

ABLE ACT OF 2014

NOVEMBER 12, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,  
 submitted the following

R E P O R T

[To accompany H.R. 647]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 647) to amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. Summary and Background .....	7
A. Purpose and Summary .....	7
B. Background and Need for Legislation .....	7
C. Legislative History .....	7
II. Explanation of the Bill .....	8
A. Qualified ABLE Programs (secs. 3 and 4 of the bill and new sec. 529A of the Code) .....	8
III. Votes of the Committee .....	16
IV. Budget Effects of the Bill .....	17
A. Committee Estimate of Budgetary Effects .....	17
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority .....	19
C. Cost Estimate Prepared by the Congressional Budget Office .....	19
D. Macroeconomic Impact Analysis .....	24
V. Other Matters To Be Discussed Under the Rules of the House .....	24
A. Committee Oversight Findings and Recommendations .....	24
B. Statement of General Performance Goals and Objectives .....	25
C. Information Relating to Unfunded Mandates .....	25
D. Applicability of House Rule XXI 5(b) .....	25
E. Tax Complexity Analysis .....	25

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff	
Benefits .....	25
G. Duplication of Federal Programs .....	26
H. Disclosure of Directed Rule Makings .....	26
VI. Changes in Existing Law Made by the Bill, as Reported .....	26

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Achieving a Better Life Experience Act of 2014” or the “ABLE Act of 2014”.

**SEC. 2. PURPOSES.**

The purposes of this Act are as follows:

(1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

(2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the supplemental security income program under title XVI of such Act, the beneficiary’s employment, and other sources.

**SEC. 3. QUALIFIED ABLE PROGRAMS.**

(a) IN GENERAL.—Subchapter F of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 529 the following new section:

**“SEC. 529A. QUALIFIED ABLE PROGRAMS.**

“(a) GENERAL RULE.—A qualified ABLE program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

“(b) QUALIFIED ABLE PROGRAM.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified ABLE program’ means a program established and maintained by a State, or agency or instrumentality thereof—

“(A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,

“(B) which limits a designated beneficiary to 1 ABLE account for purposes of this section,

“(C) which allows for the establishment of an ABLE account only for a beneficiary who is a resident of such State or a resident of a contracting State, and

“(D) which meets the other requirements of this section.

“(2) CASH CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted—

“(A) unless it is in cash, or

“(B) except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.

For purposes of this paragraph, rules similar to the rules of section 408(d)(4) (determined without regard to subparagraph (B) thereof) shall apply.

“(3) SEPARATE ACCOUNTING.—A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.

“(4) NO INVESTMENT DIRECTION.—A program shall not be treated as a qualified ABLE program unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon).

“(5) NO PLEDGING OF INTEREST AS SECURITY.—A program shall not be treated as a qualified ABLE program if it allows any interest in the program or any portion thereof to be used as security for a loan.

“(6) PROHIBITION ON EXCESS CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the

limit established by the State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions under any prior qualified ABLE program of any State or agency or instrumentality thereof.

“(c) TAX TREATMENT.—

“(1) DISTRIBUTIONS.—

“(A) IN GENERAL.—Any distribution under a qualified ABLE program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

“(B) DISTRIBUTIONS FOR QUALIFIED DISABILITY EXPENSES.—For purposes of this paragraph, if distributions from a qualified ABLE program—

“(i) do not exceed the qualified disability expenses of the designated beneficiary, no amount shall be includible in gross income, and

“(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

“(C) CHANGE IN BENEFICIARIES OR PROGRAMS.—

“(i) ROLLOVERS FROM ABLE ACCOUNTS.—Subparagraph (A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLE account for the benefit of the same beneficiary or an eligible individual who is a family member of the beneficiary.

“(ii) CHANGE IN DESIGNATED BENEFICIARIES.—Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

“(iii) LIMITATION ON CERTAIN ROLLOVERS.—Clause (i) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified ABLE program for the benefit of the designated beneficiary.

“(D) OPERATING RULES.—For purposes of applying section 72—

“(i) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

“(ii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

“(2) GIFT TAX RULES.—For purposes of chapters 12 and 13—

“(A) CONTRIBUTIONS.—Any contribution to a qualified ABLE program on behalf of any designated beneficiary—

“(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

“(ii) shall not be treated as a qualified transfer under section 2503(e).

“(B) TREATMENT OF DISTRIBUTIONS.—Except as provided in subparagraph (C), in no event shall a distribution from a qualified ABLE program be treated as a taxable gift.

“(C) TREATMENT OF DESIGNATION OF NEW BENEFICIARY.—The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a contribution under paragraph (1)(C) to the ABLE account of a new beneficiary) during any taxable year unless, as of the beginning of such taxable year, the new beneficiary is both an eligible individual for such taxable year and a member of the family of the former beneficiary.

“(3) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR DISABILITY EXPENSES.—

“(A) IN GENERAL.—The tax imposed by this chapter for any taxable year on any taxpayer who receives a distribution from a qualified ABLE program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

“(B) EXCEPTION.—Subparagraph (A) shall not apply if the payment or distribution is made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary.

“(C) CONTRIBUTIONS RETURNED BEFORE CERTAIN DATE.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

“(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such designated beneficiary’s return for such taxable year, and

“(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

“(4) LOSS OF ABLE ACCOUNT TREATMENT.—If, during any taxable year of an eligible individual for whose benefit any ABLE account is established, more than 1 ABLE account for the benefit of the eligible individual exists at the same time, each such ABLE account other than the earliest established ABLE account shall not be treated as an ABLE account as of the first day of such taxable year.

“(d) REPORTS.—

“(1) IN GENERAL.—Each officer or employee having control of the qualified ABLE program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

“(2) CERTAIN AGGREGATED INFORMATION.—For research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual.

“(3) NOTICE OF ESTABLISHMENT OF ABLE ACCOUNT.—The trustee of an ABLE account shall 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 such other information as the Secretary may require.

“(4) ELECTRONIC DISTRIBUTION STATEMENTS.—For purposes of section 4 of the Achieving a Better Life Experience Act of 2014, States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.

“(5) REQUIREMENTS.—The reports and notices required by paragraphs (1), (2), and (3) shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) ELIGIBLE INDIVIDUAL.—

“(A) IN GENERAL.—An individual is an eligible individual for a taxable year if during such taxable year—

“(i) a disability certification with respect to such individual is filed with the Secretary for such taxable year, or

“(ii) the individual has been determined for purposes of section 223 or 1614 of the Social Security Act (42 U.S.C. 421, 1382c) to meet the criteria of subparagraph (B) for such taxable year.

“(B) CRITERIA.—An individual meets the criteria of this subparagraph for a taxable year if—

“(i) in the case of an individual who has not attained age 19 as of the close of the taxable year, the individual is either blind (within the meaning of section 1614(a)(2) of the Social Security Act (42 U.S.C. 1382c(a)(2))) or disabled within the meaning of section 1614(a)(3)(C) of such Act (42 U.S.C. 1382c(a)(3)(C)), or

“(ii) the individual—

“(I) is either blind (within the meaning of section 1614(a)(2) of such Act (42 U.S.C. 1382c(a)(2))) or disabled within the meaning of section 1614(a)(3)(A) of such Act, and

“(II) such blindness or disability occurred before the date on which the individual attained age 26.

