A-8.

SPECIFIC PURPOSE, NECESSITY, AND BENEFIT OF EACH SECTION

Section 9000. Existing Definitions

Purpose: The purpose of modifying this section is to add the definitions in Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8 to the existing definitions for Title 10, Chapter 14, Article 1.

Necessity: The necessity is that additional terms were defined in the Federal Register Vol. 85, No. 224 published in November 2020 and since codified in Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8 that were not previously defined in the Welfare and Institutions Code section 4875 or Internal Revenue Code section 529A. These additional definitions add clarity to the Internal Revenue Code section 529A and the Federal Regulations.

Benefit: The benefit of adding the definitions in Title 26 of Federal Regulations section 1.529A-0 through 1.529A-8 is that the regulations will conform to Federal Regulations and there will be no confusion for members of the public about which definitions apply.

NOTE: Authority and Reference Citations

This is a non-substantive change to update the Reference citations to include Pub. L. 113-295, div. B, title I, §103 and Sections 1.529A-0 through 1.529A-8 also issued under 26 United States Code 529A(g), 26 Code of Federal Regulations Section Pt. 1, App. 1.

Deletion of Existing Section 9000

Purpose: The purpose of repealing the current language is to add the definitions in Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8 to the existing definitions for Title 10, Chapter 14, Article 1, and correct the sentence structure with the addition.

Necessity: The necessity of replacing the current language is that there are additional terms defined in the Federal Register Vol. 85, No. 224 published in November 2020 and since codified in Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8 that were not previously defined in the Welfare and Institutions Code section 4875 or Internal Revenue Code section 529A. These additional definitions add clarity to the Internal Revenue Code section 529A and the Federal Regulations.

Benefit: The benefit of replacing the current language is that it adds the definitions and updates the sentence structure at the same time.

Section 9001. Additional Definitions

Section 9001(c)

Purpose: The purpose of this section is to conform the definition of “Authorized Legal Representative” with the description of this role found in Title 26 of Federal Regulations section 1.529A-2(1)(i)(B)-(C).

Necessity: The necessity of this section is that only certain people or entities as described in Title 26 of Federal Regulations section 1.529A-2(1)(i)(B)-(C) are allowed to act as an Authorized Legal Representative. The existing definition for “Authorized Legal Representative” does not include the entire list and is therefore not compliant with Federal Regulations.

Benefit: The benefit of updating the definition for “Authorized Legal Representative” is that it will remain evergreen should Federal Regulations change. Additionally, this definition describes how a person or entity is permitted to act as an “Authorized Legal Representative” which is through self-certification.

Deletion of Existing Section 9001(c)

Purpose: The purpose of repealing the current language in this section is to remove a definition for “Authorized Legal Representative” that conflicts with Federal Regulations.

Necessity: The necessity of repealing the current language is that Title 26 of Federal Regulations section 1.529A-2(1)(i)(B)-(C) describes who may act as an “Authorized Legal Representative” which conflicts with the existing definition.

Benefit: The benefit of repealing the current language will be the removal of the conflicting definition.

Deletion of Existing Section 9001(d)

Purpose: The purpose of repealing the definition “Cash” is that this term is not used within the regulations.

Necessity: This change is necessary to remove an unnecessary definition.

Benefit: The benefit of this change is that it will reduce confusion for members of the public by removing an unnecessary definition.

Deletion of Existing Section 9001(e)

Purpose: The purpose of repealing the definition “Contribution” is that it is defined in Title 26 of Federal Regulations section 1.529A-1(b)(2).

Necessity: This change is necessary to remove a conflicting definition within the regulations since “Contribution” is already defined in Section 9000 with the addition of Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8.

Benefit: The benefit of this change is that it will reduce confusion for members of the public due to a conflicting definition.

Section 9001(d)

Purpose: The purpose of this section is to define “CFR.”

Necessity: The necessity of defining “CFR” is that it is the acronym for the Code of Federal Regulations and appears later in the regulations.

Benefit: The benefit of defining “CFR” is that there will be no confusion for what it stands for when it appears in the regulations.

Deletion of Existing Section 9001(f)

Purpose: The purpose of repealing the definition “Distribution” is that it is defined in Title 26 of Federal Regulations section 1.529A-1(b)(5).

Necessity: This change is necessary to remove a conflicting definition within the regulations since “Distribution” is already defined in Section 9000 with the addition of Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8.

Benefit: The benefit of this change is that it will reduce confusion for members of the public due to a conflicting definition.

Deletion of Existing Section 9001(g)

Purpose: The purpose of repealing the definition “Earnings” is that it is defined in Title 26 of Federal Regulations section 1.529A-1(b)(6).

Necessity: This change is necessary to remove a conflicting definition within the regulations since “Earnings” is already defined in Section 9000 with the addition of Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8.

