

CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT BOARD
901 P Street, Suite 413
Sacramento, CA 95814

Title 10, Division 1, Chapter 14
California Code of Regulations
California Achieving A Better Life Experience (ABLE) Program Trust

NOTICE OF PROPOSED RULEMAKING ACTION

NOTICE IS HEREBY GIVEN that the California ABLE Act Board (“Board” or “CalABLE”) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the attention of the Contact Person as listed in this Notice no later than Tuesday, September 3, 2024. CalABLE, upon its own motion or at the request of any interested party, may thereafter adopt the proposed substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text.

PROPOSED REGULATORY ACTION

The Board proposes to amendments to Sections 9000, 9001, 9003, 9004, 9005 and 9006 of the California Code of Regulations (“regulations”) as permanent regulations. The regulations implement the Board’s responsibilities related to the California ABLE Program Trust (“Program” or “Trust”).

AUTHORITY AND REFERENCE

Authority: Section 4882, Welfare and Institutions Code. Section 4882 (a) allows the Board to adopt regulations in order to administer the Program.

Reference: Section 4875, Welfare and Institutions Code; Section 529A, Internal Revenue Code; Pub. L. 113-295, div. B, title I, §103; 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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Legislature enacted and the Governor signed Senate Bill (SB) 324 (Chapter 796, Statutes of 2015) and Assembly Bill (AB) 449 (Chapter 774, Statutes of 2015), which authorized the Board to develop and implement the Program, which is a financial savings tool for qualified people with disabilities as defined in Section 529A of the Internal Revenue Code.

The Board is authorized under Welfare and Institutions Code section 4882 to adopt regulations as it deems necessary to implement the Program consistent with Section 529A of the Internal Revenue Code and federal regulations issued pursuant to that code to ensure that the Program meets all criteria for federal tax-exempt benefits.

These regulations, in part, provide the framework to allow eligible individuals to save and maintain their funds in the Trust while continuing to receive public means-tested benefits. Prior to the California ABLE Act, eligible individuals were subject to asset limits in order to continue receiving public means-tested benefits. Eligible individuals could only have \$2,000 in assets before their Supplemental Security Income was impacted. With the ABLE Act, they can now contribute up to \$18,000 per year and have up to \$100,000 in their ABLE accounts and still maintain eligibility for public means-tested benefits such as Supplemental Security Income and Medi-Cal.

The following rulemaking proposal includes adding or removing text from the regulations as it pertains to the following sections: definitions; limitations on contributions; change of designated beneficiary, program-to-program transfers, and rollovers; qualified distributions; and rollover distributions which are related to the administration of the Program.

The Board anticipates the proposed regulations will benefit qualified people with disabilities through the implementation and administration of the Program. The proposed regulations are compatible and consistent with the intent of the Legislature in adopting Welfare and Institutions Code section 4875 et seq.

SUMMARY OF PROPOSED REGULATIONS

1. **Section 9000** - 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.
2. **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.
3. **Deletion of Existing Section 9000** - 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.
4. **Section 9001(c)** - 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).

5. **Deletion of Existing Section 9001(c)** - The purpose of repealing the current language in this section is to remove a definition for “Authorized Legal Representative” that conflicts with Federal Regulations.
6. **Deletion of Existing Section 9001(d)** - The purpose of repealing the definition “Cash” is that this term is not used within the regulations.
7. **Deletion of Existing Section 9001(e)** - The purpose of repealing the definition “Contribution” is that it is defined in Title 26 of Federal Regulations section 1.529A-1(b)(2).
8. **Section 9001(d)** - The purpose of this section is to define “CFR.”
9. **Deletion of Existing Section 9001(f)** - The purpose of repealing the definition “Distribution” is that it is defined in Title 26 of Federal Regulations section 1.529A-1(b)(5).
10. **Deletion of Existing Section 9001(g)** - The purpose of repealing the definition “Earnings” is that it is defined in Title 26 of Federal Regulations section 1.529A-1(b)(6).
11. **Section 9001(e)** - The purpose of amending this section is to clarify the definition of “IRC” refers to the Internal Revenue Code of 1986 and that amendments to the Internal Revenue Code also apply.
12. **Section 9001(f)** - The purpose of amending this section is to use terms that are defined within the definition of a “Nonqualified Distribution.” 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.
13. **Deletion of Existing Section 9001(i)** - 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 such as “disbursement” and “rollover.”
14. **Section 9001(g)** - 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.
15. **Deletion of Existing Section 9001(j)** - 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.
16. **Deletion of Existing Section 9001(k)** - The purpose of repealing the definition “Secretary” is that this term is not used within the regulations.

17. **Section 9001(h)** - The purpose of this section is to define “Sibling.”
18. **Section 9001(i)** - This is a non-substantive change to correct the Section number due to the deletion of the prior existing sections.
19. **Section 9001(j)** - The purpose of this section is to define “Tax Regulations.”
20. **Section 9003** - 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.
21. **Deletion of Existing Section 9003(a)** - 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.
22. **Deletion of Existing Section 9003(b)** - 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.
23. **Deletion of Existing Section 9003(c)** - The purpose of repealing this section is that there are exceptions to the annual contribution limit, making this section inaccurate.
24. **Deletion of Existing Section 9003(d)** - The purpose of repealing this section is that there are exceptions to the annual contribution limit, making this section inaccurate.
25. **Section 9004** - This is a non-substantive change to correct the Section title.
26. **Section 9004(a)** - 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.
27. **Section 9004(b)** - The purpose of this section is to describe a change of Designated Beneficiary that is effective upon death.
28. **Deletion of Existing Section 9004(a)** - 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.

