

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Treasurer of State

Department 529 Programs and Financial Literacy

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Statutory Authority for Promulgating Rules Ark. Code Ann. 20-3-105(d)(2)

Rule Title: THE ARKANSAS ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM RULES

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

10/4/20 - 10/6/20

11/5/20

12/18/20

11/5/20

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Chris Scott

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12/18/20

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

Phone Number

E-mail Address

Title

Date

**THE ARKANSAS ACHIEVING A BETTER LIFE EXPERIENCE
PROGRAM**

PROGRAM RULES

TABLE OF CONTENTS

	<u>Page</u>
Section 1. General	1
Section 2. Definitions	1
Section 3. Interstate Agreement or Compact	6
Section 4. Program Structure.....	6
Section 5. Program Distribution and Participation	7
Section 6. Federal Reporting Requirements	12

Section 1. General

The Arkansas Achieving A Better Life Experience Program (the “ABLE Program”), is established pursuant to the Arkansas Achieving a Better Life Experience Program Act, Chapter 3 of Title 20 of the Arkansas Code, as amended, codified as Ark. Code Ann. § 20-3-101, et seq. (the “Act”). The Program is designed to satisfy the requirements of Section 529A of the Internal Revenue Code of 1986, as amended, and any rules, rulings, announcements and other guidance issued thereunder (collectively referred to as “Section 529A”). In accordance with the Act, the Arkansas ABLE Program Committee (the “Committee”) has established the following rules governing the operation of the Program. To the extent these rules are interpreted to be inconsistent with provisions of Section 529A, the provisions of Section 529A shall prevail. The Program may be affected by subsequent changes in federal and state legislation. The Committee shall have the right to modify these rules from time to time to comply with then current federal law and rules applicable to the Program and for other purposes. Capitalized terms not defined herein shall have the meaning ascribed to them in the Act.

Section 2. Definitions

ABLE means the federal Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295, as amended) that creates state-level tax-advantaged savings programs to assist Eligible Individuals.

ABLE Program or Program means the Arkansas Achieving a Better Life Experience Program administered by the ABLE Program Committee, managed by the Treasurer of the State of Arkansas, and created pursuant to the Arkansas Achieving a Better Life Experience Program Act of 2015 (Ark. Code Ann. § 20-3-101 et seq, as amended).

ABLE Program Committee or Committee means the committee created pursuant to Ark. Code Ann. § 20-3-105, or any successor provision thereto.

Account Application Form means an application substantially in the form approved by the Committee from time to time.

Account means an individual investment account established and owned by an Eligible Individual and maintained pursuant to the ABLE Program.

Administrative Expenses means all expenses associated with the implementation and administration of the ABLE Program, including fees payable to third parties providing services related to the ABLE Program.

Age-Based Option means a Portfolio the assets of which are invested in a combination of Underlying Investments, currently based on the ages of Designated Beneficiaries specified for such Portfolio.

Approved Allocation means the allocation of assets for a Portfolio as approved by the Committee as may be set forth in the Program Management Agreement.

Approved Allocation Effective Date means the annual date (July 1) by which the Approved Allocation for a Portfolio is approved, as may be set forth in the Program Management Agreement.

Arkansas Administration Fee means any fee paid out of the Program's assets to the Committee pursuant to a Program Management Agreement.

Business Day means each day on which the New York Stock Exchange is open for trading.

Code means the Internal Revenue Code of 1986, as amended (26 USC 1, et seq.).

Contracting State means a state without a qualified ABL program that has entered into a contract with Arkansas to provide residents of the contracting state access to a qualified ABL program.

Contribution Maximum means the maximum amount that may be contributed to an Account for the same Designated Beneficiary, as determined from time to time by the Committee in accordance with ABL.

Designated Beneficiary means the Eligible Individual who established the Account and is the owner of the Account.

Designated Beneficiary Change Form means a form for changing a Designated Beneficiary substantially in the form approved by the Committee, from time to time.

Designated Representative means a person who is authorized to act on behalf of an Account Owner and Designated Beneficiary.

Disability Certification means the same as provided in Ark. Code Ann. § 20-3-103(4).

Earnings means the aggregate total of all dividends and interest income received by the ABL Program at any time following the Program's commencement. The aggregate total of dividends and interest income shall be reduced by the aggregate total of Administrative Expenses at any time following the commencement of the Program. Earnings shall be determined without regard to realized or unrealized capital gains and losses incurred by the Program.