“(2) DISABILITY CERTIFICATION.—

“(A) IN GENERAL.—The term ‘disability certification’ means, with respect to an eligible individual, a certification to the satisfaction of the Secretary by the eligible individual or the parent or guardian of the eligible individual that—

“(i) the individual meets the criteria described in paragraph (1)(B), and

“(ii) includes a copy of the individual’s diagnosis relating to the individual’s relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

“(B) RESTRICTION ON USE OF CERTIFICATION.—No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

“(3) DESIGNATED BENEFICIARY.—The term ‘designated beneficiary’ in connection with an ABLE account established under a qualified ABLE program means—

“(A) the eligible individual designated at the commencement of participation in the qualified ABLE program as the beneficiary of amounts paid (or to be paid) to the program, and

“(B) in the case of a change in beneficiaries described in subparagraph (C)(ii) of subsection (c)(1), the individual who is the new beneficiary.

“(4) MEMBER OF FAMILY.—The term ‘member of the family’ means, with respect to any designated beneficiary, an individual who bears a relationship to such beneficiary which is described in subparagraph section 152(d)(2)(B). For purposes of the preceding sentence, a rule similar to the rule of section 152(f)(1)(B) shall apply.

“(5) QUALIFIED DISABILITY EXPENSES.—The term ‘qualified disability expenses’ means any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including 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 expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.

“(6) ABLE ACCOUNT.—The term ‘ABLE account’ means an account established and maintained under a qualified ABLE program.

“(7) CONTRACTING STATE.—The term ‘contracting State’ means a State without a qualified ABLE program which has entered into a contract with a State with a qualified ABLE program to provide residents of the contracting State access to a qualified ABLE program.

“(f) TRANSFER TO STATE.—Subject to any outstanding payments due for qualified disability expenses, in the case that the designated beneficiary dies, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program, 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. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations—

“(1) to enforce the 1 ABLE account per eligible individual limit,

“(2) providing for the information required to be presented to open an ABLE account,

“(3) to generally define qualified disability expenses,

“(4) developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability, including those conditions deemed to meet the requirements of subsection (e)(1)(B)(ii),

“(5) to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses,

“(6) under chapters 11, 12, and 13 of this title, and

“(7) to allow for transfers from one ABLE account to another ABLE account in cases in which there is a change in the State of residence of an eligible individual.”

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 of the Internal Revenue Code of 1986 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking “or” at the end of paragraph (4), by inserting “or” at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

“(6) an ABLE account (within the meaning of section 529A).”

(2) EXCESS CONTRIBUTION.—Section 4973 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(h) **EXCESS CONTRIBUTIONS TO ABLE ACCOUNT.**—For purposes of this section—

“(1) **IN GENERAL.**—In the case of an ABLE account (within the meaning of section 529A), the term ‘excess contributions’ means the amount by which the amount contributed for the taxable year to such account (other than contributions under section 529A(c)(1)(C)) exceeds the contribution limit under section 529A(b)(2)(B).

“(2) **SPECIAL RULE.**—For purposes of this subsection, any contribution which is distributed out of the ABLE account in a distribution to which the last sentence of section 529A(b)(2) applies shall be treated as an amount not contributed.”

(c) **PENALTY FOR FAILURE TO FILE REPORTS.**—Section 6693(a)(2) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following:

“(E) section 529A(d) (relating to qualified ABLE programs), and”.

(d) **CONFORMING AMENDMENTS.**—

(1) Section 26(b)(2) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of subparagraph (W), by striking the period at the end of subparagraph (X) and inserting “, and”, and by inserting after subparagraph (X) the following:

“(Y) section 529A(c)(3)(A) (relating to additional tax on ABLE account distributions not used for qualified disability expenses).”

(2) The heading for part VIII of subchapter F of chapter 1 of the Internal Revenue Code of 1986 is amended by striking “**HIGHER EDUCATION**” and inserting “**CERTAIN**”.

(3) The item in the table of parts for subchapter F of chapter 1 of the Internal Revenue Code of 1986 relating to part VIII is amended to read as follows:

“PART VIII. CERTAIN SAVINGS ENTITIES.”

(4) The table of sections for part VIII of subchapter F of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 529 the following new item:

“Sec. 529A. Qualified ABLE programs.”

(e) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

(2) **REGULATIONS.**—The Secretary of the Treasury (or the Secretary’s designee) shall promulgate the regulations or other guidance required under section 529A(g) of the Internal Revenue Code of 1986, as added by subsection (a), not later than 6 months after the date of the enactment of this Act.

#### **SEC. 4. TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS.**

(a) **ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN OTHER MEANS-TESTED FEDERAL PROGRAMS.**—Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of such individual, and any distribution for qualified disability expenses (as defined in subsection (e)(5) of such section) shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act, a distribution for housing expenses (within the meaning of such subsection) shall not be so disregarded, and in the case of such program, only the 1st \$100,000 of the amount (including such earnings) in such ABLE account shall be so disregarded.

(b) **SUSPENSION OF SSI BENEFITS DURING PERIODS OF EXCESSIVE ACCOUNT FUNDS.**—

(1) **IN GENERAL.**—The benefits of an individual under the supplemental security income program under title XVI of the Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the individual attributable to an amount in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of the individual not disregarded under subsection (a) of this section.

(2) **NO IMPACT ON MEDICAID ELIGIBILITY.**—An individual who would be receiving payment of such supplemental security income benefits but for the application of the previous sentence shall be treated for purposes of title XIX of the

Social Security Act as if the individual continued to be receiving payment of such benefits.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

H.R. 647, as reported by the Committee on Ways and Means, provides States with the option to establish an ABLE program. Such a program would allow individuals with disabilities to establish an ABLE account, modeled after Code section 529 savings accounts, permitting them to save to offset the cost of certain qualified expenses for services and programs necessary to manage their disability while maintaining access to Medicaid and Supplemental Security Income (“SSI”).

### B. BACKGROUND AND NEED FOR LEGISLATION

Individuals with disabilities can face significant barriers to finding and holding employment and living independently because their access to certain safety-net programs can be lost once they establish a minimum level of savings and income, thus creating a disincentive to find and obtain employment. The ABLE Act would facilitate the ability of individuals with disabilities to work and live independently without losing access to Medicaid and SSI.

### C. LEGISLATIVE HISTORY

#### *Background*

H.R. 647 was introduced on February 13, 2013, and was referred to the Committee on Ways and Means and in addition to the Committee on Energy and Commerce.

#### *Committee action*

The Committee on Ways and Means marked up H.R. 647, the “Achieving A Better Life Experience Act of 2013 (‘ABLE Act of 2013’),” on July 31, 2014, and ordered the bill, as amended, favorably reported (with a quorum being present).