29. **Deletion of Existing Section 9004(b)** - 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.
30. **Section 9005(a)** - 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.
31. **Section 9005(b)** - 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.
32. **Deletion of Existing Section 9005(a)** - 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).
33. **Deletion of Existing Section 9005(b)** - 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.
34. **Deletion of Existing Section 9006.** - 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.
35. **Section 9006.** - Non-substantive change to correct Section number due to the deletion of existing section 9006.

CITATIONS FOR PROPOSED REGULATIONS MANDATED BY FEDERAL LAWS OR FEDERAL REGULATIONS

Proposed regulation Sections 9000, 9001, 9003, 9004, 9005 and 9006 references sections, Section 529A, Internal Revenue Code; Pub. L. 113-295, div. B, title I, §103; 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

The full text of the federal regulations referenced above are found in Section 529A, Internal Revenue Code; Pub. L. 113-295, div. B, title I, §103; Sections 1.529A-0 through 1.529A-8 also issued under 26 United States Code 529A(g), which is available online at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title26-section529A&num=0&edition=prelim>

The full text of the federal regulations referenced above are found in 26 Code of Federal Regulations Section Pt. 1, App. 1, which is available online at <https://www.treasurer.ca.gov/able/2020-22144.pdf>

EVALUATION OF INCONSISTENCY AND INCOMPATIBILITY

CalABLE performed a search in the California Code of Regulations and the proposed regulations are neither inconsistent nor incompatible with existing regulation.

OTHER MATTERS PRESCRIBED BY STATUTES APPLICABLE TO THE SPECIFIC STATE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

No other matters prescribed by statute are applicable to the Board or to any specific regulation or class of regulations pursuant to Section 11346.5(a) (4) of the California Government Code pertaining to the proposed regulations or the Authority.

OTHER MATTERS PRESCRIBED BY STATUTES APPLICABLE TO THE SPECIFIC STATE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

No other matters prescribed by statute are applicable to the Board or to any specific regulation or class of regulations pursuant to Section 11346.5(a) (4) of the California Government Code pertaining to the proposed regulations or the Board.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined the proposed regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACT

The Board has determined that the adoption of the proposed regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement pursuant to Gov. Code sec. 17500 et seq., any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

INITIAL DETERMINATION REGARDING ANY SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the proposed regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the adoption of the proposed regulations will not affect small businesses. Small businesses will not be enrolled in the program. As such, they will not be impacted by the proposed regulations.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Assessment of Effect on Jobs and Business Expansion, Elimination or Creation

Adoption of these proposed regulations will not create or eliminate jobs within California, nor create new businesses or eliminate existing businesses within California. The proposed regulations could likely impact the expansion of businesses currently doing business within the State of California.

Assessment of Effect to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

As stated above, the proposed regulations will benefit the health and welfare of California residents, specifically, qualified individuals with disabilities who will use this program for their financial betterment. The Board does not expect that the regulations will affect worker safety or the state's environment.

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS.

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

COST IMPACT ON HOUSING

The proposed regulations will not have any effect on housing costs.

CONSIDERATION OF REASONABLE ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative to the regulations considered by the Board or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board invites interested persons to present statements with respect to alternatives to the proposed regulations during the written comment period. The Program does not believe that a reasonable alternative exists outside the amendments made here to the regulations to aid in streamlining changes so that the Program is consistent with federal authority and

where the proposed changes seek to promote clarity of the Program for the benefit of the public at-large.

AGENCY CONTACT PERSONS

Written comments, inquiries, and any questions regarding the substance of the proposed regulations shall be submitted or directed to:

Thomas Martin, Executive Director
California ABLE Act Board
901 P Street, Suite 413
Sacramento, CA 95814
Telephone: (916) 653-1728
E-mail: thomas.martin@treasurer.ca.gov

The following person is designated as a backup contact person for inquiries only regarding the proposed regulations:

Madeline Handy
California ABLE Act Board
901 P Street, Suite 413
Sacramento, CA 95814
Telephone: (916)-653-1728
E-mail: madeline.handy@treasurer.ca.gov

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulations to CalABLE. The written comment period on the proposed regulations will end on Tuesday, September 3, 2024. All comments to be considered by CalABLE must be submitted in writing to the Agency Contact Person identified in this Notice by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, FINAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF PROPOSED REGULATIONS

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Board's office at 901 P Street, Suite 413, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In

addition, the rulemaking file, including the Initial Statement of Reasons, and Final Statement of Reasons and the proposed text, may be viewed on the website at <https://www.treasurer.ca.gov/able/>.

PUBLIC HEARING

No public hearing regarding the proposed regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to CalABLE at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the proposed regulations for which the hearing is being requested.

15-DAY AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, if one is held, and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Executive Director and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Thomas Martin, Executive Director, California ABE Act Board, 901 P Street, Suite 413, Sacramento, CA, 95814; telephone, (916) 653-1728. It is recommended that assistance be requested at least two weeks prior to the hearing.