

NOTICE OF INTENT
Louisiana Tuition Trust Authority
Office of Student Financial Assistance
Achieving a Better Life Experience (ABLE) Program
(LAC 28:VI.507, 509, 511, 513, 517, 519, 521)

The Louisiana Tuition Trust Authority announces its intention to amend its administrative rules (LSA-R.S. 17:3091 *et seq.*).

This rulemaking implements 2020 Final Federal Regulations and makes technical changes. (ST21195NI).

Chapter 5. Achieving a Better Life Experience (ABLE)

§507. Applicable Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Redemption Value—the cash value of the money in an ABLE Account invested in a fixed earnings option that are attributable to the sum of the principal deposited and the earnings on principal authorized to be credited to the account by the LATA, less any disbursements and refunds. Redemption value is not applicable to an ~~ESA-ABLE~~ account invested in variable earnings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:639 (April 2017), amended LR 44:1888 (October 2018).

§509. Establishment of an ABLE Account

A. – C.3. ...

D. Through April 30, 2021, Aan ABLE account may be established by the account owner or an administrator who is authorized by law or by authentic act to administer the account on behalf of the account owner.

1. An administrator who is not the account owner may establish an account on behalf of an eligible individual upon provision of documentation to LOSFA evidencing that person has the legal right to act on behalf of the eligible individual.

2. Documentation required to establish an account on behalf of an eligible individual includes:

a. if a parent, a copy of the eligible individual's birth certificate;

b. if an adoptive parent, documentation evidencing the adoption of the eligible individual;

c. if a custodian, court documents evidencing the appointment of the custodian by a court of law;

d. if designated by the eligible individual to administer his affairs, documentation evidencing such designation;

e. if a juridical entity, documentation evidencing that the eligible individual, or a person authorized to act on his behalf, as indicated in §509.D.2.a-d above, has designated the juridical entity to act on his behalf for purposes of an LA ABLE account program account.

E. Beginning on May 1, 2021, an ABLE account may be established by or on behalf of an eligible individual by the highest ranked person listed below, who shall certify, under penalty of perjury, that he or she is authorized to establish an ABLE account on behalf of an eligible individual and that there is no other person with a higher priority who is willing or able to do so:

1. A person selected by the eligible individual or by an agent appointed by the eligible individual;

2. A custodian appointed by a court of law or a legal guardian;

3. The spouse of the eligible individual;

4. A parent of the eligible individual;

5. A sibling of the eligible individual;

6. A grandparent of the eligible individual;

7. A representative payee appointed by the Social Security Administration.

~~EF.~~ Program Enrollment Period. An account may be established at any time during the calendar year.

~~FG.~~ Completing the Owner's Agreement

1. This agreement must be completed and signed by the administrator.

2. The administrator who is also the account owner may designate a limited power of attorney to an administrator who would be authorized to act on his behalf in the event the account owner becomes incapacitated.

3. The administrator must certify:

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a. that the person for whom the account is being established is an *eligible individual* as defined in §507;

b. that the eligible individual is a Louisiana resident;

c. that the eligible individual meets the citizenship requirements set forth in §509.B;

d. that if he is not the eligible individual, that he is authorized by law or by authentic act to open and administer the ABLÉ account on behalf of the eligible individual; and that there is no other person higher in priority as provided in Subsection E.1-7 who is willing and able to do so;

e. that he will provide the documentation necessary to establish the certifications made for Subsections D.2.a-d upon request by LOSFA or the Internal Revenue Service; ~~and~~

f. that he will notify LOSFA immediately upon a determination that the person for whom the ABLÉ account was opened has ceased to be an eligible individual as that term is defined in §507.

g. that he will annually certify that the person for whose benefit the account was opened continues to be an eligible individual as defined in §507

f. that he has read and understands the owner's agreement and participation materials.

