September 21, 2015

Ms. Catherine Hughes
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Re: Guidance Under Section 529A: Qualified ABLE Programs
CC:PA:LPD:PR (REG-102837-15)

Dear Ms. Hughes, Ms. Harris, and Mr. Barnett:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to submit comments regarding the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") proposed regulations under Section 529A pertaining to qualified ABLE programs (the "Proposed Regulations").[2] SIFMA strongly supports the goal of Congress, Treasury and the IRS to create a new savings vehicle that addresses the unique financial challenges faced by children with disabilities and their families.

SIFMA believes there are improvements that can be made to the Proposed Regulations and ABLE programs to better facilitate the introduction and use of these new saving and investment accounts. Outlined below are recommendations to help ensure these programs are simple, cost effective, and viable.

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[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] RIN 1545–BM68

Residency Requirements

SIFMA believes that portability of these plans is important for the designated beneficiary to ensure ABLE accounts are simple to open and maintain and flexible to use. Portability will minimize confusion for the individual. In the preamble of the Proposed Regulations, the Treasury and IRS requested feedback relating to the transfer of ABLE account funds from one state to another. The proposal further provides that a designated beneficiary, upon leaving the state in which the account was originally opened, can continue to maintain his or her account in the state of origination. SIFMA appreciates the flexibility provided by this provision, and we recognize that the statute imposes some limits, but we would urge the Administration to consider other changes, both legislative and regulatory, to create a national market, similar to the market that exists currently for 529 college savings plans. Allowing the designated beneficiary to open an account in any state will provide individuals with the flexibility to choose the program that is most suitable, regardless of the beneficiary's state of residence. In addition to assuring simplicity for the individual, removing the residency requirements would have the benefit of lowering costs both for individuals and for financial institutions by allowing firms to capture economies of scale. We believe this will result in more uniform ABLE program design.

Disability Determination and Recertification

We appreciate that the Treasury and IRS do not wish to delay the establishment of an ABLE account due to eligibility determination processes, as noted in the preamble to the Proposed Regulations. The Proposed Regulations provide that a qualified ABLE program must determine eligibility of an individual and subsequently submit filings to the Treasury Secretary regarding the disability certification, including a copy of the individual's diagnosis signed by a licensed physician. Furthermore, a qualified ABLE program must require annual recertification that the designated beneficiary continues to satisfy the definition of an eligible individual.[3]

SIFMA believes that these requirements are unduly burdensome and will significantly increase the cost of administering plans as well as delay the establishment of ABLE accounts. The collection and retention of sensitive medical records is a task unfamiliar to many financial institutions that would be administering these accounts and this process raises serious data protection and cyber security concerns. We recommend that it be the responsibility of the designated beneficiary, their representative under a power of attorney, parent, or legal guardian, to maintain those records for auditing purposes. We suggest the Treasury and IRS require the designated beneficiary to simply certify under penalty of perjury that they are, and continue to be, a qualified individual. Account opening documents should facilitate this certification, through tools such as a check box, on which the program administrators could rely for purposes of opening and maintaining the account.

Qualified Disability Expenses

The Proposed Regulations require that a qualified ABLE program establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions. Furthermore, qualified ABLE programs must maintain records with respect to these distributions. Treasury recognized in the preamble that ABLE accounts are likely to have a "far greater" frequency of distributions than those made from 529 accounts, and SIFMA is concerned that the requirement to track high volumes of distributions and to make determinations as to the classification of those distributions is an enormous burden which would significantly raise the cost and complexity of recordkeeping systems required and increase the cost of these accounts. SIFMA recommends that the Treasury and IRS eliminate this requirement and

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[3] §1.529A-2(d)(1)–(d)(2)

suggests instead that the responsibility rests with the designated beneficiary - or the person with signature authority over the account - to track and maintain records of purchases made with ABLE account funds. This is consistent with the current requirements under 529 college savings accounts and would help reduce costs, complexity, and confusion.

Collection of TIN from contributors

The Proposed Regulation requires that Taxpayer Identification Numbers ("TINs") be collected for the owner of the account as well as any contributors to the account at the time of the contribution. SIFMA believes this requirement places an undue administrative burden on program administrators and firms and furthermore could discourage contributions by imposing an unnecessary paperwork burden on contributors. We understand that this requirement is intended to facilitate the return of excess contributions directly to contributors, bypassing the designated beneficiary in order to alleviate the risk of a beneficiary becoming disqualified from receiving certain public benefits. We recommend that IRS should instead allow firms and/or program administrators to establish program safeguards to disallow excess contributions and eliminate the TIN collection requirement. We believe these safeguards will achieve the desired objective without chilling the incentive to contribute.

We appreciate your consideration of our views and concerns. Please do not hesitate to contact Jillian Enoch (jenoch@sifma.org) or myself (ppeabody@sifma.org) with any questions.

Sincerely,

Payson R. Peabody

Payson R. Peabody
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