#### *Committee hearings*

On June 19, 2013, the Social Security Subcommittee held a hearing on encouraging work through the Social Security Disability Insurance (“SSDI”) program. Testimony was received from (i) Mark G. Duggan, Ph.D., Professor, The Wharton School, University of Pennsylvania; (ii) Mary C. Daly, Ph.D., Group Vice President and Associate Director of Research, Federal Reserve Bank of San Francisco; (iii) Kevin Ufier, National Director Managed Disability, GENEX Services; (iv) Lisa D. Ekman, Director of Federal Policy, Health & Disability Advocates, on behalf of the Consortium for Citizens with Disabilities Social Security Task Force; (v) James Smith, Budget and Policy Manager, Division of Vocational Rehabilitation, Vermont Agency of Human Services; and (vi) David Weaver, Ph.D., Associate Commissioner, Office of Program Development and Research, accompanied by Robert Williams, Associate Commissioner, Office of Employment Support Programs, Social Security Administration (“SSA”). Witnesses discussed the impact of

the SSDI program on the economy, efforts by the SSA to return individuals to work, international efforts to return individuals to work, and other options to encourage work. They highlighted the role of employment supports in helping individuals with disabilities remain in and return to the workforce. Witnesses argued for the need to reexamine the SSA's return to work programs to enable more individuals to leave the rolls and seek gainful employment. Reforms discussed included those to offer vocational and health benefits in lieu of cash benefits; create incentives for firms to keep workers employed; alter the treatment of earnings to an approach similar to the SSI program; simplify earnings rules for beneficiaries; and allow States more authority to target certain revenue streams to reduce SSDI applications.

## II. EXPLANATION OF THE BILL

### A. QUALIFIED ABLE PROGRAMS (SECS. 3 AND 4 OF THE BILL AND NEW SEC. 529A OF THE CODE)

#### PRESENT LAW

Although present law does not contain tax-advantaged savings vehicles specifically targeted to persons with disabilities, present law does contain other tax-advantaged savings vehicles, as well as rules for certain trusts intended for those with disabilities. Below is a description of one such savings vehicle and the rules applicable to special needs trusts.

#### *Section 529 qualified tuition programs*

A qualified tuition program is a program established and maintained by a State or agency or instrumentality thereof, or by one or more eligible educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary (a "prepaid tuition program"). Section 529<sup>1</sup> provides specified income tax and transfer tax rules for the treatment of accounts and contracts established under qualified tuition programs.<sup>2</sup> In the case of a program established and maintained by a State or agency or instrumentality thereof, a qualified tuition program also includes a program under which a person may make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account, provided it satisfies certain specified requirements (a "savings account program"). Under both types of qualified tuition programs, a contributor establishes an account for the benefit of a particular designated beneficiary to provide for that beneficiary's higher education expenses.

For this purpose, qualified higher education expenses means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, and expenses for special needs services in the

<sup>1</sup>Except where otherwise specified, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

<sup>2</sup>For purposes of this description, the term "account" is used interchangeably to refer to a prepaid tuition benefit contract or a tuition savings account established pursuant to a qualified tuition program.



case of a special needs beneficiary that are incurred in connection with such enrollment or attendance. Qualified higher education expenses generally also include room and board for students who are enrolled at least half-time.

Contributions to a qualified tuition program must be made in cash. Section 529 does not impose a specific dollar limit on the amount of contributions, account balances, or prepaid tuition benefits relating to a qualified tuition account; however, the program is required to have adequate safeguards to prevent contributions in excess of amounts necessary to provide for the beneficiary's qualified higher education expenses. Contributions generally are treated as a completed gift eligible for the gift tax annual exclusion. Contributions are not tax deductible for Federal income tax purposes, although they may be deductible for State income tax purposes. 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).

A qualified tuition 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 tuition program may not allow any interest in an account or contract (or any portion thereof) to be used as security for a loan.

Distributions from a qualified tuition program are excludable from the distributee's gross income to the extent that the total distribution does not exceed the qualified higher education expenses incurred for the beneficiary. If a distribution from a qualified tuition program exceeds the qualified higher education expenses incurred for the beneficiary, the portion of the excess that is treated as earnings generally is subject to income tax and an additional 10-percent tax. Amounts in a qualified tuition program may be rolled over without income tax liability to another qualified tuition program for the same beneficiary or for a member of the family of that beneficiary.

In general, prepaid tuition contracts and tuition savings accounts established under a qualified tuition program involve prepayments or contributions made by one or more individuals for the benefit of a designated beneficiary. Decisions with respect to the contract or account are made by an individual who is not the designated beneficiary. Qualified tuition accounts or contracts generally require the designation of a person (generally referred to as an "account owner")<sup>3</sup> whom the program administrator (oftentimes a third party administrator retained by the State or by the educational institution that established the program) may look to for decisions, recordkeeping, and reporting with respect to the account established for a designated beneficiary. The person or persons who make the contributions to the account need not be the same person who is regarded as the account owner for purposes of administering the account. Under many qualified tuition programs, the account owner generally has control over the account or contract, including the ability to change designated beneficiaries and to withdraw funds at any time and for any purpose. Thus, in practice, qualified

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<sup>3</sup>Section 529 refers to contributors and designated beneficiaries, but does not define or otherwise refer to the term "account owner," which is a commonly used term among qualified tuition programs.

tuition accounts or contracts generally involve a contributor, a designated beneficiary, an account owner (who oftentimes is not the contributor or the designated beneficiary), and an administrator of the account or contract.

*Treatment of savings accounts under Federal means-tested programs*

Means-tested programs typically include income and resources limits designed to properly target benefits to individuals with limited income and other financial resources on which to depend for support. Income is the money an individual receives in a month from wages and other sources while resources are savings and other items of significant value that individuals may own, such as a home or vehicle. Income and resources limits vary from program to program and sometimes from State to State for State-administered programs such as Medicaid. The SSI program is federally-administered and has a \$2,000 resource limit for individuals. In most States, SSI receipt confers Medicaid eligibility. When SSI recipients have income and resources over the limit, their SSI benefits are suspended but they remain eligible for Medicaid.

*Use of a trust to provide for the needs of a disabled person*

*In general*

A specially designed trust, sometimes referred to as special needs trusts or supplemental needs trust, may be used to provide financial assistance to a disabled person (the trust beneficiary) without disqualifying the beneficiary for certain government benefits, such as Medicaid or SSI. The trust may be established using the disabled person's own funds (a self-settled trust) or the funds of a third party who does not have a legal obligation to support the trust beneficiary (a third-party trust).

The assets of a properly drafted third-party trust generally are not counted when determining the beneficiary's eligibility for Medicaid. Assets held in a self-settled trust, however, generally are counted when determining Medicaid eligibility, unless for example the trust is described in section 1917(d)(4)(A) of the Social Security Act. That section describes a trust: (1) containing the assets of an individual who is disabled (within the meaning of section 1614(a)(3) of the Social Security Act); (2) which is established for the benefit of the individual by a parent, grandparent, legal guardian, or a court; and (3) pursuant to the terms of which the State will be reimbursed upon the individual's death for the total amount of medical assistance paid on behalf of the individual under the State's Medicaid plan, up to the amount of the assets remaining in the trust upon the death of the individual. For SSI, trusts that are irrevocable, meaning the value cannot be turned into a liquid resource, are not counted toward the asset test, but any amounts that are removed are counted as income in the month received, which may reduce the individual's monthly benefit amount.