Eligible Individual means an individual who for a taxable year (1) is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, [42 U.S.C. § 301 et seq.](#), and the blindness or disability is a preexisting condition that occurred before the date on which the individual attained twenty-six (26) years of age; or (2) has a Disability Certification filed with the United States Secretary of the Treasury for the taxable year.

FDIC means the Federal Deposit Insurance Corporation.

Federal Guidelines means official guidance from federal agencies with jurisdiction over ABLE, including the SSA's Program Operations Manual System (SI 01130.740) (2016) and IRS Notice 2015-81, "Guidance Under Section 529A: Qualified ABLE Programs" (80 FR 35602) (2015). These incorporations by reference refer to the guidelines on the date specified and do not include any editions or amendments subsequently to the date specified.

Investment Fund means the portion of the Program's assets invested in Underlying Investments (i.e., that portion of the Program's assets not held in the Operating Fund).

IRS means the Internal Revenue Service.

Management Fee means any fee paid out of the Program's assets to the Program Manager pursuant to a written agreement approved by the Committee.

Member of the Family means a brother, sister, stepbrother, or stepsister.

MSRB means Municipal Securities Rulemaking Board and any duly established entity which succeeds to the functions thereof.

Net Asset Value means: (1) the net asset value per share of the Underlying Investments as of the market close on that Business Day; (2) adjustments, if any, to the net asset value per share of any Underlying Investments made after the market close; (3) net purchase orders and net redemption orders received by the Program Manager each Business Day; (4) the deduction and payment of fees and expenses from the Portfolios by the Program Manager; and (5) the Program Manager's reinvestment, into any Underlying Investment it or its affiliate offers and manages, of any income, dividends and/or capital gain distributions paid by underlying funds.

NYSE means the New York Stock Exchange.

Operating Account means the account established for the purpose of holding the Arkansas Administration Fee.

Operating Fund means that portion of the Program's assets not held in the Investment Fund.

Participation Agreement means an agreement to participate in the Program between an Account owner and the Program, substantially in the form approved by the Committee, from time to time.

Plan Disclosure Documents means the complete disclosure document or set of documents describing the Program, including any supplement(s) thereto, each as amended from time-to-time, constituting an "official statement" within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, and the rules of the MSRB and any successor to the applicable functions thereof.

Portfolio means one of the Program Portfolios established within the Investment Fund to which contributions may be allocated, and that are invested in Underlying Investments.

Program Management Agreement means a written implementing agreement among the Program, the Committee and the Program Manager.

Program Manager means the entity engaged by the Program to administer the daily operations of the ABLE Program, provide marketing, recordkeeping, investment management, and other services for the Program, and manage the assets of the Portfolios, all pursuant to the Program Management Agreement, and designated as such in the then current Plan Disclosure Documents.

Qualified Disability Expenses means the same as provided in Ark. Code Ann. § 20-3-103(8).

Qualified Withdrawal or Qualified Distribution means a withdrawal from an Account to pay the Qualified Disability Expenses of the Designated Beneficiary of the Account.

Rollover Contribution means a contribution to an Account which is transferred to or deposited in the Account from another program operating as a “qualified ABLE program” within the meaning of Section 529A, or any successor provision thereto, of the Code.

Rollover Distribution means a distribution or transfer from an Account which is transferred to or deposited in another program operating as a “qualified ABLE program” within the meaning of Section 529A, or any successor provision thereto, of the Code.

Secretary means the U.S. Secretary of the Treasury.

SSA means the Social Security Administration.

SSI Limit means the Supplemental Security Income limit.

Series means a class of units of a Portfolio.

State means the State of Arkansas, acting through its executive, administrative, legislative and judicial branches.

Treasurer means the duly elected Treasurer of the State of Arkansas.

Trust means the Achieving a Better Life Experience Program Trust created pursuant to Ark. Code Ann. § 20-3-104(a).

Underlying Investments means ETF’s, securities, separate accounts, registered mutual funds or other investments in which assets of a Portfolio are invested.

Withdrawal means a Qualified Withdrawal or a nonqualified withdrawal.

Withdrawal Request means a request by an Account owner to effect a Withdrawal substantially in the form or other process approved by the Committee, from time to time.

