ABLE America 2022:
Victories and Momentum for Change
An Update on Growth of the ABLE Market

April 2023

Overview

This AKF Market Report provides an update on trends across the Section 529A ("ABLE") industry. Plan Administrators are breathing sighs of relief after an eventful 2022 – a year that saw both a major regulatory implementation and a major legislative victory. Now, many States are turning to the next phase of technological and statutory improvements.

Reviewing the past year and looking ahead to the future has led us to the following observations and considerations:

Observations

- IRS Final Regulations for ABLE Plans (the "Final Regulations") went into effect in November 2022, but implementation of features differed across some States. Optional enhancements remain an open item for many Plans; implementation will increase user flexibility.
- The age of ABLE eligibility has increased from 26 to 46 after years of steadfast lobbying by advocates and stakeholders, a great triumph. While Plans have considerable work to implement the adjustment over the next three years, the expanded pool of eligible participants presents outreach opportunities at the same time.

Considerations

- Section 529A ABLE Plans have not always kept up with the pace of technology. Upgrades to consider now include, among others, mobile apps, live chats on customer service, added functions for entities and automatic deposits of Social Security benefits.
- With the 2022 legislative season behind us, States can begin working on the next phase of legislative advocacy. Easy items to focus on include extensions of ABLE to Work and 529-rollovers as well as elimination of certain account limitations. ABLE advocates are extremely effective – it's time to keep the focus!

Methodology

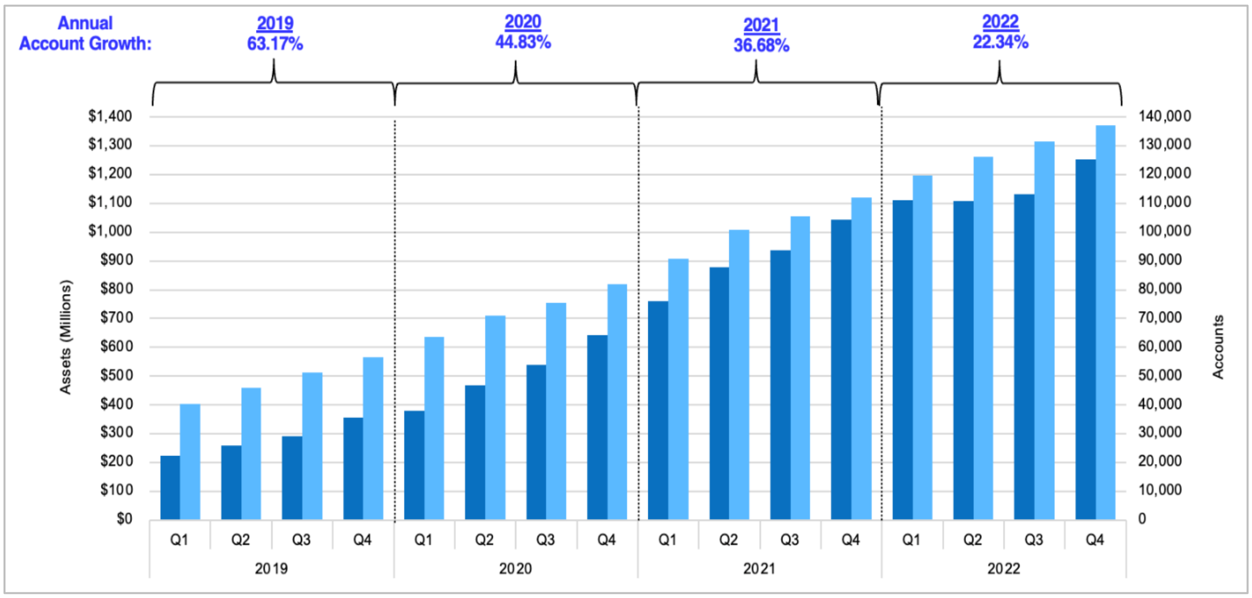
Data for this AKF Market Report has been compiled from available Program disclosure documents and Program websites as of March 22, 2023. Asset and account data is sourced to ISS Market Intelligence as of December 31, 2022.