Benefit: The benefit of this change is that it will reduce confusion for members of the public due to a conflicting definition.

Section 9001(e)

Purpose: The purpose of amending this section is to clarify the definition of “IRC.”

Necessity: This change is necessary to clarify that “IRC” refers to the Internal Revenue Code of 1986 and that amendments to the Internal Revenue Code also apply.

Benefit: The benefit of this update is that it removes ambiguity in which version of the Internal Revenue Code is being referenced.

Section 9001(f)

Purpose: The purpose of amending this section is to use terms that are defined within the definition of a “Nonqualified Distribution.”

Necessity: The necessity of amending this section is that terms such as “disbursement” and “rollover” do not have a corresponding definition within the regulations. The amended definition for “Nonqualified Distribution” uses the terms “Distribution” and “Rollover” which are included in Section 9000 with the addition of Title 26 of Federal Regulations sections 1.529A-0 through 1.529A-8.

Benefit: The benefit of amending this section is that the definition for a “Nonqualified Distribution” now uses terms that are defined, thereby clarifying the definition for members of the public.

Deletion of Existing Section 9001(i)

Purpose: The purpose of repealing the current language in this section is to remove a definition for “Nonqualified Distribution” that contains terms that are not defined.

Necessity: The necessity of repealing the current definition for “Nonqualified Distribution” is that terms such as “disbursement” and “rollover” do not have a corresponding definition within the regulations.

Benefit: The benefit of repealing this current language and replacing the definition of “Nonqualified Distribution” is that the updated definition contains terms that are defined.

Section 9001(g)

Purpose: The purpose of amending this section is to update the definition for “Program Administrator” to the entity that provides program administrative services for the Board.

Necessity: The necessity of amending this section is that the existing definition for “Program Administrator” was developed prior to the Program launch. With the launch of the Program, the references made to “Program Administrator” in the regulations are more congruent with the amended definition.

Benefit: The benefit of amending this section is that a member of the public will have clarity for the roles of the California ABLE Act Board versus the Program Administrator.

Deletion of Existing Section 9001(j)

Purpose: The purpose of repealing the current language in this section is to remove a definition for “Program Administrator” that is no longer accurate with the Program launch in December 2018.

Necessity: The necessity of repealing the current language in this section is that the existing definition for “Program Administrator” was developed prior to the Program launch. In practice, the “Program Administrator” is the entity that provides program administrative services to the Board.

Benefit: The benefit of repealing the current language and replacing the definition of “Program Administrator” is that a member of the public will have clarity for the roles of the California ABLE Act Board versus the Program Administrator.

Deletion of Existing Section 9001(k)

Purpose: The purpose of repealing the definition “Secretary” is that this term is not used within the regulations.

Necessity: This change is necessary to remove an unnecessary definition.

Benefit: The benefit of this change is that it will reduce confusion for members of the public by removing an unnecessary definition.

Section 9001(h)

Purpose: The purpose of this section is to define “Sibling.”

Necessity: The necessity of defining “Sibling” is that the term appears later in the regulations.

Benefit: The benefit of defining “Sibling” is that there will be no confusion for what it stands for when it appears in the regulations.

Section 9001(i)

This is a non-substantive change to correct the Section number due to the deletion of the prior existing sections.

Section 9001(j)

Purpose: The purpose of this section is to define “Tax Regulations.”

Necessity: The necessity of defining “Tax Regulations” is that the term appears later in the regulations.

Benefit: The benefit of defining “Tax Regulations” is that there will be no confusion for which Tax Regulations it refers to when it appears later in the regulations.

Section 9003. Limitations on Contributions

Purpose: The purpose of this section is to conform the regulations with IRC section 529A and federal Tax Regulations, and to ensure that the Program will still be a qualified ABLE Program in the event of any changes in how limitations on contributions are defined.

Necessity: The necessity is that changes to the limitations on contributions at the federal level are possible and have occurred. For example, Title 26 of Federal Regulations section 1.529A-2(g)(2)(ii)(B) allows for additional contributions dependent on employment status until the end of 2025. Should changes to the annual contribution limit occur again, it is necessary to ensure the Program can incorporate these changes.

Benefit: The benefit of this section is that it allows for the immediate change of the limitations on contributions should these limits be increased or decreased at the federal level.

Deletion of Existing Section 9003(a)

Purpose: The purpose of repealing this section is to ensure that if the annual contribution limit were to ever be changed from the federal gift tax exclusion limit, the Program will comply with the IRC section 529A and federal Tax Regulations.

