

MEMORANDUM OF UNDERSTANDING

Between

**DELAWARE DEPARTMENT OF FINANCE
DIVISION OF REVENUE**

Contact:

**Kathy Revel, Director
Division of Revenue
Carvel State Building
820 N. French Street, 8th Floor
Wilmington, Delaware 19801
302-577-8686**

and

THE OFFICE OF THE STATE TREASURER

Contact:

**John Meyer
Director of Contributions & Plan Management
820 Silver Lake Boulevard – Suite 100
Dover, DE 19904
302-672-6705**

April 3, 2024

MEMORANDUM OF UNDERSTANDING

A. BACKGROUND

This Memorandum of Understanding (the “MOU”) is entered into on April 3, 2024, by the Delaware Department of Finance, Division of Revenue (“DOR”), and the Office of the State Treasurer (“OST”), on behalf of the Plans Management Board (collectively referred to as the “Parties”).

B. PURPOSE

Subject to the terms of this MOU, OST, on behalf of the Plans Management Board (the “Board”), will provide certain data related to the DE529 Education Savings Plan (“DE529” data) and the Delaware Achieving a Better Life Experience (ABLE) Program (“ABLE” data) to DOR so that DOR can conduct tax audits in compliance with its duties under Chapter 5, Title 30 of the Delaware Code.

Delaware residents, who make contributions to DE529 or ABLE accounts, are eligible for a deduction from their federal adjusted gross income (“AGI”) when they file their personal state income taxes. *See 30 Del. C. §§ 1106(b)(11), (12)*. Federal AGI may be reduced for DE 529 plan contributions up to \$1,000 (or \$2,000 for joint returns) with conditions. *See 30 Del. C. § 1106(b)(11)*. Individuals with a federal AGI greater than \$100,000 (or \$200,000 for joint returns) are not eligible for this deduction. *Id.* Federal AGI may be reduced for ABLE account contributions up to \$5,000 (or \$10,000 for joint filers). *See 30 Del. C. § 1106(b)(12)*. DOR intends to use the 529 and ABLE data from OST to verify the deductions claimed by Delaware taxpayers in their personal income tax returns and to conduct tax audits of certain returns.

This MOU provides guidelines for the sharing of DE529 and ABLE data as between DOR and OST.

C. LEGAL AUTHORITY

1. DOR: The DOR Director (“Director”) is responsible for the administration and enforcement of Title 30 in the Delaware Code. *See 30 Del. C. § 563*. The Director’s duties include the examinations of state tax returns to determine the correct amount of tax. *See 30 Del. C. § 521*.

2. OST/Plan Management Board: The Board is responsible for the administration of the 529 and ABLE plan. *See 29 Del. C. 2722(a)*. The Board is authorized to enter into an agreement for services necessary or desirable for carrying out the purposes of the plan. *See 29 Del. C. § 2722(e)(3)*. OST serves as the administrative support agency for the Board and its Committees. *See 29 Del. C. § 2722(g)*.

D. GENERAL PROVISIONS

1. The DE529 data to be shared under this MOU is limited to the following data fields:

DE529 Data Fields Supplied by Fidelity
ACC_N_CONS

Contributions_YEAR
DE_Resident_Flag
Full Name

2. The ABLER data to be shared under this MOU is limited to the following data fields:

ABLE Data Fields Supplied By Ascensus	
Traunch ID	Account Owner Last Name
Plan Name	State
AB Account #	Transaction Date
Account Status	Transaction Amount
Account Owner First Name	Transaction Type=Contribution

3. Parties agree to contribute the staff time necessary to comply with the terms of this MOU.

4. This MOU replaces and supersedes any previous agreement or understanding between the Parties regarding the subject matter of this MOU.

5. This MOU contains all the terms and conditions agreed upon by the Parties concerning the purpose of this MOU. No other understandings, oral or otherwise, regarding the purposes of this MOU shall be deemed to exist or be binding upon the Parties.