AKF Consulting Group gratefully acknowledges the ABLE market data provided by ISS Market Intelligence. Please see https://www.issgovernance.com/market-intelligence/529-able-solutions/ for extensive information related to the ABLE and 529 industries.

Findings and Observations

Currently, 46 States and the District of Columbia offer 15 distinct ABLE Plans. Most States offer a single Plan directly to the public. Oregon and Virginia, however, each offer two separate Plans: Oregon ABLE is available to Oregon residents and ABLE for ALL is available to participants nationwide; Virginia has two national Plans - ABLEnow, which is direct-sold, and ABLEAmerica, which is only available through advisors.

The ABLE market has grown steadily since the initial Plan was launched in June 2016. As of December 31, 2022, assets exceeded $1.25 billion and accounts numbered more than 137,000. Although account growth rate has slowed in recent years, Plans continue to hit milestones that seemed oh-so-distant in the early days of the industry. Recent growth trends are depicted in the chart below:



Source: **ISS Market Intelligence** as of December 31, 2022

The majority of ABLE Plans function as part of a larger coalition, allowing States to share resources to achieve economies of scale sooner. Currently, 36 States and the District of Columbia participate in a partnership structure, while ten States operate independent, stand-alone Plans.

The chart on the following page provides a snapshot of ABLE Plans and coalitions as of December 31, 2022:

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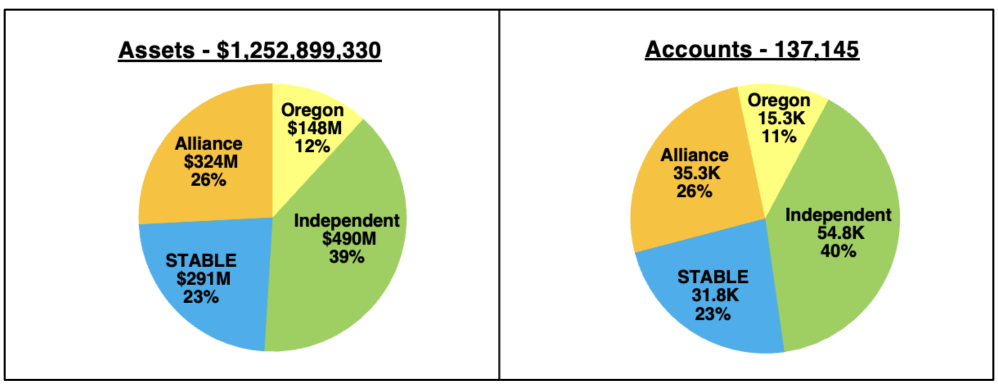
	Collaborative Structures			Independent Plans
	National ABLE Alliance	STABLE Account Partnership	Oregon Partnership	
46 States and DC	<u>18 States and DC</u> Alaska Arkansas Colorado[1] Connecticut Delaware District of Columbia Illinois Indiana Iowa Kansas Michigan Minnesota Mississippi Montana Nevada New Jersey North Carolina Pennsylvania Rhode Island	<u>13 States</u> Arizona Georgia Kentucky Missouri New Hampshire New Mexico Ohio Oklahoma South Carolina Utah Vermont West Virginia Wyoming	<u>5 States</u> Alabama Hawaii Maryland Oregon (2) Washington	<u>10 States</u> California Florida Louisiana Maine Massachusetts Nebraska New York Tennessee Texas Virginia (2)
15 Distinct Plans[2]	1 Plan	1 Plan	2 Plans	11 Plans

*Note: **Blue** represents the lead State for each Collaborative Structure*

The majority of industry assets and accounts (approximately 60%) sit within a collaborative structure, while the remaining assets and accounts (nearly 40%) sit within an independent plan.