*Income tax provisions related to qualified disability trusts*

Under present law, a qualified disability trust is allowed a deduction for a personal exemption equal to that of an unmarried in-

dividual (for 2014, \$3,950 subject to phaseout if adjusted gross income exceeds \$254,200).<sup>4</sup>

In addition, amounts distributed to a child who is a beneficiary of a qualified disability trust are treated as earned income for purposes of the “kiddie” tax and thus are not taxed at parents’ tax rates.<sup>5</sup>

For these purposes a qualified disability trust means a disability trust described in section 1917(c)(2)(B)(iv) of the Social Security Act<sup>6</sup> all the beneficiaries of which are determined to be disabled (within the meaning of section 1614(a)(3) of that Act).

#### REASONS FOR CHANGE

The Committee recognizes the special financial burdens borne by families raising children with disabilities and the fact that increased financial needs generally continue throughout the child’s lifetime. Present law provides for various types of tax-advantaged savings arrangements; however, none of these arrangements adequately serves the goal of promoting saving for these financial needs. The creation of qualified ABLE programs with tax-favored treatment of ABLE accounts for eligible beneficiaries will assist families and disabled individuals in meeting their financial needs.

#### EXPLANATION OF PROVISION

##### *In general*

The provision provides rules for a new type of tax-advantaged savings program, a qualified ABLE program. 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 designated beneficiaries who are either residents of the State maintaining such ABLE program (a “program State”) or residents of a State that has not established an ABLE program (a “contracting State”) which has entered into a contract with a program State to provide the contracting State’s residents with access to the program 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

<sup>4</sup>Sec. 642(b)(2)(C). The exemption amount of a trust generally is either \$100 or \$300 (if required to distribute all its income currently).

<sup>5</sup>Sec. 1(g)(4)(C).

<sup>6</sup>Section 1917(c)(2)(B)(iv) of the Social Security Act describes trusts, including disability trusts described in section 1917(d)(4) of that Act, established solely for the benefit of an individual under 65 years of age who is disabled (within the meaning of section 1614(a)(3) of that Act).

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 provision, 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 annual gift tax exclusion amount (\$14,000 for 2014).<sup>7</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 of the State maintaining the qualified ABLE program, taking into account contributions under any prior 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).

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), which shall be implemented in the same manner as section 529 qualified tuition programs. A qualified ABLE program must also provide separate accounting for each designated beneficiary and may not allow any interest in the program (or any portion thereof) to be used as security for a loan.

Amounts distributed from a qualified ABLE account are includible in the gross income of the distributee as provided in section 72 (relating to annuities) to the extent not otherwise excluded from gross income. If the distributions from a qualified ABLE account do not exceed the qualified distribution expenses of the designated beneficiary, no amount is includible in gross income. If the distributions exceed the qualified distribution expenses, the amount otherwise includible in gross income is reduced by an amount which bears the same ratio to the distributed amount as the qualified disability expenses bear to that amount. The portion of any distribution that is includible in gross income is subject to an additional 10-percent tax unless made after the death of the beneficiary.

For example, assume a qualified ABLE account with a balance of \$100,000 (of which \$50,000 consists of contributions) distributes \$10,000 to a beneficiary who has incurred \$6,000 of qualified disability expenses. Under section 72, one-half of the distribution (\$5,000) is includible in gross income. Under the bill, the \$5,000 amount otherwise includible in gross income is reduced by \$3,000 (\$6,000/\$10,000 multiplied by \$5,000) to \$2,000. An additional tax of \$200 (ten percent of \$2,000) is imposed on the distribution.

Amounts in an ABLE account may be rolled over without income tax liability to another ABLE account for the same beneficiary<sup>8</sup> or another ABLE account for the designated beneficiary's brother, sister, stepbrother or stepsister who is also an eligible individual.

<sup>7</sup>Sec. 2503(b). 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>8</sup>Such circumstances could arise, for instance, if an eligible individual were to relocate to a different State.

Under the provision, 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 provision provides the Secretary of the Treasury ("Secretary") with the authority to prescribe regulations to enforce the one ABLE account limitation. Within those regulations, Treasury should establish a method for allowing individuals to verify the existence of accounts in order to prevent individuals from unknowingly having nonqualifying ABLE accounts.

Under the provision, a contribution to an ABLE account is treated as a completed gift of a present interest to the beneficiary of the account. Thus, the contribution qualifies for the per-donee annual gift tax exclusion (\$14,000 for 2014) and, to the extent of the exclusion, is exempt from the generation skipping transfer ("GST") tax. A distribution from an ABLE account generally is not subject to gift tax or GST tax. These taxes may 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, 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 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 SSI benefits<sup>9</sup> to meet the requirements relating to disability or blindness described below. For the purposes of determining eligibility for SSI, the eligible individual is the owner of the account. All rules for the counting and deeming of income and resources should apply. 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>10</sup>

Treasury is responsible for maintaining the list of eligible individuals, including those who have a Social Security disability determination, so that States and the IRS need to contact only one entity to confirm an individual's eligibility status. The SSA is responsible for providing confirmation of disability determination in the manner specified by Treasury. This process does not violate the Health Insurance Portability and Accountability Act of 1996

<sup>9</sup>These are benefits, respectively, under Title II or Title XVI of the Social Security Act.

<sup>10</sup>No inference may be drawn from a disability certification for purposes of eligibility for Social Security, SSI or Medicaid benefits.

(“HIPAA”) because no diagnosis information should be exchanged, only binary information on the result of a disability determination or certification for a given tax year.

For purposes of the requirements relating to disability or blindness, the definitions of blind and disabled under the SSI program apply (“SSI definitions”).<sup>11</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. This does not require SSA to make additional disability determinations beyond what is needed to administer its programs, but means that if a positive disability determination was made prior to the individual’s turning 26, it can be used. An individual who has not reached age 19 during the taxable year may be blind or disabled under the SSI definition applicable to an individual under the age of 18. This is meant to allow for additional processing time on a pending age-18 redetermination.

As discussed further below, the provision 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 provision. Among these aspects are regulations or guidance, 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. It is intended that individuals with those conditions shall be required to present only limited (or no) evidence demonstrating that the condition occurred prior to age 26. This list of conditions should operate in a manner similar to the SSA’s Compassionate Allowances, which targets the most obviously disabled individuals for allowances based on objective medical information that can be obtained quickly. Compassionate Allowances are selected using information received at public outreach hearings, comments received from the Social Security and Disability Determination Services communities, the counsel of medical and scientific experts, and research conducted by the National Institutes of Health.

#### *Qualified disability expenses*

As described above, the earnings on distributions from an ABLE account are excluded from income only 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 expenses, which are approved by the

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<sup>11</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.

Secretary under regulations and consistent with the purposes of this section.