4. The administrator agrees to the following terms when completing the account owner's agreement.

a. All transactions involving the ABLÉ account will be reported to the Social Security Administration on a monthly basis.

b. Fees

i. Except for penalties which may be imposed on refunds, the LATTA shall not charge fees for the opening or the maintenance of a fixed earnings account.

ii. Fees imposed by investment institutions for opening or maintenance of variable earnings accounts may be charged to the account owner.

c. Financial and investment institutions may be authorized by the LATTA to offer prospective owners information and assistance in opening an ABLE START Program account.

d. Only the account owner, his heirs, or his estate may be designated to receive refunds from the ABLÉ account. In the event of the death of the account owner when the account owner is designated to receive the refund or when no successor beneficiary is named, the refund shall be made to the account owner's estate.

GH. Acceptance of the Owner's Agreement

1. A properly completed and submitted owner's agreement will be reviewed within 48 hours of receipt for completeness. If additional information is required to accept the owner's agreement, the Administrator will be contacted to provide that information.

2. Upon acceptance of the owner's agreement, the LATTA will establish the ABLÉ account.

HI. Providing Personal Information

1. The administrator is required to disclose personal information regarding the eligible individual, including:

- a. his Social Security number;
- b. his date of birth; and
- c. his relationship to the administrator.

2. If not the eligible individual, the administrator will be required to disclose the following information:

- a. his relationship to the eligible individual;
- b. if a parent of the eligible individual, his Social Security number.

3. The eligible individual's Social Security number and federal and state employer identification numbers will be used for purposes of federal and state income tax reporting to access individual account information for administrative purposes, and to provide necessary reports to the Social Security Administration.

4. The following protected health information is collected only for IRS reporting purposes:

- a. basis for the eligible individual's eligibility:
 - i. code A—Social Security disability Income—title II SSA;
 - ii. code B—Social Security income—title XVI SSA;
 - iii. code C—eligible individual is the subject of a disability certification filed with the IRS for 2016;
- b. type of disability:
 - i. code 1—developmental disorders, including autistic spectrum disorder, Asperger's disorder, development delays, learning disabilities;
 - ii. code 2—intellectual disability. May be reported as mild, moderate or severe intellectual disability;
 - iii. code 3—psychiatric disorders, including schizophrenia, major depressive disorder, post-traumatic stress disorder (PTSD), anorexia nervosa; attention deficit/hyperactivity disorder (AD/HD), bipolar disorder;
 - iv. code 4—nervous disorders, including blindness, deafness, cerebral palsy, muscular dystrophy, spina bifida, juvenile-onset Huntington's disease, multiple sclerosis, severe sensorineural hearing loss, congenital cataracts;
 - v. code 5—congenital anomalies: chromosomal abnormalities, including down syndrome, osteogenesis imperfecta, xeroderma pigmentosum, spinal muscular atrophy, fragile X syndrome, Edwards syndrome;
 - vi. code 6—respiratory disorders: cystic fibrosis;

vii. code 7—other: includes tetralogy of fallot, hypoplastic left heart syndrome, end-stage liver disease, juvenile-onset rheumatoid arthritis, sickle cell disease, hemophilia; and any other disability not listed under codes 1-6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:640 (April 2017), amended LR 44:1888 (October 2018)

§511. Deposits to ABLÉ Accounts

A. Application Fee and Initial Deposit Amount

1. No application fee will be charged to those applying for an ABLÉ account on behalf of an eligible individual.

2. Financial and investment institutions may be authorized by the LATTA to offer assistance in establishing an START Program ABLÉ account. (See fees in §509.G.4.F.4).

3. An initial deposit is not required to open an ABLÉ account; however, a deposit of at least \$10 must be made within 180 days from the date on the letter of notification of approval of the account.

4. A lump sum deposit may not exceed the maximum allowable account balance (\$500,000) the annual contribution limit unless such deposit is the result of a rollover from another ABLÉ Program.

