

Rules of
Elected Officials
Division 50—Treasurer
Chapter 4—Missouri Higher Education Savings Program

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Title 15—ELECTED OFFICIALS
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Education Savings Program

15 CSR 50-4.010 General Organization

PURPOSE: This regulation provides the public with a description of the Missouri Higher Education Savings Program Board's operations and the methods and procedures where the public may obtain information. This rule is adopted to fulfill the statutory requirement of section 536.023(3), RSMo.

(1) House Bill No. 1694, 2nd Regular Session, 89th General Assembly (1998) as amended by Senate Bill No. 460, 1st Regular Session, 90th General Assembly (1999) (effective August 28, 1999), codified at sections 166.400 through 166.455 (the statute) creates the Missouri Higher Education Savings Program (the program), to be administered by the Missouri Higher Education Savings Program Board (the board). The board consists of the state treasurer (who serves as chairman), the commissioner of the state Department of Higher Education, the commissioner of the state Office of Administration, the director of the state Department of Economic Development, and two (2) persons having demonstrable experience and knowledge in the areas of finance and investment and management of public funds, one of whom will be selected by the president pro tem of the state Senate and the other selected by the speaker of the state House of Representatives. The board's primary purpose is to administer the program and the board possesses all powers necessary to carry out and effectuate the purposes, objectives and provisions of the statute.

(2) The program is designed to promote access to higher education by providing individuals with a convenient method to fund the increasingly expensive cost of post-secondary education. By allowing participants to make current contributions for designated beneficiaries and by investing these contributions with the goal of achieving a rate of return that reflects increases in educational costs, the program is intended to provide designated beneficiaries with funds needed for the costs of their post-secondary school education. Within limits set by state and federal law, contributions to a savings account pursuant to the program are deductible from the contributor's state income tax, and income earned or received from the program by a contributor or beneficiary are not subject to state income tax.

(3) Pursuant to the statute, the board has selected and approved a program manager to administer the program. The program manager manages the day-to-day operation of the program.

(4) The public may obtain information or make submissions or requests to the State Treasurer's Office, P.O. Box 210, Jefferson City, MO 65102, (573-751-2411).

*AUTHORITY: sections 166.416 and 536.023, RSMo Supp. 1998. * Original rule filed Aug. 30, 1999, effective Feb. 29, 2000.*

**Original authority: 536.023, RSMo 1975, amended 1976, 1997.*

15 CSR 50-4.020 Missouri Higher Education Savings Board

PURPOSE: This rule establishes procedures for the operation of the Missouri Higher Education Savings Program (the savings program), specifies responsibilities of the Missouri Higher Education Savings Program Board (the board) in administering and monitoring the savings program, describes the rights and responsibilities of the board and its staff, participants, beneficiaries and any third party designated by the board to carry out services under the savings program, and is intended to ensure that the savings program conforms with the federal and state statutes and regulations governing qualified state tuition programs.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) Incorporation by Reference. The provisions of section 529 of the *Internal Revenue Code* and the Treasury regulations (or proposed regulations) promulgated thereunder are incorporated herein by reference with the same effect as if fully set forth herein.

(2) Definitions.

(A) Existing Missouri Definitions. The following terms, as used in this rule, are defined in section 166.410, RSMo: benefits, board, eligible educational institution, *Internal Revenue Code*, participation agreement,

qualified higher education expenses, savings program.

(B) Existing Federal Definitions. The following terms, as used in this rule, are defined in section 529 of the *Internal Revenue Code* or the Treasury regulations (or proposed regulations) promulgated thereunder: contribution, distributee, distribution, earnings, investment in the account, member of the family, qualified state tuition program.

