Michael Frerichs
State Treasurer
Illinois

Seth Magaziner
State Treasurer
Rhode Island

Beth Pearce
State Treasurer
Vermont

September 21, 2015

CC:PA:LPD:PR (REG-102837-15),
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Treasury and IRS Rulemaking Staff:

As the administrators of our respective state's ABLE programs, we would first like to commend US Treasury on the transparent comment period they have organized in order to ensure the safe and efficient implementation of the Achieving a Better Life Experience (ABLE) Act. Many stakeholders have worked tirelessly for years in order to make tax-advantaged savings plans for people with disabilities a reality and we acknowledge that a new program with such a diversity of advocates may not be easy to regulate.

We appreciate the detailed suggested guidance for the administration of ABLE programs that Treasury published on June 22nd, and believe the outlined rules to be a good first effort to securing a smooth ABLE implementation period for the states. However, we believe that it is important for the long-term health of the program that Treasury understands that the current proposed federal rules and regulations regarding the administration of ABLE programs are not ideal for the efficient administration of the plan.

Specifically, our concerns center on three broad issues: (1) determination of eligibility of designated beneficiaries, (2) determination of qualified disability expenses, and (3) the limitation of one ABLE account per designated beneficiary. We expect there will be additional questions and concerns the states will have as ABLE programs are put into practice, but this letter will only focus on these three concerns in order to draw appropriate attention to their place in ABLE's implementation. In short, without different and clear guidance on these three issues it is our belief that ABLE programs will be prohibitively difficult to push forward on the state level.

1.) Designated Beneficiaries

Under 529a of the IRS Code, designated beneficiaries are eligible for an ABLE account if they provide evidence that they receive disability benefits under the Social Security Act for a disability that occurred before the age of 26 or by filing a disability certification approved by the Secretary of US Treasury. The preamble of Treasury's proposed guidelines suggests that this

disability certification process will be chiefly administered by the states. With a wide range of states and state agencies set to administer ABLE, it is our concern that the requirements to determine eligibility will vary considerably between programs and, as a result, Treasury may be forced to take punitive action in order to align the state programs.

More importantly, the suggested certification process places the onus of determining eligibility of designated beneficiaries on the states. In speaking with our fellow state administrators, the vast majority of state entities that will manage ABLE programs have little to no expertise in the health or medical field, and even those that do are concerned with the staff requirements that a detailed certification process will place on their offices. The certification process also raises potentially serious HIPPA-related protected health information and related privacy issues. Furthermore, the guidance from Treasury provides for an annual recertification process for ABLE account holders, forcing disabled designated beneficiaries to provide updated documentation each year. Considering the difficulty that states will have in initially certifying eligibility, it is our belief that this recertification process is unduly burdensome to both the states and the beneficiary.

While we acknowledge Treasury's responsibility to ensure ABLE accounts are only being used by legitimate designated beneficiaries, we feel that it is at least equally important that the eligibility burden be lessened on the states in order make effective and efficient management of the program possible.

Suggestion

In order to streamline the eligibility process, we recommend that Treasury allow for a self-certifying "check-the-box," disability certification and annual certification—where the designated beneficiary certifies (a) eligibility to receive ABLE benefits and (b) that, if requested, will provide documentation of a diagnosis before the age of 26 for a condition that is generally considered to be covered by the Act.

We echo the statements submitted by the College Savings Plans Network (CSPN) that there should be no reason to believe that a non-disabled individual will attempt to open an ABLE account, since the primary purpose of ABLE is to protect assets from disqualifying individuals from SSI and SSDI eligibility.

It is our firm belief that by streamlining this eligibility process ABLE programs will be able to provide savings services to disabled individuals more efficiently, and avoid adding undue burden to the states and Treasury. The stakeholders of this legislation have worked hard to ensure its implementation; requiring states to make significant judgements on disability eligibility will needlessly stall the ability of ABLE administrators to provide services to the disabled.

2.) Certification of Qualified Expenses

It is clear from the final legislation that Congress felt the need to define qualified expenses for ABLE accounts as broadly as possible. As defined in Section 102 of the Act, qualified expenses shall include, "expenses for education, housing, transportation, employment training and support,

assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, and expenses for oversight and monitoring, funeral and burial expenses." Furthermore, due to growing public concern that developmentally disabled individuals will be unable to effectively manage their own ABLE account, leeway has been suggested for parents or legal guardians to manage an individual beneficiary's ABLE account if needed.

In order to avoid mismanagement of the plan, Treasury has suggested that states review and qualify expenses dispersed from ABLE accounts to verify that all expenses are executed for the benefit of the beneficiary. While this suggestion is noble in its intentions, it is logistically impossible for the states to certify every ABLE expense under such a broad definition of "qualified expenses."

For instance, our offices are ill prepared at present to judge whether retrofitting a home is truly to the benefit of the beneficiary rather than just an improvement for the guardian who may own the home. Due to the lack of expertise and staff size, ensuring that all expenses are qualified will likely result in significant delay in disbursements which will have a serious negative impact on designated beneficiaries.

Suggestion

We are not suggesting that the definition of qualified expenses under ABLE be narrowed. The purpose of the legislation has always been to provide a malleable tool for disabled individuals to use in order to meet their varying needs. We instead suggest that Treasury allow the states to presume qualification of all expenditures made through ABLE accounts and then allow for Treasury to provide regular auditing services for the program. This suggestion would put ABLE in line with the skillsets of both the states—which have expertise in managing statewide investment programs—and Treasury—which already has a significant auditing body. By making this change, we believe that the day-to-day administration of ABLE will become streamlined and better benefit the communities it is intended to serve.

3.) One ABLE account per designated beneficiary

Currently, the Act limits the amount of ABLE accounts to one (1) ABLE account per designated beneficiary. However, recognizing that individuals, particularly military families, may move frequently from one state to another, the rules allow for rollovers or program-to-program transfers – requiring that the ABLE account from which amounts were rolled from be closed as of the 60th day from distribution of funds. While we fully agree and commend Treasury and IRS for recognizing our military families, it is unclear what the repercussions, if any, would be on the second or subsequent state(s) if a designated beneficiary represented that there were no other ABLE accounts and in fact there was one. Or, alternatively, the original ABLE account was not closed on the 60th day from distribution. Moreover, it is unclear as to what impact, if any, the funds to be transferred would have on the designated beneficiary during the potential 60-day transition period.

Suggestion

We would respectfully request that Treasury clarify that there is either no repercussions for the second or subsequent state(s) other than the tax implications to the designated beneficiary, or, if there is any repercussion, to simply identify what that may be and provide guidance as to how states may be able to confirm, prior to opening an ABLE account, whether or not there are any additional ABLE accounts owned by the designated beneficiary. Furthermore, with respect to the assets held during the transition period, we would agree with CSPN that these assets should not impact any benefits that the designated beneficiary receives.

We would like to thank Treasury again for their commitment to making an efficient rollout of ABLE programs possible and look forward to a continued dialogue in order to ensure all issues regarding the administration of the program are addressed. We would also like to offer our offices to assist Treasury in any capacity they may need in coming to a final decision on rules and regulations.

Sincerely,

Michael Frerichs, State Treasurer
Illinois

Seth Magaziner, State Treasurer
Rhode Island

Beth Pearce, State Treasurer
Vermont