B. Deposit Options

1. The administrator shall select one of the following deposit options during the completion of the owner's agreement; however, the administrator may change the monthly deposit amount at any time and the payment method by notifying the LATTA:

- a. occasional lump sum payment(s) made directly to the LATTA or to a LATTA-approved investment institution;
- b. monthly payments made directly to the LATTA or to a LATTA-approved financial or investment institution;
- c. automatic account debit, direct monthly transfer from the Administrator's checking or savings account to the LATTA or a LATTA-approved investment institution;
- d. payroll deduction, if available through the Administrator's employer.

C. Limitations on Deposits

1. All deposits must be rendered in amounts of at least \$10 and must be made in cash, check, money order, automatic account debit or payroll deduction, defined as any of the deposit options listed in §511.B.1.

2. Once the cumulative contributions and earnings on contributions have reached or exceeded the maximum allowable account balance, principal deposits will no longer be accepted to the account until a distribution is made which

reduces the account balance below the maximum allowable account balance.

3. ABLÉ account balances of up to \$100,000 will not affect Social Security income (SSI) benefits. However, once an account exceeds \$100,000, SSI benefits will be suspended until such time as the balance is reduced below \$100,000.

4. If the person for whose benefit an ABLÉ account was opened ceases to be an eligible individual as defined in §507, no further deposits will be accepted unless and until such time as the person becomes an eligible individual again.

D. - E.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:641 (April 2017).

§513. Disbursement of Account Funds for Payment of QDEs

A. Request for Disbursement

1. An ABLÉ account administrator may request a disbursement at any time, but no more than twice per month.

2. The request for disbursement must include:

- a. the ABLÉ account number;
- b. the eligible Individual's name, address, and Social Security number;
- c. the administrator's signature (may be electronic); and
- d. the amount to be disbursed.

3. Requests for disbursements must be in whole dollar increments, must be no less than \$200 and may be no more than the account balance.

4. In the event funds are invested in more than one investment option, the disbursement shall be made proportionally from each investment option in the account.

5. Disbursements will be made only to the administrator of the account.

6. Disbursements from investment options with variable earnings shall be assigned a trade date of one business day after the business day of receipt of the transfer request.

7. Disbursements made during a period in which the person for whose benefit the account was opened is not an eligible individual as defined in §507 will not be considered qualified disbursements.

B. Rate of Expenditure

1. The amount to be disbursed from an account shall be drawn from deposits and interest in the same ratio as

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these funds bear to the total value of the account as of the date of the disbursement.

2. The administrator may not withdraw an amount in excess of the QDEs of the eligible individual or the value of the account, whichever is less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:642 (April 2017).

§517. Termination, Refund, and Rollovers of an Education Savings Account

A. Account Termination

1. The administrator may terminate an ABLA account at any time.

2. Through April 30, 2021, if in the event the person for whose benefit the account was opened is no longer an *eligible individual* as defined in §507, the administrator shall

a. terminate the account; or

b. transfer the account to another eligible individual who is also a member of the family of the original *eligible individual* within 60 days of the determination that the original eligible individual is no longer qualified.

3. Beginning on May 1, 2021, in the event the person for whose benefit the account was opened ceases to be an eligible individual as defined in §507, the account may remain open through the end of the fifth full calendar year during which the person ceases to be an eligible individual as defined in §507. The administrator shall exercise one of the following options ~~through~~by the end of the applicable calendar year:

a. terminate the account; or

b. transfer the account to another eligible individual who is also a member of the family of the eligible individual.

34. The LATTA may terminate an account as follows.

a. If LATTA determines that funds have been disbursed for expenses other than QDEs, LATTA may require the return of the funds to the ABLA account. If funds are not returned to the account within 60 days of a request to do so, LATTA, in its sole discretion, may refund any balance remaining and close the account.

b. The LATTA may terminate an account if no deposit of at least \$10 has been made within 180 days from the date of notification of approval of the account.

c. The LATTA may terminate an account if the eligible individual for whom the account was opened no longer meets the criteria to be an eligible individual and a new eligible individual is not named within 60 days by the end of the fifth full calendar year during which the person for whose benefit the account was opened ceases to be an eligible individual.

d. The LATTA may terminate an owner's agreement if it finds that the account owner or beneficiary provided false or misleading information (see §507).

i. If the LATTA terminates an owner's agreement under this Subsection, all interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded.

ii. An individual who obtains program benefits by providing false or misleading information will be prosecuted to the full extent of the law.