6. Nothing in this MOU is intended to diminish or otherwise affect the authority of either Party to perform its respective statutory or regulatory functions.

7. This MOU is not intended to be legally binding and does not confer any rights on any private person. This MOU is not intended to confer any rights against the United States, its agencies, or its officers upon any private person.

8. This MOU will be executed in full compliance with applicable federal and Delaware laws and regulations.

9. Disputes arising under this Agreement will be resolved informally by discussions between authorized officials designated by each Party.

E. CONFIDENTIALITY PROVISION

1. Parties recognize that the confidentiality of 529 and ABLER data is of paramount importance and must be observed except where disclosure is permitted or required by law. Accordingly, Parties agree to take all necessary steps to protect such confidentiality.

2. DOR agrees to:

- (i) use 529 and ABLE data only in the performance of official duties and for purposes authorized by law and consistent with this MOU;
- (ii) store 529 and ABLE data in a place physically secure from access by unauthorized persons;
- (iii) store and process 529 and ABLE data in an electronic format that is secure from access by unauthorized persons;
- (iv) take precautions to ensure that only authorized personnel have access to the computer systems in which the 529 and ABLE data are stored;
- (v) make the 529 and ABLE data accessible only to personnel who require the data in the official performance of their job duties;
- (vi) instruct all personnel provided access to 529 and ABLE data per this MOU about the confidentiality requirements of this MOU;
- (vii) require all individuals obtaining 529 and ABLE data under this MOU to agree to adhere to the confidentiality requirements contained in this MOU and agree to promptly report any infraction of the terms of this MOU to OST;
- (viii) immediately notify OST of any breach of security but no later than twenty-four (24) hours after identification of a security breach or system change to hardware or software that could pose a security threat.

3. Responsibility for the disclosure of security breaches to the public shall be the responsibility of the Party whose system has been breached.

4. All confidentiality provisions shall survive termination of this MOU.

5. DOR shall continue to comply with DTI's Terms and Conditions Governing Cloud Services and Data Usage Agreement. For reference, copies of DTI's Delaware Data Usage Terms and Conditions Agreement and Delaware Cloud Services Terms and Conditions Agreement are available at the DTI's website, <https://dti.delaware.gov/technology-services/standards-and-policies/>.

6. DOR shall follow OST's reasonable requests regarding the return or destruction of 529 and ABLE data shared under this MOU.

F. EFFECTIVE DATE, MODIFICATION, AND DURATION OF AGREEMENT

1. This MOU shall be effective when signed by both Parties.

2. This MOU may be modified or amended only as DOR and OST mutually agree in writing by their respective authorized representatives.

3. This MOU may be cancelled by either Party by giving thirty (30) days' advance written notice prior to the date of termination. Either Party may immediately terminate disclosures to the other Party if it determines the other Party is not properly safeguarding return or taxpayer information.

4. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same MOU. A signed copy of this MOU delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this MOU.

5. This MOU will continue in effect until the earlier of (i) five (5) years after the effective date of this MOU; (ii) notification of one Party to the other Party of its intent to terminate the MOU; or (iii) termination by either Party as set forth in this MOU.

G. CONTACT INFORMATION

The Parties designate the individuals appearing on the cover page of this MOU as the primary points of contact (“POCs”) responsible for their respective performances under this MOU, unless a Party notifies the other party in writing that a new POC has been designated. The Parties will notify each other in the event of the separation or long-term absence of their POCs, naming a substitute or replacement POC if needed.

[signature page follows]

IN WITNESS WHEREOF, this MOU has been agreed to and executed by the Parties below this
3rd day of April, 2024.

**DELAWARE DEPARTMENT OF FINANCE
DIVISION OF REVENUE**

By: *Kathy L. Revel*
Kathy L. Revel
Director of the Division of Revenue

Date: 4/3/24

**THE OFFICE OF THE STATE
TREASURER, ON BEHALF OF THE PLAN
MANAGEMENT BOARD**

By: *John Meyer*
John Meyer
Director of Contributions & Plan
Management

Date: 4/03/24