Necessity: The necessity is that changes to the annual contribution limit are possible and have occurred. For example, Title 26 of Federal Regulations section 1.529A-2(g)(2)(ii)(B) allows for additional contributions dependent on employment status until the end of 2025. Should changes to the annual contribution limit occur again, it is necessary to repeal this language so that the Program will remain in compliance with Federal Regulations.

Benefit: The benefit of repealing this section is that it will be covered by Section 9003 in a more comprehensive and evergreen manner.

Deletion of Existing Section 9003(b)

Purpose: The purpose of repealing this section is to ensure that if changes were made regarding maximum account balances at the federal level, the Program will comply with the IRC section 529A and federal Tax Regulations.

Necessity: The necessity is that changes to maximum account balances could be possible should the IRC section 529A or federal Tax Regulations be amended.

Benefit: The benefit of removing this section is that it will be covered by Section 9003 in a more comprehensive and evergreen manner.

Deletion of Existing Section 9003(c)

Purpose: The purpose of repealing this section is that there are exceptions to the annual contribution limit, making this section inaccurate.

Necessity: The necessity of repealing this section is that Title 26 of Federal Regulations section 1.529A-2(g)(2)(ii)(B) allows for additional contributions dependent on employment status until the end of 2025. This makes the existing section inaccurate.

Benefit: The benefit of repealing this section is that it removes inaccuracies from the regulations.

Deletion of Existing Section 9003(d)

Purpose: The purpose of repealing this section is that there are exceptions to the annual contribution limit, making this section inaccurate.

Necessity: The necessity of repealing this section is that it is inaccurate in the cases of exceptions to the annual contribution limit and maximum account balances. Additionally, rather than return an excess contribution, the Program does not allow for the contribution to be made in the first place.

Benefit: The benefit of repealing this section is that it removes inaccuracies from the regulations.

Section 9004. Changes of the Designated Beneficiary, Program-to-Program Transfers, and Rollovers

This is a non-substantive change to correct the Section title.

Section 9004(a)

Purpose: The purpose of this section is to conform the regulations to IRC section 529A and federal Tax Regulations by specifying that both Program-to-Program Transfers and Rollovers are possible, and that Program-to-Program Transfers and Rollovers to non-siblings are not permitted. It also adds that roll over funds from an existing IRC section 529 account are possible as long as it is allowed by IRC section 529 and federal Tax Regulations, a provision that is currently scheduled to sunset at the end of 2025.

Necessity: The necessity of this section is to note the difference between Program-to-Program Transfers and Rollovers rather than lump them together as was done in existing section 9004(b).

Benefit: The benefit is that it removes the confusion between Program-to-Program Transfers and Rollovers.

Section 9004(b)

Purpose: The purpose of this section is to describe a change of Designated Beneficiary that is effective upon death.

Necessity: The necessity of this section is that Title 26 of Federal Regulations section 1.529A-2(f)(2) allows the qualified ABLE program to permit a change in Designated Beneficiary effective upon death. The Program does permit this option.

Benefit: The benefit of this section is that it provides clarity between a change in Designated Beneficiary as described in Section 9004(a) which would be effective immediately versus a change in Designated Beneficiary that is effective upon death.

Deletion of Existing Section 9004(a)

Purpose: The purpose of repealing this section is that section 9004(a) will cover a change of Designated Beneficiary, along with Program-to-Program Transfers and Rollovers.

Necessity: The necessity to repeal this section is that section 9004(a) will cover a change of Designated Beneficiary, along with Program-to-Program Transfers and Rollovers.

Benefit: The benefit of repealing this section is that the updated language for section 9004(a) conforms with IRC section 529A and federal Tax Regulations.

Deletion of Existing Section 9004(b)

Purpose: The purpose of repealing this section is that section 9004(a) will cover Rollovers, along with a change of Designated Beneficiary and Program-to-Program Transfers.

Necessity: The necessity of repealing this section is that it does not differentiate between a rollover for the same account owner and a rollover to a sibling's account.

Benefit: The benefit of repealing this section is that Section 9004 will now clarify the difference between a Program-to-Program Transfer and a Rollover by conforming to IRC section 529A and federal Tax Regulations.

Section 9005. Qualified Distributions

Section 9005(a)

Purpose: The purpose of this section is to describe that a qualified distribution includes both a distribution that is used to pay for the Qualified Disability Expenses of an Account Owner and a Rollover.

Necessity: The necessity of this section is to clarify what is considered a qualified distribution so that a nonqualified distribution may be compared.

Benefit: The benefit of this section is that it provides clarity for members of the public on the difference between a qualified distribution and a nonqualified distribution.

Section 9005(b)

Purpose: The purpose of this section is to describe that a nonqualified distribution is any distribution that is not used to pay for a Qualified Disability Expense or a Rollover. This section also describes the potential consequences of a nonqualified distribution.