B. Refunds

1. Requests for refund may result in the termination of the account and in the refund of:

a. the deposits invested in fixed earnings, if the account has been open for less than 12 months;

b. the redemption value, if the account has been open for 12 or more months;

c. the deposits to or the current value of an account invested in a variable earnings option, whichever is less, if the account has been open for less than 12 months;

d. the current value of an account invested in variable earnings, if the account has been open for 12 or more months.

2. Refunds from investment options with variable earnings shall be assigned a trade date of one business day after the business day of receipt of the request.

C. Designation of a Refund Recipient. The refund recipient can only be the account owner, his heirs, or his estate, and the administrator shall designate the refund recipient when completing the owner's agreement.

D. Voluntary Termination of an Account

1. Refunds shall be equal to the redemption value of the ESA-ABLE account at the time of the refund, and shall be made to the person designated in the owner's agreement or by rule.

D.2. – G.2.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:642 (April 2017), amended LR 44:1888 (October 2018).

§519. Substitution, Assignment, and Transfer

A. Substitute Beneficiary. The beneficiary of an ESA-ABLE account may be changed to a substitute beneficiary provided the account owner completes a beneficiary substitution form and the following requirements are met:

1. the substitute beneficiary is a member of the family as defined under §107;

2. the substitute beneficiary meets the citizen/resident alien requirements of §301.F, and, if the account owner is a

nonresident of the state of Louisiana, the substitute beneficiary meets the applicable residency requirements (see §301.G).

B. Substitution/Transfer of Account Ownership. The administrator may transfer ownership of an ABLE account only with the written approval of the LATTA and only to a member of the family of the eligible individual for whom the account was opened.

C. Assignment of Account Ownership. Ownership of an ESA-ABLE account cannot be assigned.

D. Changes to the Owner's Agreement

1. The administrator may request changes to the owner's agreement.

2. Changes must be requested in writing and be signed by the administrator.

3. Changes, if accepted, will take effect as of the date the notice is received by the LATTA.

4. The LATTA shall not be liable for acting upon inaccurate or invalid data which was submitted by the administrator.

5. The administrator will be notified by the LATTA of any changes affecting the owner's agreement which result from changes in applicable federal and state statutes and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:643 (April 2017).

§521. Miscellaneous Provisions

A. – J.1. ...

2. Through April 30, 2021, Ffunds in excess of the maximum allowable account balance may remain in the account and continue to accrue interest and may be disbursed in accordance with §309, or will be refunded in accordance with §311 upon termination of the account.

3. Beginning May 1, 2021, Funds in excess of the maximum allowable account balance, along with any interest earned on those amounts, will be returned to the contributor on a last-in-first-out basis as an unqualified disbursement.

K. Withdrawal of Funds. Funds may not be withdrawn from an ESA-ABLE account except as set forth in §513 and §515.

L. – O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:643 (April 2017).

Family Impact Statement: The proposed rule has no known impact on family formation, stability, or autonomy, as described in LSA-R.S. 49:972.

Poverty Impact Statement: The proposed rulemaking will have no impact on poverty as described in LSA-R.S. 49:973.

Business Analysis Statement: The proposed rule will have no adverse impact on small businesses as described in LSA-R.S. 49:965.2 *et seq.*

Provider Impact Statement: The proposed rule will have no adverse impact on providers of services for individuals with developmental disabilities as described in HCR 170 of 2014.

Interested persons may submit written comments on the proposed changes (SG21194NI) until 4:30 p.m., March 10, 2021, by email to LOSFA.Comments@la.gov or to Sujuan Williams Boutté, Ed. D., Executive Director, Office of Student Financial Assistance, P. O. Box 91202, Baton Rouge, LA 70821-9202.

DocuSigned by:
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