*Reporting requirements*

Under the provision, each officer or employee having control of the qualified ABLE program (or their designee) 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, the Secretary, with assistance from SSA, shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions in order to monitor take-up and identify gaps. However, an item of information may not be made publicly available if it can be associated with, or otherwise identify, directly or indirectly, a particular individual. Given SSA's research capabilities, SSA will be an important partner in developing, creating, and publishing the required research tables. In this case, these tables will not violate HIPAA because data is de-identified and presented in the aggregate.

The provision also requires that the trustee of an ABLE account submit a notice to the Secretary upon the establishment of the ABLE account. The 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), States having control of a qualified ABLE program must submit statements on distributions and account balances of all ABLE accounts to the Commissioner of Social Security. States should work with the Commissioner during implementation to identify data elements to include in their electronic statements that would allow SSA to electronically make accurate and timely SSI determinations on a monthly basis. This would include but not be limited to the name, date of birth, and SSN of the beneficiary, balance information as of the first moment of the month (i.e., 12:00 a.m. on the first of the month); and, regarding distributions, the recipient of the distribution, whether it is a distribution for a qualified or non-qualified expense, and if for a qualified expense, the type of qualified expense (e.g., housing). To comply with the requirements for notice and appeal in the Computer Matching and Privacy Protection Act, SSA should work with States to address issues so that information can be processed as efficiently as possible. In doing so, options such as providing immediate notice when an individual indicates a withdrawal is for a housing expense or when the account balance reaches \$100,000 should be considered.

*Transfer to State*

Under the provision, 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 for such individual after establishment of the account 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 ABLE account to another ABLE 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 ABLE accounts under Federal programs*

Under the provision, any amount in an ABLE 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 ABLE account in excess of \$100,000. In the case that an individual's ABLE account balance exceeds \$100,000, the 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, the suspension shall not apply for purposes of Medicaid eligibility.

EFFECTIVE DATE

The provision relating to the establishment of ABLE programs is effective for taxable years beginning after December 31, 2014. The directive that the Secretary issue regulations within six months and the disregard of ABLE accounts and distributions from such accounts in the case of certain means-tested Federal programs are effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 647 the "Achieving A Better Life Experience Act of 2014 ('ABLE Act of 2014')," on July 31, 2014:



MOTION TO REPORT RECOMMENDATIONS

The bill, H.R. 647, was ordered favorably reported as amended by voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 647, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2014–2024:

Item	Fiscal years—(millions of dollars)													
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–19	2014–24	
Revenues .....														
Outlays <sup>1</sup> .....	-1	-4	-10	-24	-49	-82	-117	-158	-203	-249	-280	-89	-898	
Net Total .....	-1	-12	-31	-47	-78	-109	-150	-202	-243	-280	-280	-170	-1,153	
Net Total .....	-2	-16	-41	-71	-127	-191	-267	-360	-446	-529	-529	-259	-2,051	

Note: Details may not add to total due to rounding.  
<sup>1</sup> Estimated outlay effects provided by the Congressional Budget Office.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX  
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 27, 2014.*

Hon. DAVE CAMP,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 647, the Achieving a Better Life Experience Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Rafferty.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 647—Achieving a Better Life Experience Act of 2014*

Summary: H.R. 647 would allow for the creation of a new type of tax-favored account—an ABLE account—for the benefit of individuals with disabilities. Assets in an ABLE account and distributions from the account for qualifying expenses would be disregarded when determining the beneficiary’s eligibility for most federal means-tested benefits.

CBO estimates that enacting H.R. 647 would increase direct spending by \$1.2 billion over the 2015–2024 period. Additionally, the staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 647 would decrease revenues by \$0.9 billion over the 2015–2024 period. In total, CBO and JCT estimate that enacting the bill would increase deficits by \$2.1 billion over the next 10 years. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO has determined that the nontax provisions of the bill contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Similarly, JCT has determined that the tax provisions of the bill contain no intergovernmental or private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 647 is shown in the following table. The costs of this legislation fall within budget functions 550 (health), 570 (Medicare), and 600 (income security).

TABLE 1. SUMMARY OF ESTIMATED BUDGETARY EFFECTS OF H.R. 647

	By fiscal year, in millions of dollars—											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015– 2019	2015– 2024
CHANGES IN DIRECT SPENDING												
Estimated Budget Au- thority .....	1	12	31	47	78	109	150	202	243	280	170	1,153
Estimated Outlays .....	1	12	31	47	78	109	150	202	243	280	170	1,153
CHANGES IN REVENUES												
Estimated Revenues ....	-1	-4	-10	-24	-49	-82	-117	-158	-203	-249	-89	-898
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Impact on Deficit .....	2	16	41	71	127	191	267	360	446	529	259	2,051

Sources: CBO and the staff of the Joint Committee on Taxation.  
Note: Components may not sum to totals because of rounding.

**Basis of estimate:** For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2015. CBO also assumes that, under the bill, states would establish qualifying ABLE programs during the 2015–2017 period.

The ABLE Act would amend section 529 of the Internal Revenue Code to permit individuals to establish “ABLE accounts” for disabled beneficiaries that resemble the qualified tuition programs—often called “529 accounts”—that have been established under that section of the tax code since 1996. Earnings on an ABLE account would not count as taxable income of the contributor to the account or the eligible beneficiary; because earnings on assets in other accounts would generally be taxed under current law, the legislation would reduce tax revenues. Moreover, assets in an ABLE account and distributions from the account for qualified disability expenses would be disregarded when determining the qualified beneficiary’s eligibility for most federal means-tested benefits. Thus, the legislation would increase the number of beneficiaries of federal means-tested programs and federal spending from such programs.

**Key characteristics of ABLE accounts:** ABLE accounts would have the following features—

- Any contributor—such as a family member, a friend, or the disabled person—could establish an ABLE account for an eligible beneficiary. An eligible beneficiary could have only one ABLE account, which must be established in the state in which he resides (or in a state that provides ABLE account services for his home state).
- An ABLE account may not receive annual contributions exceeding the annual gift-tax exemption. Additionally, a state must provide adequate safeguards to ensure aggregate contributions to an ABLE account do not exceed the state-based limits for 529 accounts.
- An eligible beneficiary would be a child who meets the Supplemental Security Income (SSI) program’s disability standard for children or an adult who meets the SSI program’s disability standard for adults, provided that the adult’s disability occurred before he reached age 26.
- Qualified disability expenses would be any expenses made for the benefit of the disabled beneficiary related to education; housing; transportation; employment training and support; assistive technology and personal support services; health, prevention, and wellness; financial management and administra-

tive services; legal fees; expenses for oversight and monitoring; funeral and burial expenses; and any other expenses approved by the Secretary of the Treasury under regulations.

- Earnings on an ABLÉ account and distributions from the account for qualified disability expenses would not count as taxable income of the contributor or the eligible beneficiary. Contributions to an ABLÉ account would have to be made in cash from the contributor’s after-tax income.
- Assets in an ABLÉ account and distributions from the account for qualified disability expenses would be disregarded when determining the qualified beneficiary’s eligibility for most federal means-tested benefits. For SSI, only the first \$100,000 in each ABLÉ account would be disregarded.
- Assets in an ABLÉ account could be rolled over without penalty into another ABLÉ account for either the qualified beneficiary or any of the beneficiary’s qualifying family members. Any assets remaining in an ABLÉ account upon the death of the qualified beneficiary could be used to reimburse a state Medicaid agency for payments it made on behalf of the beneficiary.

