

**DESCRIPTION OF THE CHAIRMAN'S AMENDMENT  
IN THE NATURE OF A SUBSTITUTE TO H.R. 647,  
THE "ACHIEVING A BETTER LIFE EXPERIENCE ACT  
(‘ABLE ACT’) OF 2013”**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on July 31, 2014

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



July 30, 2014  
JCX-95-14

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## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman’s amendment in the nature of a substitute to H.R. 647, the “Achieving a Better Life Experience Act (‘ABLE Act’) of 2013,” which is to be marked up by the Committee on Ways and Means on July 31, 2014.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman’s Amendment in the Nature of a Substitute to H.R. 647, the Achieving a Better Life Experience Act (‘ABLE Act’) of 2013* (JCX-95-14), July 30, 2014. This document can also be found on our website at [www.house.gov/jct](http://www.house.gov/jct).

## A. Chairman's Amendment in the Nature of a Substitute

### 1. Qualified ABLE programs

#### In general

The Chairman's amendment provides rules for a new type of tax-favored savings program, qualified ABLE programs. A qualified ABLE program is a program established and maintained by a State or agency or instrumentality thereof. A qualified ABLE program must meet the following conditions: (1) under the provisions of the program, contributions may be made to an account (an "ABLE account"), established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account; (2) the program must limit a designated beneficiary to one ABLE account; (3) the program must allow for the establishment of ABLE accounts only for a designated beneficiary who is either a resident of the State maintaining such ABLE program or a resident of a State that has not established an ABLE program (a "contracting State") which has entered into a contract with such State to provide the contracting State's residents with access to the State's ABLE program; and (4) the program must meet certain other requirements discussed below. A qualified ABLE program is generally exempt from income tax, but is otherwise subject to the taxes imposed on the unrelated business income of tax-exempt organizations.

A designated beneficiary of an ABLE account must be an eligible individual (defined below) who is designated at the commencement of participation in the qualified ABLE program as the beneficiary of amounts paid (or to be paid) into the program. Additionally, a designated beneficiary may be a brother, sister, stepbrother or stepsister of the former designated beneficiary of the ABLE account, provided such new designated beneficiary is also an eligible individual.

Contributions to an ABLE account must be made in cash and are not deductible for Federal income tax purposes. Under the Chairman's amendment, except in the case of a rollover contribution from another account, an ABLE account must provide that it may not receive aggregate contributions during a taxable year in excess of the amount under section 2503(b) of the Code (the annual gift tax exemption). For 2014, this is \$14,000.<sup>2</sup> Additionally, a qualified ABLE program must provide adequate safeguards to ensure that ABLE account contributions do not exceed the limit imposed on accounts under the qualified tuition program<sup>3</sup> of the State maintaining the qualified ABLE program. Amounts in the account accumulate on a tax-deferred basis (*i.e.*, income on accounts in the plan is not subject to current income tax).

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<sup>2</sup> This amount is indexed for inflation. In the case that contributions to an ABLE account exceed the annual limit, an excise tax in the amount of six percent of the excess contribution to such account is imposed on the designated beneficiary. Such tax does not apply in the event that the trustee of such account makes a corrective distribution of such excess amounts within the taxable year.

<sup>3</sup> Rules for qualified tuition programs are contained in section 529.

A qualified ABLE program may not permit any contributor to, or designated beneficiary under, the program to direct (directly or indirectly) the investment of any contributions (or earnings thereon), and must provide separate accounting for each designated beneficiary. A qualified ABLE program may not allow any interest in the program (or any portion thereof) to be used as security for a loan.

Distributions from an ABLE account are generally includible in the distributee's income to the extent consisting of earnings on the account.<sup>4</sup> Distributions from an ABLE account are excludable from income to the extent that the total distribution does not exceed the qualified disability expenses of the beneficiary during the taxable year. If a distribution from an ABLE account exceeds the qualified disability expenses of the beneficiary, a pro rata portion of the distribution is excludable from income. The portion of any distribution that is includible in income is subject to an additional 10-percent tax unless the distribution is made after the death of the beneficiary. Amounts in an ABLE account may be rolled over without income tax liability to another ABLE account for the same beneficiary<sup>5</sup> or another ABLE account for the designated beneficiary's brother, sister, stepbrother or stepsister who is also an eligible individual.

Under the Chairman's amendment, if, during any taxable year of an eligible individual, more than one ABLE account exists for such individual, each such ABLE account other than the earliest established ABLE account shall cease to be an ABLE account as of the first day of such taxable year. In this case, the designated beneficiary of the nonqualifying ABLE account shall be treated as having received a distribution of the fair market value of all the non-qualifying ABLE account's assets on the first day of such taxable year. The Chairman's amendment provides the Secretary of the Treasury ("Secretary") with the authority to prescribe regulations to enforce the one ABLE account limitation.

Under the Chairman's amendment, a contribution to an ABLE account is treated as a completed gift of a present interest to the beneficiary of the account. Such contributions qualify for the per-donee annual gift tax exclusion (\$14,000 for 2014) and, to the extent of such exclusion, are exempt from the generation skipping transfer ("GST") tax. A distribution from an ABLE account generally is not subject to gift tax or GST tax. Those taxes apply, however, to a change of designated beneficiary during any taxable year unless, as of the beginning of the year, the new beneficiary is both an eligible individual for the taxable year and a brother, sister, stepbrother or stepsister of the former beneficiary.

### **Eligible individuals**

As described above, under the Chairman's amendment a qualified ABLE program may provide for the establishment of ABLE accounts only if those accounts have as their designated beneficiary an eligible individual. For these purposes, an eligible individual is an individual

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<sup>4</sup> The rules of section 72 apply in determining the portion of a distribution that consists of earnings.