Year-of-Enrollment Portfolio means a Portfolio the assets of which are invested in a combination of Underlying Investments based upon the Designated Beneficiaries participated year of enrollment as determined by the Account owner.

Section 3. Interstate Agreement or Compact

The Treasurer and Committee may enter into an interstate agreement for joint ABLE-related services, in order to achieve better programming and higher economies of scale in investment options.

Section 4. Program Structure

A. The Trust. The Trust is comprised of an Investment Fund and an Operating Fund.

1. Investment Fund. The Investment Fund initially receives all contributions to Accounts established pursuant to Participation Agreements. The Investment Fund is invested in Underlying Investments.

2. Operating Fund. The Operating Fund is comprised of the Operating Account and such sub-accounts as may be established by the Committee from time to time.

B. Portfolios.

1. General.

a. The Investment Fund may be divided into one or more Portfolios and/or Series of Portfolios. Each Portfolio will represent a separate, segregated portfolio of Underlying Investments held in the Investment Fund.

b. Contributions made to an Account are invested in units of one or more Series of one or more Portfolios based on an election on the Account Application Form (or other appropriate form) made by an Account owner. If an Account owner is awarded a matching grant, the matching grant will be invested according to the Portfolio's(s') allocation instructions on file for the owner's Account. The terms, expenses and sales charges, if any, as well as the availability of different Portfolios (or Series thereof) shall be as described in the then current Plan Disclosure Documents.

c. The assets of each Portfolio will be rebalanced periodically on an as needed basis to conform each Portfolio to the Approved Allocation.

d. The Program or the Program Manager has the right to alter the basis of assigning Accounts to Age-Based Options and, subject to receipt of reasonably satisfactory assurance that such reassignment would not disqualify the affected Accounts or the Program from treatment, for federal tax purposes,

as described in the then current Plan Disclosure Documents and/or supplement, or any supplements thereto, to reassign existing Accounts for any reason it deems appropriate.

2. Change of Designated Beneficiary.

a. An Account owner shall be the Designated Beneficiary of an Account and have the right at any time to change the Designated Beneficiary of an Account to an Eligible Individual who is a Member of the Family of the former Designated Beneficiary.

b. At the direction of an Account owner, all or a portion of an Account may be transferred to another Account of which the Designated Beneficiary is a member of the family of the Designated Beneficiary of the transferee Account if the transferee Account was created by this chapter or in accordance with ABLE.

3. Subsequent Portfolios and Series. The Committee shall have the authority to increase or decrease the number of Age-Based Options or custom portfolio options and/or the number of Series of each such Portfolio and to create or terminate any additional Portfolios or Series the terms of which shall be as set forth in the then current Plan Disclosure Documents provided.

C. Net Asset Value. The Program Manager, or its delegate, will calculate a Net Asset Value for each Portfolio (or Series thereof) of the Investment Fund as described in the then current Plan Disclosure Documents.

Section 5. Program Distribution and Participation

A. Program Distribution.

1. Except as otherwise indicated in the Act, interest, dividends, and capital gains from funds invested in the Arkansas ABLE Program are exempt from Arkansas income taxes.

2. A Qualified Distribution from an Account established under the Program is exempt from Arkansas income tax with respect to the Designated Beneficiary's income.

3. Nonqualified distributions from an Account established under the Program are subject to Arkansas income tax. The nonqualified distribution is taxable to the party, account owner, or designated beneficiary who actually makes the withdrawal.

a. Earnings on a contribution that are included in a refund are subject to Arkansas income tax.

B. Program Participation.

1. Opening an Account. An Eligible Individual must complete an Account Application Form and any other documents required by the Committee or, the Program Manager, these rules, or applicable federal and state law or rule and submit such documents to the Program Manager along with the initial minimum account contribution as set forth in the then current Plan Disclosure Documents. A Designated Beneficiary is limited to one (1) Account. The acceptance by the Program Manager for processing an Account Application Form and an initial contribution does not constitute the agreement of the Program Manager to open an account. The Program Manager has the right, but not the obligation to reject an Account Application Form that does not contain all information requested on the Account Application Form. There shall be no restrictions on the age of the Designated Beneficiary (except as may be deemed necessary to comply with applicable law).

2. Entering into a Participation Agreement. Subsequent to or concurrently with opening an Account, an Eligible Individual must provide the information required by and agree by virtue of opening an Account to be bound by a Participation Agreement.

