

# **Federal Legislative Efforts to Expand Savings Options for Individuals with Disabilities**

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People with disabilities face a number of barriers to saving assets for self-sufficiency. Current asset limits tied to eligibility for public support programs restrict individuals' and families' access to the tax-advantaged savings tools available to the general population. Together with income limits, these are a significant disincentive to work. The few savings options designed specifically for people with disabilities have limited functionality, particularly for low- and moderate-income families. Additionally, many of the nonprofits and financial companies providing asset-building products and services to low-income customers have not yet adapted them to the disability market. These factors contribute to a cycle of poverty for many individuals with disabilities that dramatically limits their economic opportunity and their access to self-determination. Despite large public expenditures on disability programs, individuals with disabilities are generally hindered from participating in the economic mainstream. Consider the following:

- According the Bureau of Labor Statistics (BLS), in June 2010, only 21.7 percent of people with disabilities were participating in the work force compared to 70.5 percent of people with no disability. Of the subset of people with disabilities who were participating in the workforce, 14.4 percent were unemployed compared to the national average unemployment rate of 9.4 percent.
- The National Disability Institute reports that only 21 percent of taxpayers with disabilities have incomes over \$40,000.
- Working-age adults with disabilities are three times more likely than their nondisabled peers to live at or below the poverty line.

Progressive, disability-friendly public policy is critical to encouraging people with disabilities to work, save, and participate in the nation's economy. This paper critiques existing policies that deter employment and saving among people with disabilities and reviews the limitations of the currently available savings vehicles. It also describes proposals currently before Congress aimed at tackling policy disincentives and expanding savings options. In the final section, the paper describes the prospects for each legislative proposal.

## **Asset and Income Limits**

Individuals with disabilities often require long-term services and support provided by Medicaid, income assistance from the Supplemental Security Income (SSI) program, as well as other assistance through

federal and state programs. Asset limits greatly restrict individuals' ability to save and improve their well-being. Current Social Security regulations restrict Medicaid support for persons with disabilities who have accumulated more than \$2,000 in countable assets (\$3,000 for a married couple). These limits have not changed since 1989. Persons with disabilities and their family members often face a stark dilemma: Either set aside the total amount of resources necessary to provide care for a person with a disability over their lifetime, or rely exclusively on public assistance. Even those not currently on public support may be concerned with maintaining eligibility for public programs, in the event they would like to use them in the future. Parents of children with disabilities may decide against saving for their child in order to avoid jeopardizing their child's eligibility for Medicaid, SSI, and other means-tested programs.

For people receiving SSI benefits, earnings over the Substantial Gainful Activity (SGA) level can cause a loss of benefits. The SGA level for 2009 was \$1,640 for the Blind and \$980 for people with other disabilities. As such, individuals with disabilities may also face a major conflict around work: Either work significantly more hours, generating income and building assets to become partially self-sufficient; or work significantly fewer hours, if at all, in order to maintain eligibility for public programs. Many individuals and families decide to work just a few hours a week or stay out of the workforce altogether. According to the Social Security Administration, only 5.5 percent of the working-age population (those 18 to 64 years of age) receiving SSI worked in December 2008.

Entitlement programs do not offer realistic, customized strategies that promote optimal self-sufficiency by encouraging work and savings while simultaneously providing needed ongoing support. Individuals who do work, generate income, and save for their future are penalized through the reduction or outright elimination of support. Yet, for many, employment and savings may never provide the income necessary to live independently and plan for the future. Ultimately, asset and income limits deter many from seeking meaningful education or employment opportunities. Thus, a vicious cycle of poverty among individuals living with disabilities continues.

This welfare paradigm is characterized by low expectations and a culture of compliance in which individuals with disabilities are treated primarily as consumers of services and public assistance. From a fiscal perspective, the paradigm may allow public expenditures to be controlled, but it does nothing to help reduce them. This model comes at a cost to individuals with disabilities and to society as a whole. As economist Jonathan Gruber notes, "When individuals reduce their labor supply in order to become poor and qualify for (or in this case maintain) cash welfare, social surpluses fall because fewer goods are produced. A key component of the efficiency-equity trade-off is the social surplus (efficiency) lost due to reduced labor supply by welfare recipients."<sup>1</sup>

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<sup>1</sup> Gruber, 2007.