Necessity: The necessity of this section is to describe the potential consequences of a nonqualified distribution.

Benefit: The benefit of this section is that members of the public will be aware of what is considered a nonqualified distribution and the potential consequences of a nonqualified distribution.

Deletion of Existing Section 9005(a)

Purpose: The purpose of repealing the existing language in Section 9005(a) is that it only included Qualified Disability Expenses as a qualified distribution when a Rollover also qualifies. Additionally, Account Owners may use the Account for nonqualified distributions; however, there may be potential consequences which are described in Section 9005(b).

Necessity: The necessity of repealing this section is that it is inaccurate as a Rollover is also a qualified distribution. Additionally, Account Owners may use the Account for nonqualified distributions; however, there may be potential consequences which are described in Section 9005(b).

Benefit: The benefit of repealing this section is that it removes inaccuracies from the regulations.

Deletion of Existing Section 9005(b)

Purpose: The purpose of repealing the existing language in Section 9005(b) is to simplify the description of a Rollover which is now defined in Section 9000 with the addition of Title 26 of Federal Regulations section 1.529A-0 through 1.529A-8.

Necessity: The necessity of repealing this section is that a Rollover is defined in Section 9000 with the addition of Title 26 of Federal Regulations section 1.529A-0 through 1.529A-8 and having a description included in this section could create confusion for members of the public.

Benefit: The benefit of repealing and replacing the language in this section is that it will reduce confusion for members of the public.

Deletion of Existing Section 9006. Rollover Distributions

Purpose: The purpose of repealing this entire section is that there are multiple types of rollovers allowed with differences depending on whether the rollover is done for the same Account Owner, a Sibling, or from an existing IRC section 529 account.

Necessity: The necessity of repealing this entire section is that the existing language creates confusion by not differentiating between the types of rollovers. Section 9004 now does this by differentiating between Program-to-Program Transfers and Rollovers making this section obsolete.

Benefit: The benefit of repealing this section is that the Program-to-Program Transfers and Rollover information is covered in Section 9004 and is no longer necessary. Maintaining this section may cause confusion for members of the public.

Section 9006. Account Information

Non-substantive change to correct Section number due to the deletion of existing section 9006.

ECONOMIC IMPACT ASSESSMENT

Creation or Elimination of Jobs within the State of California

Pursuant to Welfare and Institutions Code sections 4875 through 4885, the proposed changes to the regulations are designed for the California ABLE Act Board to administer the Program. The Program is designed for eligible people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. Therefore, no jobs will be created or eliminated in the State of California.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

Pursuant to Welfare and Institutions Code sections 4875 through 4885, the proposed changes to the regulations are designed for the California ABLE Act Board to administer the Program. The Program is designed for eligible people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. Therefore, no new businesses will be created and no existing businesses will be eliminated in the State of California.

Expansion of Businesses or Elimination of Businesses Currently Doing Business within the State of California

Pursuant to Welfare and Institutions Code sections 4875 through 4885, the proposed changes to the regulations are designed for the California ABLE Act Board to administer the Program. The Program is designed for eligible people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. Therefore, no existing businesses will be expanded and no existing businesses currently doing business in the State of California will be eliminated.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

Pursuant to Welfare and Institutions Code sections 4875 through 4885, the proposed changes to the regulations are designed for the California ABLE Act Board to administer the Program. The Program is designed for eligible people with disabilities and permits them to save money in a tax-advantaged CalABLE account while continuing to receive means-tested public benefits such as Medi-Cal and Social Security Income. CalABLE account funds will be used for qualified disability expenses which include expenses that help maintain or improve the account owner's quality of life.

OTHER REQUIRED SHOWINGS

Studies, Reports, or Documents Relied Upon – Gov. Code Section 11346.2(b)(2):

The California ABLE Act Board did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the changes to these regulations.

Reasonable Alternatives Considered Or Agency's Reasons for Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(3)(A):

No other alternatives were presented to or considered by the California ABLE Act Board.

Reasonable Alternatives That Would Lessen the Impact On Small Businesses – Gov. Code Section 11346.2(b)(3)(B):

The California ABLE Act Board has not identified any alternatives that would lessen any adverse impact on small business.

Evidence Relied Upon To Support the Initial Determination That the Regulations Will Not Have A Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(5)(A):

The proposed changes to the regulations would not have a significant adverse economic impact on any business because it is designed for eligible people with disabilities to save money in a CalABLE account.

Analysis of Whether the Regulations Are an Efficient and Effective Means of Implementing the Law in the Least Burdensome Manner – Gov. Code Section 11346.3(e)

The regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.

Duplication or Conflicts with Federal Regulations

The proposed regulatory action does not contain any regulations that are identical to or in conflict with any corresponding federal regulation.