Effects on direct spending: CBO estimates that enacting H.R. 647 would increase direct spending by \$170 million over the 2015–2019 period and by about \$1,150 million over the 2015–2024 period (see Table 2). The SSI and Medicaid programs would each account for roughly half of the increase, with the Medicare program experiencing a very small increase in outlays.

TABLE 2—ESTIMATED EFFECTS OF H.R. 647 ON DIRECT SPENDING, BY PROGRAM

	By fiscal year, outlays in millions of dollars—											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015–2019	2015–2024
CHANGES IN DIRECT SPENDING												
Supplemental Security Income .....	*	5	15	25	45	60	80	110	125	135	90	600
Medicaid .....	1	7	16	22	33	49	69	91	117	144	79	549
Medicare .....	0	0	*	*	*	*	1	1	1	1	1	4
Total Changes .....	1	12	31	47	78	109	150	202	243	280	170	1,153

Source: Congressional Budget Office.  
 Notes: Components may not sum to totals because of rounding.  
 \* = less than \$500,000.

Supplemental Security Income: CBO expects that the ABLÉ Act would increase SSI caseloads for two distinct groups of people—

- Individuals whose eligibility for SSI benefits was denied or interrupted because of excess resources (defined as assets exceeding \$2,000 for an individual or \$3,000 for a couple, excluding the value of a home, a vehicle, and several other categories of assets). Under current law, those individuals must spend down their excess resources before gaining or reestablishing eligibility for SSI. Under H.R. 647, many such individuals could establish an ABLÉ account more quickly than they could spend down excess resources—accelerating their participation in SSI by several months to several years. CBO anticipates that, by the 10th year after enactment, about one-third of the individuals who could accelerate their SSI eligibility by establishing an ABLÉ account would do so.

- Individuals who do not apply for SSI under current law because of excess resources, but who would meet SSI's age or disability requirement and income requirement. CBO anticipates that, by the 10th year after enactment, about 10 percent of the individuals in this group would establish an ABLE account.

Based on data from the Social Security Administration and the Current Population Survey, CBO estimates that SSI outlays would increase by roughly \$600 million (or one-tenth of one percent of benefit payments in that program) over the 2015–2024 period. CBO estimates that the average monthly SSI caseload would increase by around 25,000 (or about one-quarter of one percent) in 2024.

Medicaid: As discussed above, assets in an ABLE account would be disregarded when determining a qualified beneficiary's eligibility for most federal means-tested benefits. There are several pathways to Medicaid eligibility for disabled adults under the age of 65 that require individuals to meet both income and asset tests. CBO expects that enacting H.R. 647 would increase the number of disabled adults under the age of 65 who enroll in Medicaid because they could hold cash assets in an ABLE account that would not count against Medicaid eligibility. Because a beneficiary of an ABLE account must have a disability that occurred before he reached age 26, CBO does not expect an increase in the number of elderly individuals who enroll in Medicaid. Additionally, CBO does not expect that establishment of ABLE accounts would increase the number of children and nondisabled adults enrolled in Medicaid because those individuals are not required to meet an asset test under current law.

CBO estimates that enacting H.R. 647 would increase federal spending for Medicaid by about \$550 million over the 2015–2024 period. Many disabled adults who might have benefitted from the current legislation in the absence of the Affordable Care Act (ACA) are, or will soon become, eligible for Medicaid under current law. Under the ACA, states are permitted to expand their Medicaid programs to cover adults earning less than 138 percent of the federal poverty level. That pathway to Medicaid eligibility has a higher income limit than most of the income limits used to determine Medicaid eligibility for disabled adults, and it does not require individuals to meet an asset test. Therefore, CBO expects that enacting H.R. 647 would lead to an increase in enrollment of disabled adults to only a small degree in states that expand Medicaid eligibility under the ACA and to a larger degree in states that do not. Altogether, CBO estimates that enacting the bill would increase the number of disabled adults under age 65 who are covered by Medicaid by about 10,000 in 2024, or less than one-tenth of one percent of the number of nonelderly disabled Medicaid beneficiaries in that year.

Low-Income Subsidy under Medicare Part D: The Low-Income Subsidy (LIS) under Medicare's prescription drug benefit program (known as Part D) provides premium and cost-sharing assistance to individuals whose income is up to 150 percent of the federal poverty level and whose assets do not exceed \$13,440 per individual or \$26,860 per couple in 2014. CBO estimates that LIS spending would increase by less than \$5 million over the 2015–2024 period. CBO expects that very few Medicare beneficiaries would be permitted to establish ABLE accounts because a beneficiary of an

ABLE account must have a disability that was diagnosed before he or she reached age 26.

Effects on revenues: H.R. 647 would allow for the creation of a new type of tax-favored account—an ABLE account—for the benefit of individuals with disabilities. Qualified distributions from such accounts would include payments for education, medical and dental care, housing, community-based support services, moving, and funeral and burial services. For purposes of this estimate, JCT assumes that the provision allowing for the creation of ABLE accounts would be effective for taxable years beginning after December 31, 2014. JCT estimates that the resulting reduction in federal tax collections would total \$898 million over the 2015–2024 period.

JCT’s estimate primarily reflects the revenue loss attributable to savings by households with qualified disabled dependents and incomes higher than \$40,000. Under H.R. 647, earnings on the assets deposited in ABLE accounts would be untaxed; in contrast, earnings on assets in other accounts would generally be taxed under current law. There would be an additional, but much smaller, revenue loss stemming from transfers from qualified disability trusts.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 647 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON JULY 31, 2014

	By Fiscal Year, in Millions of Dollars—												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–2019	2014–2024
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	2	16	41	71	127	191	267	360	446	529	259	2,051
Memorandum:													
Changes in Outlays ..	0	1	12	31	47	78	109	150	202	243	280	170	1,153
Changes in Revenues	0	–1	–4	–10	–24	–49	–82	–117	–158	–203	–249	–89	–898

Intergovernmental and private-sector impact: CBO has determined that the nontax provisions of the bill contain no intergovernmental or private-sector mandates as defined in UMRA. CBO estimates that the provisions in the bill that would increase federal spending for Medicaid would similarly result in \$415 million of additional Medicaid spending by states over the 2014–2024 period. Those provisions, however, would not be intergovernmental mandates as defined by UMRA because Medicaid provides states with significant flexibility to make programmatic adjustments to accommodate the changes.

JCT has determined that the tax provisions of the bill contain no intergovernmental or private-sector mandates as defined in UMRA.