3. Assigning Accounts to Portfolios and Series. The Program Manager will assign each Account to a Portfolio(s) based upon information submitted by the Account owner.

4. Contributions to an Account.

a. Form of Contribution. Contributions may be made by check, wire transfer, payroll direct deposit, automated clearing house (ACH), electronic funds transfer (EFT), rollover from another ABLE or 529 Plan account, or by such other method as set forth in the then current Plan Disclosure Documents. Contributions may not be made by cash, money orders, travelers checks, foreign checks not in U.S. dollars, checks dated over 180 days, checks post-dated more than seven days, checks with unclear instructions, securities, non-cash assets, charges on debit, credit cards or any other payment method prohibited by the then current Plan Disclosure Documents. In order for an Account owner to make contributions by employer payroll deduction, the Account owner's employer must be able to meet the Program Manager's operational and administrative requirements for payroll contributions. Any person may make contributions to an Account that is established to meet the Qualified Disability Expenses of the Designated Beneficiary of the Account.

b. Amount of Contribution. The minimum initial and minimum subsequent contribution amount are as set forth in the then current Plan Disclosure Documents, and may, from time to time, be revised subject to the approval of the Committee. . The Contribution Maximum for an Account for

a Designated Beneficiary is as set forth in the then current Plan Disclosure Documents.

c. Crediting of Contributions. The Program Manager generally shall credit contributions to an Account as of the same Business Day as received in good order as determined by the Program Manager, provided such contributions are delivered to and accepted by the Program Manager by 4:00 p.m. Eastern time on such Business Day, or upon such other Business Day as may be set forth in the then current Plan Disclosure Documents. The Program Manager generally shall credit contributions made by electronic fund transfer to an Account generally the next Business Day after the transfer is received in good order as determined by the Program Manager, provided such contributions are delivered to and accepted by the Program Manager by 10:00 p.m. Eastern Time on such Business Day, or upon such Business Day, or upon such other Business Day as may be set forth in the then current Plan Disclosure Documents.

d. Accounting of Contributions. On the Business Day of the investment of a contribution by the Program Manager, units (or additional units) of the applicable Portfolio(s) will generally be reflected in the records of the Program for the applicable Account. Contributions made by check, which are received in good order, will generally be considered received by the Program in a given year if received on or before December 31st of the same year, provided the checks are subsequently paid. Contributions made pursuant to an electronic funds transfer will generally be considered received by the Program in a given year if initiated by the Account owner on or before 10:00 p.m. Eastern Time on December 31st of such year, provided the funds are subsequently withdrawn from an Account owner's checking or savings account at another financial institution. Contributions made pursuant to an automatic investment plan will generally be considered received by the Program in the year the automatic investment debit has been deducted from an Account owner's checking or savings account at another financial institution.

e. Investment of Contributions. A contribution to an Account is generally invested in units of the Portfolio(s) designated by the Account owner or assigned by the Program Manager and/or the Committee on the same Business Day as the crediting of the contribution to an Account, or upon such other Business Day as may be set forth in the then current Plan Disclosure Documents.

f. Accounting for Contribution. On the Business Day following the investment of a contribution by the Program Manager, units (or additional units) of the applicable Portfolio(s) will generally be reflected in the records of the Program for the applicable Account.

g. Overfunding an Account. Any contribution will generally be returned in the event the contribution exceeds the Contribution Maximum for the

Designated Beneficiary. At the Program Manager's discretion, a penalty may be imposed on contributions which exceed the Contribution Maximum. The Program Manager may refuse contributions, which it determines, in its sole discretion, appear to constitute an abuse of the Program.

h. Rollover Contributions. Rollover Contributions to an Account must be accompanied by an incoming rollover form (or such other form as approved by the Committee) executed by the Account owner and submitted in good order as determined by the Program Manager. An incoming rollover form (or other approved form) must include all information the Program Manager and/or Committee may require in order to process the Rollover Contribution in accordance with all requirements of the Program, including those specified in these rules, the Plan Disclosure Documents, and applicable federal and state law or rule. The Program Manager has the right, but not the obligation to reject an applicable form that does not contain all information requested. The Program Manager may record the entire amount of the contribution as earnings unless the incoming rollover form (or other approved form) is accompanied by a statement from the administrator or manager of the qualified ABLE program from which the Rollover Contribution is made detailing the amount of the Rollover Contribution that constitutes principal and the amount of the Rollover Contribution that constitutes earnings, together with such other information as the Committee and/or Program Manager may require. Rollover Contributions to an Account may be subject to federal income tax and/or penalties as required by then current federal law or rule. Reporting and payment of any such federal or state taxes or penalties shall be the obligation of the Account owner.