(C) Additional Definitions. The following definitions shall also apply to the following terms as they are used in this rule:

1. "501(c)(3) organization" means an organization described in section 501(c)(3) of the *Internal Revenue Code* and exempt from taxation under section 501(a) of the *Internal Revenue Code*;

2. "Account" means the account in the savings program established by a participant and maintained for a beneficiary;

3. "Account balance" means the fair market value of an account on a particular date;

4. "Account owner" means—a) a participant or b) the transferee of an account pursuant to subsection (5)(H) below;

5. "Beneficiary" means a designated beneficiary as defined in section 529 of the *Internal Revenue Code* and the Treasury regulations (or proposed regulations) promulgated thereunder;

6. "Cash" shall include but not be limited to checks drawn on a banking institution located in the continental United States in U.S. dollars (other than cashiers checks, travelers checks or third-party checks exceeding ten thousand dollars (\$10,000)), money orders, payroll deduction, and electronic funds transfers. Cash does not include property;

7. "Disability" means, with respect to a beneficiary, any disability of such beneficiary that has been certified pursuant to subparagraph (6)(B)2. below;

8. "Member of the family" means an individual who is related to the beneficiary as listed in subparagraphs (2)(C)8.A. through (2)(C)8.I. of this definition, together with such changes to such list as may be included, from time-to-time, in the definition of "member of the family" pursuant to section 529 of the *Internal Revenue Code* or the Treasury regulations (or proposed regulations) thereunder:

A. A son or daughter, or a descendant of either;

B. A stepson or stepdaughter;

C. A brother, sister, stepbrother or stepsister;

D. The father or mother, or an ancestor of either;

E. A stepfather or stepmother;
 F. A son or daughter of a brother or sister;

G. A brother or sister of the father or mother;

H. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law; or

I. The spouse of the designated beneficiary or the spouse of any individual described in subparagraphs (2)(C)8.A. through (2)(C)8.H. of this definition.

For purposes of determining who is a member of the family hereunder, a legally adopted child of an individual shall be treated as the child of such individual by blood, and the terms brother and sister include a brother or sister by the halfblood;

9. “Non-qualified withdrawal” means a distribution from an account other than a qualified withdrawal, a withdrawal due to death, disability or scholarship of beneficiary, a rollover distribution, or a distribution from an account that is made after amounts are held in such account for the minimum length of time, if at all, permitted by section 529 of the *Internal Revenue Code* without the imposition of a penalty;

10. “Participant” means a person who has entered into a participation agreement pursuant to the statute and this rule for the payment of qualified higher education expenses on behalf of a beneficiary;

11. “Person” means any individual, estate, association, trust, partnership, limited liability company, corporation, the state of Missouri or any department thereof, or any political subdivision of the state of Missouri;

12. “Qualified withdrawal” means a distribution from an account established under the savings program used exclusively to pay qualified higher education expenses of the beneficiary;

13. “Rollover distribution” means a distribution or transfer from an account for a beneficiary that is transferred or deposited within sixty (60) days of the distribution into an account for another beneficiary who is a member of the family of the current beneficiary, in each case to the extent permitted as a rollover distribution, as defined in section 529(c)(3)(C)(i) of the *Internal Revenue Code* and the Treasury regulations (or proposed regulations) promulgated thereunder. A distribution is not a rollover distribution unless there is a change of beneficiary. The account for such other beneficiary may be an account established under the savings program or an account established under a qualified state tuition program in another state;

14. “Scholarship” means any scholarship and any allowance or payment described

in section 135(d)(1)(B) or (C) of the *Internal Revenue Code*;

15. “Scholarship account” means an account in the savings program established by a participant that is a scholarship sponsor and maintained for the benefit of one (1) or more current and/or future beneficiaries;

16. “Scholarship sponsor” means the state of Missouri, an instrumentality of the state of Missouri, a political subdivision of the state of Missouri, or an organization described in section 501(c)(3) of the *Internal Revenue Code*, in each case who establishes one or more accounts as part of a scholarship program;

17. “Statute” means sections 166.400 to 166.455, RSMo, as amended from time-to-time; and

18. “Withdrawal due to death, disability or scholarship of beneficiary” means a distribution from an account established under the savings program—a) made because of death or disability of the beneficiary, or b) made because of the receipt of a scholarship by the beneficiary to the extent that such distribution does not exceed the amount of such scholarship.