Previous CBO estimate: On May 9, 2014, CBO transmitted a cost estimate for S. 313, the Achieving a Better Life Experience Act of 2013, as introduced on February 13, 2013. The text of S. 313 is identical to the text of H.R. 647 that also was introduced on February 13, 2013. CBO and JCT estimated that the introduced

version of S. 313 would increase direct spending by \$17.5 billion and reduce revenues by \$1.7 billion over the 2015–2024 period. S. 313 and H.R. 647 (as introduced) would increase the deficit by significantly more than the version of H.R. 647 that was ordered reported by the Ways and Means Committee primarily for three reasons:

- S. 313 would allow a beneficiary to have multiple ABLE accounts. In contrast, the committee-approved version of H.R. 647 would limit each beneficiary to a single account.
- S. 313 would allow effectively unlimited contributions into a beneficiary’s accounts. The committee-approved version of H.R. 647 would limit annual and aggregate contributions into a beneficiary’s account.
- S. 313 would permit adults of any age to be a beneficiary—even if they were retired or were earning substantial income from work—provided they had a marked and severe functional limitation (the SSI program’s disability standard for children). The committee-approved version of H.R. 647 would limit adult eligibility to those who are incapable of engaging in substantial gainful (work) activity (the SSI program’s disability standard for adults) and whose disability occurred before the age of 26.

Relative to the earlier cost estimate for S. 313 as introduced, CBO and JCT estimate that those differences would significantly reduce the number of individuals who would be eligible to become beneficiaries of ABLE accounts, the amount of assets that would receive tax-preferred treatment, and the additional months of means-tested benefits received by those whose assets were placed in an ABLE account.

Estimate prepared by: Federal Costs: Tom Bradley, Andrea Noda, and David Rafferty; Federal Revenues: Staff of the Joint Committee on Taxation; Impact on State, Local, and Tribal Governments: J’nell L. Blanco; Impact on the Private Sector: Sam Trachtman.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

### V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

#### A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee’s review of the provisions of H.R. 647 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.



#### B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

#### C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### D. APPLICABILITY OF HOUSE RULE XXI 5(B)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

#### E. TAX COMPLEXITY ANALYSIS

The following statement is made pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives. Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

#### F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(j)(2) of H. Res. 5 (113th Congress), the Committee states that the Government Accountability Office has included programs related to benefits for disabled Americans in a report to Congress pursuant to section 21 of Public Law 111-139. The Committee also states that the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169), identified programs related to benefits for disabled Americans.

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(k) of H. Res. 5 (113th Congress), the following statement is made concerning directed rule making: The Committee estimates that the bill requires at most one directed rule making within the meaning of such section (related to the requirement that the Secretary prescribe certain regulations to carry out the purposes of the proposal).

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**INTERNAL REVENUE CODE OF 1986**

\* \* \* \* \*

**Subtitle A—Income Taxes**

\* \* \* \* \*

**CHAPTER 1—NORMAL TAXES AND SURTAXES**

\* \* \* \* \*

**Subchapter A—Determination of Tax Liability**

\* \* \* \* \*

**PART IV—CREDITS AGAINST TAX**

\* \* \* \* \*

**Subpart A—Nonrefundable Personal Credits**

\* \* \* \* \*

**SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.**

(a) \* \* \*

(b) **REGULAR TAX LIABILITY.**—For purposes of this part—

(1) \* \* \*

(2) EXCEPTION FOR CERTAIN TAXES.—For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) \* \* \*

\* \* \* \* \*

(W) section 36(f) (relating to recapture of homebuyer credit), **[and]**

(X) section 457A(c)(1)(B) (relating to determinability of amounts of compensation) **[.]**, and

(Y) *section 529A(c)(3)(A) (relating to additional tax on ABLÉ account distributions not used for qualified disability expenses).*

\* \* \* \* \*

**Subchapter F—Exempt Organizations**

\* \* \* \* \*

**[PART VIII. HIGHER EDUCATION SAVINGS ENTITIES.]**

*PART VIII. CERTAIN SAVINGS ENTITIES.*

\* \* \* \* \*

**PART VIII—[HIGHER EDUCATION] CERTAIN SAVINGS ENTITIES**

Sec. 529. Qualified tuition programs.  
Sec. 529A. Qualified ABLÉ programs.

\* \* \* \* \*

**SEC. 529A. QUALIFIED ABLÉ PROGRAMS.**

(a) *GENERAL RULE.*—A qualified ABLÉ program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) *QUALIFIED ABLÉ PROGRAM.*—For purposes of this section—

(1) *IN GENERAL.*—The term “qualified ABLÉ program” means a program established and maintained by a State, or agency or instrumentality thereof—

(A) *under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLÉ account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,*

(B) *which limits a designated beneficiary to 1 ABLÉ account for purposes of this section,*

(C) *which allows for the establishment of an ABLÉ account only for a beneficiary who is a resident of such State or a resident of a contracting State, and*

(D) *which meets the other requirements of this section.*

(2) *CASH CONTRIBUTIONS.*—A program shall not be treated as a qualified ABLÉ program unless it provides that no contribution will be accepted—

- (A) unless it is in cash, or  
 (B) except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.

For purposes of this paragraph, rules similar to the rules of section 408(d)(4) (determined without regard to subparagraph (B) thereof) shall apply.

(3) SEPARATE ACCOUNTING.—A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.

(4) NO INVESTMENT DIRECTION.—A program shall not be treated as a qualified ABLE program unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon).

(5) NO PLEDGING OF INTEREST AS SECURITY.—A program shall not be treated as a qualified ABLE program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) PROHIBITION ON EXCESS CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions under any prior qualified ABLE program of any State or agency or instrumentality thereof.

(c) TAX TREATMENT.—

(1) DISTRIBUTIONS.—

(A) IN GENERAL.—Any distribution under a qualified ABLE program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) DISTRIBUTIONS FOR QUALIFIED DISABILITY EXPENSES.—For purposes of this paragraph, if distributions from a qualified ABLE program—

(i) do not exceed the qualified disability expenses of the designated beneficiary, no amount shall be includible in gross income, and

(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

(C) CHANGE IN BENEFICIARIES OR PROGRAMS.—

(i) ROLLOVERS FROM ABLER ACCOUNTS.—Subparagraph (A) shall not apply to any amount paid or distributed from an ABLER account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLER account for the benefit of the same bene-

fiary or an eligible individual who is a family member of the beneficiary.

(ii) *CHANGE IN DESIGNATED BENEFICIARIES.*—Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

(iii) *LIMITATION ON CERTAIN ROLLOVERS.*—Clause (i) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified ABLE program for the benefit of the designated beneficiary.

(D) *OPERATING RULES.*—For purposes of applying section 72—

(i) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

(ii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(2) *GIFT TAX RULES.*—For purposes of chapters 12 and 13—

(A) *CONTRIBUTIONS.*—Any contribution to a qualified ABLE program on behalf of any designated beneficiary—

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) *TREATMENT OF DISTRIBUTIONS.*—Except as provided in subparagraph (C), in no event shall a distribution from a qualified ABLE program be treated as a taxable gift.

(C) *TREATMENT OF DESIGNATION OF NEW BENEFICIARY.*—The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a contribution under paragraph (1)(C) to the ABLE account of a new beneficiary) during any taxable year unless, as of the beginning of such taxable year, the new beneficiary is both an eligible individual for such taxable year and a member of the family of the former beneficiary.