5. Changes to an Account.

a. Change in Designated Beneficiary. To change the Designated Beneficiary of an Account, the Account owner must complete a Designated Beneficiary Change Form or such other form as the Committee shall approve (and any additional required documentation) and submit it in good order as determined by the Program Manager in accordance with all requirements of the Program, including those specified in these rules, the Plan Disclosure Documents, and applicable federal or state law or rule. The Program Manager has the right, but not the obligation to reject an applicable form that does not contain all information requested. If the Account owner's request is in good order (as determined by the Program Manager), the Designated Beneficiary on the Account will be changed to the new Designated Beneficiary on the records of the Program.

b. Partial Transfer of Account Assets to New Designated Beneficiary. To transfer some, but not all, assets from one Account to another Account, the Account owner must provide such information as is necessary for the Program Manager to process such transaction in accordance with all requirements of the Program, including those specified in these rules, the Plan Disclosure

Documents, and applicable federal law or rule. If the Account owner's request is in good order as determined by the Program Manager the amount specified by the Account owner for transfer from the Account will be transferred to on the records of the Program to an Account for the benefit of the new Designated Beneficiary.

c. Successor Account owner. An Account owner may name a successor Account owner if permitted by the applicable form, and to the extent permissible in accordance with the Plan Disclosure Documents and applicable law. On notification to the Program Manager of the death of the Account owner, accompanied by a death certificate or other proof of death recognized under applicable law and such other information as the Program Manager requires, the Program Manager will change the Account owner for the Account on the records of the Program. In the event a qualified successor Account owner is not named on the Account Application Form or the named successor Account owner does not qualify for or accept the Account, and the Account owner has not disposed of the Account otherwise in a will, trust or other testamentary disposition, the Account will become part of the Account owner's estate.

d. Change in Account Owner. The Account owner may transfer ownership of an Account to another Eligible Individual, if the transfer is made without consideration. The Account owner will be responsible for any adverse federal and state tax consequences arising from such a change. A change of Account owner must be accompanied by an account information change form or such other form as approved by the Committee and submitted in good order as determined by the Program Manager.

e. Account Owner Direction of the Investment of Contributions. Account owners cannot direct the investment of contributions (or the earnings on contributions) once they have been used to purchase units of the designated Portfolio(s). Account owners may change how investments are allocated up to two (2) times per year among the available Portfolio options in accordance with the then current Plan Disclosure Documents and applicable law or rule.

f. General. The ability of Account owners to affect changes in an Account and the consequences to Account owners may be affected by subsequent changes in federal and state legislation.

6. Penalties for Misrepresentations. In the event an Account owner makes any material misrepresentation in any oral or written communication with the Committee or the Program Manager, the Program Manager may terminate an Account owner's Account and may charge a penalty of up to fifteen percent (15%) on the investment earnings of the Account, and may seek to recover any losses incurred by the Program, the Committee, or the Program Manager as a result of such misrepresentation.

Section 6. Federal Reporting Requirements

The Program will comply with all reporting responsibilities as outlined in the Federal Guidelines. The Treasurer, or the Treasurer's designee, will compile or cause to be compiled the needed information to complete any reports.

These Amended and Restated Rules are adopted as of ____ __, 20__.

**THE ARKANSAS ABLE PROGRAM
COMMITTEE**

By: _____

Name: Fran Jansen

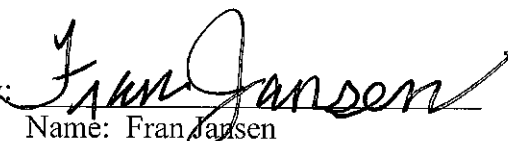
Title: Director of 529 Programs and Financial
Education

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These Amended and Restated Rules are adopted as of Dec 28, 2020.

THE ARKANSAS ABLE PROGRAM COMMITTEE

By: 
Name: Fran Jansen
Title: Director of 529 Programs and Financial
Education