(3) Purposes. The purposes of the savings program are—a) to encourage savings to enable students to continue their education by attending eligible educational institutions, and b) to enable participants and beneficiaries to avail themselves of tax benefits provided for qualified state tuition programs under the *Internal Revenue Code*.

(4) Program Administration and Management. The savings program shall be administered and managed in compliance with the provisions of the *Internal Revenue Code* (including section 529, other applicable sections and implementing regulations and guidelines), the statute and this rule. Procedures and forms for use in the administration and management of the savings program shall be subject to the approval of the board. If the board designates a third party to assist or act for the board with respect to the administration and management of the savings program, the references herein to the board shall govern such a designee of the board.

(5) Savings Program Participation and Participation Agreements.

(A) Beneficiary Eligibility. A beneficiary may be any individual designated as such in a participation agreement.

(B) Participant Eligibility. A participant may be any person—a) who submits to the board a completed participation agreement,

and an address for each participant and beneficiary in the United States, and b) who otherwise meets the qualifications set forth in federal law, Missouri law and regulations governing the savings program. A participant that establishes a scholarship account shall provide the valid Social Security numbers or taxpayer identification numbers and addresses in the United States of each beneficiary of the applicable scholarship account prior to or in connection with a request for a distribution.

(C) Participation Agreements. To participate in the savings program, a prospective participant must submit a completed participation agreement with either an initial contribution or a selection of electronic funds transfer or payroll deduction as the method of initial contribution. The participation agreement will provide that the participant (and any successor account owner) will retain ownership of payments made under the program through the opening of an account in the name of the participant and for the benefit of the beneficiary designated by such participant (or the successor account owner). Only one (1) account owner and one (1) beneficiary is permitted per account, except that scholarship accounts may be established for the benefit of one (1) or more present or future beneficiaries. One (1) or more participants may establish accounts for a single beneficiary. Each participant agreement shall impose a penalty on the early distribution of funds in accordance with section 166.430, RSMo. Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions set forth therein, subject to subsection (5)(I) below.

(D) Contributions. All contributions to accounts shall be in cash. The maximum amount which may be contributed annually by a participant with respect to a beneficiary shall be established by the board, from time-to-time, but in no event shall be more than the total contribution limit described in the succeeding sentence. The total contributions that may be held in an account shall be the amount established by the board from time-to-time, but in no event shall be more than the maximum amount permitted for the savings program to qualify as a “qualified state tuition program” pursuant to section 529 of the *Internal Revenue Code*.

(E) Excess Contributions and Balances. Contributions for any beneficiary shall be rejected (or, if accepted in error or resulting from a change of beneficiary, returned to the account owner with any earnings thereon and less any penalties applicable thereto) if the amount of the contributions in the account

together with the contributions in other accounts established under the program for the benefit of the same beneficiary would cause the aggregate amount held for such beneficiary to exceed the maximum amount established by the board from time-to-time, but in no event more than the amount permitted under section 529 of the *Internal Revenue Code*. Any payment of such excess balances to the account owner shall be a non-qualified withdrawal subject to the penalties set forth in subsection (6)(D) below or such lesser amount as may be permitted by section 529 of the *Internal Revenue Code*.

(F) Changes to Beneficiary. An account owner may change the beneficiary designated for an account to any member of the family of the current beneficiary at any time, without penalty, by submitting a completed change of beneficiary form to the board in such form as the board may specify from time-to-time. Any change of beneficiary by an account owner other than as permitted in the foregoing sentence shall be a non-qualified withdrawal subject to the penalties set forth in subsection (6)(D) below.

(G) Rollover Distributions. An account owner may transfer, in a rollover distribution, all or part of the account balance to an account for another beneficiary who is a member of the family of the current beneficiary by submitting a completed request for transfer of account funds in such form as the board may specify from time-to-time.

(H) Changes of Account Ownership. An account owner may transfer ownership of an account to another person eligible to be a participant under the provisions of the statute and this rule, and upon receipt of a request for change of account owner that satisfies the criteria set forth in this subsection, the transferee shall be considered the account owner for all purposes related to the savings program, regardless of the source of subsequent contributions.