(3) *ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR DISABILITY EXPENSES.*—

(A) *IN GENERAL.*—The tax imposed by this chapter for any taxable year on any taxpayer who receives a distribution from a qualified ABLE program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

(B) *EXCEPTION.*—Subparagraph (A) shall not apply if the payment or distribution is made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary.

(C) *CONTRIBUTIONS RETURNED BEFORE CERTAIN DATE.*—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such designated beneficiary's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution. Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

(4) *LOSS OF ABLE ACCOUNT TREATMENT.*—If, during any taxable year of an eligible individual for whose benefit any ABLE account is established, more than 1 ABLE account for the benefit of the eligible individual exists at the same time, each such ABLE account other than the earliest established ABLE account shall not be treated as an ABLE account as of the first day of such taxable year.

(d) *REPORTS.*—

(1) *IN GENERAL.*—Each officer or employee having control of the qualified ABLE program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

(2) *CERTAIN AGGREGATED INFORMATION.*—For research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual.

(3) *NOTICE OF ESTABLISHMENT OF ABLE ACCOUNT.*—The trustee of an ABLE account shall 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 such other information as the Secretary may require.

(4) *ELECTRONIC DISTRIBUTION STATEMENTS.*—For purposes of section 4 of the Achieving a Better Life Experience Act of 2014, States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.

(5) *REQUIREMENTS.*—The reports and notices required by paragraphs (1), (2), and (3) shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) *OTHER DEFINITIONS AND SPECIAL RULES.*—For purposes of this section—

(1) *ELIGIBLE INDIVIDUAL.*—

(A) *IN GENERAL.*—An individual is an eligible individual for a taxable year if during such taxable year—

(i) a disability certification with respect to such individual is filed with the Secretary for such taxable year, or

(ii) the individual has been determined for purposes of section 223 or 1614 of the Social Security Act (42 U.S.C. 421, 1382c) to meet the criteria of subparagraph (B) for such taxable year.

(B) CRITERIA.—An individual meets the criteria of this subparagraph for a taxable year if—

(i) in the case of an individual who has not attained age 19 as of the close of the taxable year, the individual is either blind (within the meaning of section 1614(a)(2) of the Social Security Act (42 U.S.C. 1382c(a)(2))) or disabled within the meaning of section 1614(a)(3)(C) of such Act (42 U.S.C. 1382c(a)(3)(C)), or

(ii) the individual—

(I) is either blind (within the meaning of section 1614(a)(2) of such Act (42 U.S.C. 1382c(a)(2))) or disabled within the meaning of section 1614(a)(3)(A) of such Act, and

(II) such blindness or disability occurred before the date on which the individual attained age 26.

(2) DISABILITY CERTIFICATION.—

(A) IN GENERAL.—The term “disability certification” means, with respect to an eligible individual, a certification to the satisfaction of the Secretary by the eligible individual or the parent or guardian of the eligible individual that—

(i) the individual meets the criteria described in paragraph (1)(B), and

(ii) includes a copy of the individual’s diagnosis relating to the individual’s relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

(B) RESTRICTION ON USE OF CERTIFICATION.—No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

(3) DESIGNATED BENEFICIARY.—The term “designated beneficiary” in connection with an ABLE account established under a qualified ABLE program means—

(A) the eligible individual designated at the commencement of participation in the qualified ABLE program as the beneficiary of amounts paid (or to be paid) to the program, and

(B) in the case of a change in beneficiaries described in subparagraph (C)(ii) of subsection (c)(1), the individual who is the new beneficiary.

(4) MEMBER OF FAMILY.—The term “member of the family” means, with respect to any designated beneficiary, an individual who bears a relationship to such beneficiary which is described in subparagraph section 152(d)(2)(B). For purposes of the preceding sentence, a rule similar to the rule of section 152(f)(1)(B) shall apply.

(5) QUALIFIED DISABILITY EXPENSES.—The term “qualified disability expenses” means any expenses related to the eligible

*individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including 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 expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.*

(6) *ABLE ACCOUNT.*—*The term "ABLE account" means an account established and maintained under a qualified ABLE program.*

(7) *CONTRACTING STATE.*—*The term "contracting State" means a State without a qualified ABLE program which has entered into a contract with a State with a qualified ABLE program to provide residents of the contracting State access to a qualified ABLE program.*

(f) *TRANSFER TO STATE.*—*Subject to any outstanding payments due for qualified disability expenses, in the case that the designated beneficiary dies, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program, 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. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.*

(g) *REGULATIONS.*—*The Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations—*

(1) *to enforce the 1 ABLE account per eligible individual limit,*

(2) *providing for the information required to be presented to open an ABLE account,*

(3) *to generally define qualified disability expenses,*

(4) *developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability, including those conditions deemed to meet the requirements of subsection (e)(1)(B)(ii),*

(5) *to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses,*

(6) *under chapters 11, 12, and 13 of this title, and*

(7) *to allow for transfers from one ABLE account to another ABLE account in cases in which there is a change in the State of residence of an eligible individual.*

\* \* \* \* \*



**Subtitle D—Miscellaneous Excise Taxes**

\* \* \* \* \*

**CHAPTER 43—QUALIFIED PENSION, ETC., PLANS**

\* \* \* \* \*

**SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO CERTAIN TAX-FAVORED ACCOUNTS AND ANNUITIES.**

(a) TAX IMPOSED.—In the case of—

(1) \* \* \*

\* \* \* \* \*

(4) a Coverdell education savings account (as defined in section 530), **[or]**

(5) a health savings account (within the meaning of section 223(d)), *or*

(6) *an ABLE account (within the meaning of section 529A)*, there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

\* \* \* \* \*

(h) *EXCESS CONTRIBUTIONS TO ABLE ACCOUNT.*—*For purposes of this section—*

(1) *IN GENERAL.*—*In the case of an ABLE account (within the meaning of section 529A), the term “excess contributions” means the amount by which the amount contributed for the taxable year to such account (other than contributions under section 529A(c)(1)(C)) exceeds the contribution limit under section 529A(b)(2)(B).*

(2) *SPECIAL RULE.*—*For purposes of this subsection, any contribution which is distributed out of the ABLE account in a distribution to which the last sentence of section 529A(b)(2) applies shall be treated as an amount not contributed.*

\* \* \* \* \*

**Subtitle F—Procedure and Administration**

\* \* \* \* \*

**CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES**

\* \* \* \* \*

**Subchapter B—Assessable Penalties**

\* \* \* \* \*

**PART I—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 6693. FAILURE TO PROVIDE REPORTS ON CERTAIN TAX-FAVORED ACCOUNTS OR ANNUITIES; PENALTIES RELATING TO DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS.**

(a) REPORTS.—

(1) \* \* \*

(2) PROVISIONS.—The provisions referred to in this paragraph are—

(A) \* \* \*

\* \* \* \* \*

(D) section 529(d) (relating to qualified tuition programs), **[and]**

(E) section 529A(d) (relating to qualified ABLE programs), and

**[(E)] (F)** section 530(h) (relating to Coverdell education savings accounts).

This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(X).

\* \* \* \* \*