Source: **ISS Market Intelligence** as of December 31, 2022

[1] Colorado has elected to withdraw from the National ABLE Alliance and transition to an independent ABLE Plan. Per Colorado's Program Disclosure Booklet, the transition is expected to be completed no later than June 30, 2023.

[2] Each State Plan in the National ABLE Alliance is identical in terms of investments, asset-based fees and account platform, which is why we characterize the Alliance as "1 Plan." The States in the STABLE Account Partnership are all separately branded but each invests in the Ohio Plan, with a slight dollar-based fee break for Ohio residents. Finally, in the Oregon Partnership, each State Plan design and account platform is essentially the same, with slight differences in fees and some operational details.

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Observation 1: IRS Final Regulations Take Effect – With Some Variation

The November 20, 2022 deadline for implementation of many provisions of the Final Regulations[3] has come and gone at last. The Final Regulations were an enormous undertaking to implement; Plans and Program Managers had their work cut out for them.

Perhaps the biggest change was implementation of an expanded, hierarchical list of eligible account managers. Prior to the Final Regulations, if an individual was unable to manage their own account, only a parent, guardian, or power of attorney was permitted to step in and assist. The Final Regulations greatly expand this list to include the following people *in this order* as eligible account managers: (1) a power of attorney, (2) a conservator or legal guardian, (3) a spouse, (4) a parent, (5) a sibling, (6) a grandparent, or (7) a Representative Payee appointed by the Social Security Administration. The expanded categories give individuals and families much more flexibility, especially where a parent or guardian may not be present.

But not all States implemented this hierarchy equally. To our knowledge, at least two States (Maryland and Minnesota) do not recognize all the hierarchy categories. In addition, in some States, the new hierarchy also means a more involved application process. For instance, to prove you are the account owner's sibling, submission of a birth certificate (showing a common parent) is required in Pennsylvania, while an affidavit is required in North Carolina. In Virginia (as well as a few other States), Representative Payees must also submit additional documentation with their application. A larger number of States also require Power of Attorney forms to be submitted in either some or all hierarchy situations. Many States, however, do not require any documents to be submitted; they instead allow account managers to self-attest to their position on the hierarchy.

The Final Regulations also allowed Programs to implement several other optional features. This includes items such as debit card contributions, successor account owners and successor account managers, multiple account managers and allowing a sub-account structure. The goal of these features was to give greater administrative flexibility, protections and ease of use to participants and their support persons.

These optional enhancements are being implemented sporadically across Programs.[4] So far, Programs have generally chosen not to offer account contributions via debit card.[5] Successor account owner and successor account manager initiatives were widely supported, although the practice of allowing successor account owners appears to be more popular than allowing successor account managers. A sizable number of Plans (including those in the National ABLE Alliance) have also chosen to allow co-signatories (i.e., multiple account managers on a single account). Finally, to our knowledge, no Programs currently offer the sub-accounting structure (i.e., designating multiple sub-accounts, each with a different account manager) envisioned by the Final Regulations.

[3] See https://www.federalregister.gov/documents/2020/11/19/2020-22144/guidance-under-section-529a-qualified-able-programs
[4] Information contained in this paragraph reflects Program disclosure documents and Program websites as of March 2023, and information provided by Vestwell, Ascensus and PNC between February and April 2023
[5] Vestwell appears to be the exception by allowing gift contributions through a debit card

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Observation 2: ABLE Age Adjustment Passed – Now the Implementation Work Begins

In December 2022, the Consolidated Appropriations Act, 2023, changed the age of ABLE eligibility. Currently, an account holder's disability must have begun before age 26; the December 2022 change increases this threshold to age 46. It was a major victory for State Programs, advocates and stakeholders who have been lobbying for years to increase the age of eligibility.

The good news: an estimated 6 million more Americans will become eligible for ABLE accounts, including one million veterans.[6] The bad news: the provision does not go into effect until January 1, 2026. This gives State administrators ample time to implement the new provision and educate the public about the change.