## Current Savings Tools

Disability advocates have long argued for additional savings tools designed specifically for people with disabilities and their families that would offer the flexibility, portability, and tax advantages available to other Americans. Currently, only a few savings vehicles are available for individuals with disabilities. These products have limited features, and many cannot be used by people on public support because of the income and asset limits associated with these programs. The primary savings options available are special needs trusts, pooled trusts, and individual development accounts (IDAs). Each of the savings tools has its own advantages and limitations.

### Special Needs Trusts

Assets deposited into special needs trusts are treated for tax and legal purposes as assets held by the trust rather than the individual, and therefore are not counted for purposes of the asset tests that are associated with determining eligibility for publicly funded cash assistance and entitlement programs. Unlike pooled trusts (discussed below), the assets held in a special needs trust are dedicated solely to the benefit of a single special needs beneficiary and are not held collectively for multiple individuals. These trusts are created and regulated at the state level. They can be expensive to set up and maintain, because the declaration of the trust document must be drafted by an attorney and updated if a family moves to another state. Special needs trusts are taxed at the highest individual tax rate, but they do not have contribution limits, and there are few restrictions on how the assets held in the trust may be spent. If a special needs trust is set up as a third-party trust, then funds remaining upon the death of the beneficiary are not subject to use in any Medicaid reimbursement, also known as a “Medicaid payback.”<sup>2</sup>

### Pooled trusts

Unlike special needs trusts, which are created for the benefit of an individual beneficiary, pooled trusts are established and maintained by nonprofit disability organizations for groups of beneficiaries. Individuals with disabilities deposit assets into an account owned and controlled by the nonprofit organization, and that organization pools the assets of each account for investment and management. Pooled trusts are fully taxable, require set-up and maintenance costs, and are regulated at the state level. Because the assets belong to the nonprofit organization rather than to the individual with a disability, the assets in a pooled trust are not counted for purposes of any asset tests tied to eligibility for publicly funded cash assistance and entitlement programs. Similar to special needs trusts, there are no contribution limits for pooled trusts, and the allowed expenditures of the assets held in the accounts are expansive. The set-up fees can be lower for pooled trusts than for special needs trusts, and the

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<sup>2</sup> A Medicaid payback is a provision in certain types of savings vehicles requiring funds remaining in the accounts at the individual’s death to be returned to the state Medicaid program up to the value of services provided to the individual over his or her lifetime.

organizations that maintain the trusts assist individuals with the maintenance of their accounts. A portion of any funds left in the account after the beneficiary's death remains in the account for the benefit of other participants before a Medicaid payback requirement is applied.

### Individual Development Accounts (IDAs)

IDAs are matched savings accounts created to help low-income individuals and families save, build assets, and enter the financial mainstream. A sponsor organization (often a nonprofit) holds the account at a financial institution and “matches” participant contributions (the match is usually one to four times the size of the participant's contribution). The assets held in an IDA are restricted for certain uses, usually the purchase of a first home, paying for post-secondary education, or starting a small business. As such, IDAs reward the monthly savings of working-poor families. IDAs are taxable accounts, although the matching funds may be exempt from federal income taxation as gifts in certain circumstances. Organizations that operate IDA programs often couple the match incentive with financial literacy education, training, and case management. IDAs can be a helpful tool for persons with disabilities, because assets maintained in the account do not count toward asset limits tied to eligibility requirements for federal and state entitlement programs. Only a small number of IDAs are available in each state. Early numbers indicated a small uptake among individuals with disabilities, with fewer than 50 individuals with disabilities opening an IDA by the end of 2009.<sup>3</sup>

### Current Policy Initiatives

Many individuals with disabilities and their families have been searching for ways to save for the unique, ongoing long-term services and support that individuals with disabilities often require without jeopardizing the individual's eligibility for benefits. Several legislative proposals have been introduced in the 111<sup>th</sup> Congress that would significantly expand the financial savings options of individuals with disabilities. Below we provide a brief overview of these proposals and discuss opportunities to enhance them to ensure the greatest opportunity for savings among individuals with disabilities.