<sup>5</sup> For instance, if an eligible individual were to relocate to a different State.

either (1) for whom a disability certification has been filed with the Secretary for the taxable year, or (2) who has been determined, for purposes of Social Security Disability Insurance benefits or Supplemental Security Income (“SSI”) benefits<sup>6</sup> or to meet the requirements relating to disability or blindness described below. A disability certification means a certification to the satisfaction of the Secretary, made by the eligible individual or the parent or guardian of the eligible individual, that the individual meets the requirements relating to disability or blindness described below and that includes a copy of the individual’s diagnosis relating to the individual’s relevant impairment or impairments, signed by a licensed physician.<sup>7</sup>

For purposes of the requirements relating to disability or blindness, the definitions of blind and disabled under the SSI program apply (“SSI definitions”).<sup>8</sup> In general, an individual must be either blind or disabled, and the blindness or disability must have occurred before the date on which the individual attained age 26. An individual who has not reached age 19 during the taxable year must be blind or must be disabled under the SSI definition applicable to an individual under the age of 18.

As discussed further below, the Chairman’s amendment provides that, not later than six months after the date of enactment, the Secretary shall develop regulations or other guidance on certain aspects of the proposal. Among these aspects are regulations, to be developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability including those conditions which are deemed to have occurred prior to age 26, with limited evidence required by the individual as to this requirement.

### **Qualified disability expenses**

As described above, the earnings on distributions from an ABLE account are only untaxed to the extent total distributions do not exceed the qualified disability expenses of the designated beneficiary. For these purposes, qualified disability expenses are any expenses related to the eligible individual’s blindness or disability which are made for the benefit of the designated beneficiary. Such expenses include the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other

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<sup>6</sup> These are benefits, respectively, under Title II or Title XVI of the Social Security Act.

<sup>7</sup> No inference may be drawn from a disability certification for purposes of eligibility for Social Security, SSI or Medicaid benefits.

<sup>8</sup> Section 1614(a)(2) and (a)(3) of the Social Security Act. Under the applicable definition, an individual is generally disabled if unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months. An individual under the age of 18 is disabled if having a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.

### **Reporting requirements**

Under the Chairman's amendment, each officer or employee having control of the qualified ABLE program (or their designees) is required to make reports to the Secretary and to the designated beneficiaries of ABLE accounts. Such reports must provide information with respect to contributions, distributions, the return of excess contributions, and other matters as required by the Secretary. In addition, for research purposes, such officers and employees shall make available to the public and provide to the Secretary, reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions. However, an item of information may not be made publically available if it can be associated with, or otherwise identify, directly or indirectly, a particular individual.

The Chairman's amendment also requires that the trustee of an ABLE account submit a notice to the Secretary upon the establishment of the ABLE account. Such notice shall contain the name and State of residence of the beneficiary, and other such information as the Secretary may require. These reports and notices must be filed at such time and in such manner as required by the Secretary. A penalty of \$50 may apply with respect to any failure to provide a required report or notice.

Additionally, for purposes of the rules relating to eligibility for SSI (discussed below), officers and employees having control of a qualified ABLE program must submit statements on distributions from all ABLE accounts to the Commissioner of the Social Security Administration. The statements must be submitted electronically on at least a monthly basis in the manner specified by the Commissioner of the Social Security Administration.

### **Transfer to State**

Under the Chairman's amendment, in the event that the designated beneficiary dies, subject to any outstanding payments due for qualified disability expenses incurred by the designated beneficiary, all amounts remaining in the deceased beneficiary's ABLE account not in excess of the amount equal to the total medical assistance paid such individual under any State Medicaid plan established under title XIX of the Social Security Act shall be distributed to such State upon filing of a claim for payment by such State. Such repaid amounts shall be net of any premiums paid from the account or by or on behalf of the beneficiary to a Medicaid Buy-In program.

### **Regulations**

The Secretary is directed to issue regulations or other guidance as the Secretary determines is necessary or appropriate to carry out the purposes of the qualified ABLE program rules, including regulations (1) to enforce the one ABLE account per eligible individual limit; (2) providing for the information required to be presented to open an ABLE account; (3) to generally define disability expenses; (4) relating to disability certifications and determinations of disability, to be developed in consultation with the Commissioner of Social Security, as discussed above; (5) to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses;

(6) under the estate tax, gift tax, and generation-skipping transfer tax provisions of the Code; and (7) to allow for transfers from one ABLÉ account to another ABLÉ account in cases in which an eligible individual has a change in State of residence. The Secretary is directed to issue such regulations or other guidance no later than six months after the date of enactment.

### **Treatment of ABLÉ accounts under Federal programs**

Under the Chairman's amendment, any amounts in an ABLÉ account, and any distribution for qualified disability expenses, shall be disregarded for purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by any Federal means-tested program. However, in the case of the SSI program, a distribution for housing expenses is not disregarded, nor are amounts in an ABLÉ account in excess of \$100,000. In the case that an individual's ABLÉ account balance exceeds \$100,000, such individual's SSI benefits shall not be terminated, but instead shall be suspended until such time as the individual's resources fall below \$100,000. However, such suspension shall not apply for purposes of Medicaid eligibility.

### **Effective Date**

The amendments made by the Chairman's amendment relating to the establishment of ABLÉ programs shall take effect for taxable years beginning after December 31, 2014. The directive that the Secretary issue regulations within six months and the disregard of ABLÉ accounts and distributions from such accounts in the case of certain means-tested Federal programs are effective on the date of enactment.