The key opportunity is for ABLE administrators to begin expanding their customer base. A host of groups that were previously challenging to reach may now be interested in ABLE. Importantly, this includes injured veterans whose disability onset came between ages 26 and 46. Several mental illnesses and degenerative or terminal conditions also present in middle age, such as schizophrenia, multiple sclerosis and late-stage cancers (many of which are listed on the Social Security Administration's List of Compassionate Allowances Conditions and therefore qualify as ABLE-eligible). Finally, individuals who experienced traumatic brain or physical injury between ages 26 and 46 will also newly qualify. States should not wait until 2026 to begin outreach to these new populations!

In addition to public outreach, State administrators should also consider the following:

- Will a Program need a State statutory amendment? State ABLE laws that align eligibility with Section 529A likely will not need amendments. But if State law specifically mentions age 26 – new legislation is likely warranted. Consider whether other changes are needed and, if so, the advantages of a single legislative package.
- If new legislation *is* needed, will a score be required? This can be a tricky exercise and may require coordination with a State tax agency.
- Will any State rules or regulations need to be amended?
- Program websites and disclosure materials will need to be supplemented or re-stated.
- Customer service representatives should be trained on the changes.
- Plan forms (enrollment applications, etc.), marketing materials and public presentations mentioning age 26 will need to be redone – both paper and online versions.
- Any past presentations that may have been recorded and uploaded for public consumption may need a disclaimer that certain information is now outdated (or the presentations could be re-recorded with updated information).

[6] See ABLE National Resource Center and National Disability Institute, "ABLE Age Adjustment Act: Estimate of Additional Eligible ABLE Participants"

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Future Considerations

With implementation of Final Regulations and passage of the ABLE Age Adjustment Act behind us, Plans can focus on what's next. As we look to the future, we note two considerations for ABLE Plans as they continue to grow.

Consideration 1: New Technology

The latest technology, especially assistive technology, can be a core differentiator amongst ABLE Plans. Program Managers typically have to balance the cost of development against the bottom line, but many new technologies can actually improve that bottom line. Here are some of the most talked-about potential industry improvements:

- **Mobile Apps**. Currently, only one ABLE Program - Virginia's ABLEnow - offers a mobile app. Virginia's app allows users to view account activity, transact, view investment summaries, upload receipts and more. And so far, according to Apple App Store ratings, the ABLEnow app boasts a 4.9-star rating (out of 5 stars).[7] User trends are equally impressive. In January 2023, ABLEnow registered over 16,700 app logins across 1,500 unique users.[8] In that same month, the app processed over 800 transactions, including contributions and distributions. Interestingly, contribution activity has consistently outpaced distribution activity on the app. We are encouraged – though not surprised – to see these technological successes.

  Our market information indicates that other Programs may be close behind: Vestwell is targeting the release of its ABLE mobile app in 2024;[9] CalABLE made mobile app a key part of its recent RFP for Program Management, highlighting the demand for it; and Ascensus is currently evaluating adding it to its product roadmap.

- **Customer Service Live Chat**. According to market research from the customer service industry, live chat is the modern consumer's preferred mode of communication.[10] Live chat is preferred by 41% of customers, compared to 32% who prefer phone and 23% who prefer email.[11] Live chat is perhaps even more critical for certain individuals with disabilities, who may have difficulty using the phone as a medium of communication. Today, however, Vestwell appears to be the only service provider offering live chat assistance for ABLE account holders.[12] We encourage States to explore live chat options with their Program Administrators to better meet customers' needs.