#### The Achieving a Better Life Experience (ABLE) Act

The Achieving a Better Life Experience (ABLE) Act (H.R. 1205 and S. 493) is the only proposed legislation focused on promoting savings and asset development opportunities specifically for people with disabilities. The ABLE Act would provide individuals and their families control over savings accounts that could accrue assets without jeopardizing their eligibility for Medicaid, SSI, or other public assistance. There are several distinct advantages to these accounts. First, earnings would accrue tax-free. Withdrawals from ABLE accounts would not be taxed as long as they are used to pay for the individual's qualified expenses. Second, ABLE accounts would differ from other savings instruments with tax

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<sup>3</sup> National Disability Institute, [www.ndi-inc.org](http://www.ndi-inc.org).

advantages because they would provide substantial flexibility. Any individual with a disability or their parent or guardian could hold and control the account. Third, ABLE accounts are designed to be easy and inexpensive to open, like a basic savings account. Fourth, ABLE accounts would be created and regulated at the federal level, ensuring that they are portable for individuals and families who move across state lines.<sup>4</sup> Finally, the ABLE Act considers the unique situations of families with children who acquire a disability later in life and allows them to roll-over funds from a traditional college savings account into an ABLE savings account without penalty. Specific details of the proposed ABLE accounts include:

- **Eligible Expenses**—ABLE accounts are designed to allow the assets held in the account to be used for a broad range of expenses. Funds are not limited to use in adulthood or retirement but can be used for many expenditures whenever they are needed. This flexibility is necessary for planning ahead when families are not yet sure how independent their child will become. Although the list of eligible expenses is not as expansive as that for special needs trusts or pooled trusts, the ABLE account can fund a variety of essential expenses, including educational expenses; medical and dental care; health, prevention, and wellness expenditures; employment training and support; assistive technology; personal supports services; transportation; housing; and other expenses for life necessities.
- **Flexibility and Portability**—Individuals and families with ABLE accounts can roll-over these funds into an individual trust or pooled trust if these trusts would better meet their needs. ABLE accounts can be managed by pooled trusts if the individual or family so chooses. Similar to Medicaid trusts, funds remaining in the accounts at the individual's death would be applied toward Medicaid paybacks.

There are possibilities for strengthening the tax incentives provided in the ABLE Act. Under the current versions of the bill, an individual with a disability who is the beneficiary of an ABLE account is entitled to a tax deduction for the amount he or she contributes to the ABLE account, up to a maximum of \$2,000 per year. The deduction phases out as income increases until it reaches zero for individuals with income exceeding \$35,000, heads of household with income exceeding \$52,500, and joint filers with income exceeding \$70,000.

Taxpayers who do not itemize their deductions (the vast majority of lower- and middle-income taxpayers) cannot make use of the proposed tax deduction. Those receiving Medicaid and SSI do not ordinarily have significant taxable income, and therefore cannot make use of the proposed deduction. For these reasons, we recommend that the proposed tax deduction be eliminated or replaced with a

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<sup>4</sup> ABLE Accounts may be established either as trusts or as custodial accounts. Like other tax-advantaged savings vehicles (e.g., Coverdell Education Savings Accounts), the governing instrument establishing the account would be an Internal Revenue Service form created specifically for ABLE Accounts to comply with federal law (see, e.g., IRS Form 5305-E and 5305-EA).

refundable tax credit, which reduces the amount of tax owed on a dollar-for-dollar basis. If the resulting amount of tax owed is negative, a taxpayer may apply for a refund.

Additionally, language should be added to any tax credit provision requiring that refunds made to individuals as a result of the new tax credit be deposited directly into the ABLE account rather than paid to the individual. This would help ensure that the refund does not affect the individual's ability to qualify for Medicaid or SSI. The tax credit should also have income phase-outs and a cap.

## The Savings for Working Families Act

The government established the first IDA program under the Assets for Independence Act of 1998. Most states include IDAs in their Temporary Assistance for Needy Families (TANF) Statute. One benefit of opening an IDA is that savings in the account do not count as assets for the purpose of qualifying for state or federal benefits.

Today many IDA advocates across the country are working to advance state policies and expand funding for IDAs so that even more Americans will be able to benefit from this program. The Savings for Working Families Act of 2009 (SWFA) (H.R. 2277 and S.985) would authorize the creation of an additional 2.7 million in IDAs and provide \$120 million over a 10-year period to nonprofit organizations providing financial education to low-income individuals. Passage of this important legislation would result in a three-fold increase in the number of available IDAs and a six-fold increase in the resources for financial education compared with the previous legislation.

Since the first federally funded IDA program began 10 years ago, the IDA field has grown dramatically, and today more than 1,100 sites provide IDAs to more 83,000 savers. More than 35,000 people have graduated from the program, having purchased a major asset and completed courses in financial education. The SWFA would expand IDAs by providing a tax credit to financial institutions that match the savings of low-income families on a dollar-for-dollar basis. Despite the growth of IDAs, to date these programs have served only a small proportion of lower-income individuals and families. If the SWFA is enacted, the additional resources would fund at least 6,000 new accounts per state, and eligible donor organizations could apply for additional accounts. Expansion of IDAs would increase the opportunities of individuals with disabilities to build savings and achieve financial security and independence.