- **Online functionality for entities**. Organizations opening and managing ABLE accounts (referred to as "entities") were a large driver of growth before the Final Regulations and they are set to become an even bigger driver now that Representative Payees can act as account managers. Programs should consider how to build their technology to accommodate these

[7] See https://apps.apple.com/us/app/ablenow-supported-by-pnc/id1528603827
[8] Data provided by Virginia and PNC
[9] Vestwell reports that 40% of user interaction currently takes place on mobile devices
[10] See Kayako, Live Chat Statistics, at https://kayako.com/live-chat-software/statistics/
[11] See footnote 10
[12] ABLE Plans using Fifth Third's checking account investment option have access to Fifth Third's live chat feature, but only for questions about the ABLE checking option

organizations. Their buy-in could be extremely valuable as these organizations could be a core source of information about and provide referrals to ABLE Plans.[13]

- **Social Security Direct Deposit**. Currently, only a few Plans allow account holders to set up direct deposit of Social Security benefits into their ABLE accounts. We expect this list to expand soon with Vestwell planning a platform release in mid-May; Ascensus also plans to add this functionality in the near term.

Consideration 2: A New Legislative Agenda

The past few years of legislative advocacy have focused on increasing the age of ABLE eligibility. Moving forward, ABLE Programs, along with the newly established ABLE Savings Plans Network, can begin sketching out the next set of priorities for 529A legislative changes. A few considerations could include:

- **Make ABLE to Work permanent**. The ABLE to Work provisions of Section 529A will sunset as of January 1, 2026. This would be a huge loss for Programs and account holders nationwide. Industry data shows that as of March 31, 2022, over 12,000 account holders had made ABLE to Work contributions.[14] As of that same date, total ABLE to Work contributions exceeded $147 million – and that is likely a conservative figure.[15] It is not too early to start advocating to make ABLE to Work permanent.

- **Make 529-to-ABLE rollovers permanent**. In addition to ABLE to Work, rollovers from Section 529 accounts to ABLE accounts are also set to expire as of January 1, 2026. Making these rollovers permanent will preserve a significant feature for many account holders. Case in point: as of March 31, 2022, there were more than 4,000 529-to-ABLE rollovers, representing over $39 million in contributions.[16]

- **Exempt 529 rollovers from annual contribution limits**. Currently, 529 rollovers are subject to the general ABLE contribution limit of $17,000 a year. Exempting 529-to-ABLE rollovers from the annual contribution limit could increase ABLE account balances and decrease administrative burdens for families.

- **Add the ability to make one-time lump sum contributions**. Annual contribution limits for ABLE accounts hamper growth and are a main reason individuals turn to alternative savings vehicles, like Special Needs Trusts ("SNTs"), over ABLE accounts. Data shows that there is demand for higher limits: in 2021, over 6.5% of ABLE account holders maxed out their annual contributions.[17] The ability to make one-time large contributions from specific sources could make a significant difference for ABLE account holders and would-be account holders. Sources that are commonly discussed include court settlements, Social Security back-payments, life insurance payouts, SNT distributions or lump-sum inheritances.

[13] We understand that PNC expects to expand its group path enrollment functionality within the next two years; that Vestwell plans to put entity enrollment fully online in 2023, including self-service reporting features for entities; and that entity enrollments and entity account management are two major initiatives on Ascensus' development roadmap.

[14] Source: *Data 2.2: Annual ABLE Programs National Data Review*, Presentation at the National Association of State Treasurers' Treasury Management Training Symposium, June 2022, slide 38

[15] See footnote 14. The figure is likely conservative because not all ABLE Programs provided data for these statistics.

[16] See footnote 14

[17] See footnote 14, slide 41

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- **Remove the one account rule**. The ability to have multiple ABLE accounts for one person could also be a game changer for industry growth and account holder stability. It would also solve administrative problems that arise when an account owner has multiple (and even competing) would-be account managers. For instance, with multiple accounts, parents who may be separated could each oversee a distinct ABLE account for their child. This multiple-account structure works in the 529 industry and could potentially work well for ABLE, too.

Find Out More

After several big victories in 2022, ABLE Plans have new challenges and new agendas to tackle in 2023 and beyond. We are anxious to see what is on the horizon and to help turn opportunities into realities.

We would be delighted to discuss these findings in more detail with you. For more information, please contact:

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