## Revisiting Asset Limits

This year, Representative Niki Tsongas (D-MA) introduced the SSI Savers Act of 2010 (H.R. 4937), legislation that would address concerns around the extremely low asset limits of the federal disability programs. H.R. 4937 would make the following modifications to the SSI program:

- Increase limits on countable resources to \$5,000 for individuals and \$7,500 for couples and index these limits to inflation.
- Exclude any assets (up to \$10,000 for individuals and \$15,000 for couples) included in a

qualified retirement plan, trust, education savings account, savings bond, or individual development account.

- Eliminate the requirements that SSI recipients apply for periodic payments from deferred compensation arrangements.
- Exclude from income one-third of distributions from deferred compensation arrangements.

Representative Tsongas worked closely with the Corporation for Enterprise Development (CFED) and other national asset development organizations in the drafting of H.R. 4937. Disability advocates have provided the following five recommendations for improving and clarifying the intent of the legislation:

1. Increase asset limits five-fold, to \$10,000.
2. Ensure that asset and income limitations outlined in the legislation for Social Security programs are applied comprehensively to financial eligibility tests under all federally supported programs, including Medicaid.
3. Strengthen language of the current bill to ensure that it will cover alternative financial savings tools and new types of accounts yet to be created.
4. Reference the inclusion of IDAs operating under the auspices of the Personal Responsibility Act to ensure that the legislation covers all TANF IDA accounts.
5. Clarify that anything that is excluded as an asset under the legislation will also be excluded when converted to income. This would ensure that any withdrawn funds be income-exempt up to the level that they were resource-exempt prior to their withdrawal.

## **Legislative Outlook**

These three legislative proposals are representative of a new era in federal legislative initiatives aimed at improving the economic self-sufficiency and long-term financial security of individuals with disabilities and their families. As Congress heads into the election cycle, disability advocacy organizations see a significant opportunity to increase momentum surrounding these legislative proposals.

The ABLE Act was introduced in the U.S. House of Representatives and Senate in February 2009.<sup>5</sup> The legislation currently enjoys tremendous bipartisan support, with over 195 cosponsors in the House and 25 cosponsors in the Senate. The Joint Committee on Taxation scored the ABLE Act as costing \$1.6 billion over ten years. This cost presents a gradual increase each year as people learn about the accounts and start to establish them for personal use until the annual costs reach an estimated \$316 million.

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<sup>5</sup> H.R. 1205 was introduced by Representatives Ander Crenshaw (R-FL), Kendrick Meek (D-FL), Phil Hare (D-IL), Patrick Kennedy (D-RI), Gregg Harper (R-MS), and Cathy McMorris Rogers (R-WA). S.493 was introduced by Senators Robert Casey (D-PA), Chris Dodd (D-CT), and Orrin Hatch (R-UT).

The Savings for Working Families Act was reintroduced in the U.S. House of Representatives and Senate in May 2009.<sup>6</sup> The legislation currently has 10 cosponsors in the Senate and 18 cosponsors in the House. In the 110<sup>th</sup> Congress, the SWFA (then S.871/H.R. 1514) possessed widespread bipartisan support, with a record level of 127 cosponsors (including 27 Senators and 100 House Representatives). At that time, the Congressional Budget Office scored the legislation as costing \$1.35 billion over a 10-year period. The Obama Administration included passage of SWFA in the President's 2009 proposed budget, but there has yet to be any movement on the legislation in the Congress.

Representative Tsongas introduced the SSI Savers Act (H.R. 4937) on March 24, 2010. The legislation was referred to the House Ways & Means Committee and currently has five cosponsors. There have been no announcements of plans to introduce a companion bill in the Senate.

If passed, these legislative proposals would create a significant opportunity for financial services companies and asset development organizations to engage in the goal of helping individuals with disabilities participate actively in the U.S. economy through working, earning, and saving. These proposals provide a pathway for empowering individuals with disabilities to attain greater economic self-sufficiency.

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<sup>6</sup> H.R. 2277 was introduced by Representatives Earl Pomeroy (D-ND), Allyson Schwartz (D-PA), Joseph Pitts (R-PA), and Kevin Brady (R-TX). S.985 was introduced by Senators Blanche Lincoln (D-AR), Joe Lieberman (D-CT), John Kerry (D-MA), Jim Bunning (R-KY), Olympia Snowe (R-ME), and Susan Collins (R-ME).