1. General rule. Any such change of account ownership shall be effective provided that the transfer—*a*) is irrevocable, *b*) transfers all ownership, reversionary rights, and powers of appointments (i.e., power to change beneficiaries and to direct distributions from the account), and *c*) is submitted to the board on a change of account owner form in such form as the board may specify from time-to-time and completed by the account owner (or, in the event of the death of the account owner, by the personal representative of his or her estate).

2. Designation of contingent account owners. Any account owner that is an individual person may designate a contingent account owner for its account, to become the

owner of the account automatically upon the death of such account owner. Upon the death of an account owner who has made such a designation of contingent account owner, the assets of the account shall not be deemed assets of such person's estate for any reason. Prior to the initial action taken by the contingent account owner following the death of the deceased account owner, the contingent account owner shall provide a certified copy of a death certificate sufficiently identifying said deceased account owner by name and Social Security number or taxpayer identification number, or such other proof of death as is recognized under applicable law.

(I) Cancellation. A participant may cancel a participation agreement at any time by submitting to the board's designee a notice to terminate the participation agreement in such form as the board may specify from time-to-time. Except as provided in section 166.430 of the statute, any non-qualified withdrawal distributed as a result of such cancellation shall be subject to the penalty as provided in subsection (6)(D) below.

(J) Copy of Agreement to Account Owner. Upon request by an account owner, the board shall provide the account owner with a copy of the participation agreement executed by the account owner, or inform the account owner that the board does not have a copy thereof, mailed within ten (10) business days of receipt of the account owner's request.

(K) Separate Accounting. The board shall provide separate accounting (as provided in section 529 of the *Internal Revenue Code*) for each beneficiary for each account.

(6) Payment of Benefits; Withdrawals.

(A) Qualified Withdrawals. An account owner may request a qualified withdrawal from its account by submitting a completed request for qualified withdrawal to the board in such form as the board may specify from time-to-time, provided that any such request for a qualified withdrawal may be made only after such account has been opened for a period of at least twelve (12) months.

(B) Withdrawals Due to Death, Disability or Scholarship of Beneficiary. An account owner may request a withdrawal due to death, disability or scholarship of beneficiary from its account by submitting a completed request for withdrawal due to death, disability or scholarship of beneficiary to the board in such form as the board may specify from time-to-time. Prior to a withdrawal due to death, disability or scholarship of beneficiary from an account due to the death or disability of the beneficiary of that account, or because the beneficiary has received a scholarship to be applied toward attendance at an

eligible educational institution, the account owner shall certify the reason for the distribution and provide written confirmation from a third-party that the beneficiary has in fact died, become disabled with a disability, or received a scholarship for attendance at an eligible educational institution. A request to make a distribution due to the death or disability of, or a scholarship award to, the beneficiary shall not be considered complete until such third-party written confirmation is received by the board. For purposes of this subsection, third-party written confirmation shall consist of the following documentation:

1. For death of the beneficiary, a certified copy of a death certificate sufficiently identifying said beneficiary by name and Social Security number or taxpayer identification number, or such other proof of death as is recognized under applicable law;

2. For disability of the beneficiary, a certification by a physician who is a doctor of medicine or osteopathy that indicates that he or she is legally authorized to practice in a state of the United States and that the beneficiary is unable to attend any eligible educational institution because of an injury or illness that is expected to continue indefinitely or result in death. Such certification shall be on a form provided or approved by the board; and

3. For a scholarship award to the beneficiary, a letter from the grantor of the scholarship or from the eligible educational institution receiving or administering the scholarship, that identifies the beneficiary by name and Social Security number or taxpayer identification number as recipient of the scholarship and states the amount of the scholarship, the period of time or number of credits or units to which it applies, the date of the scholarship, and, if applicable, the eligible educational institution to which the scholarship is to be applied.

(C) Other Withdrawals. An account owner may request a distribution from an account that is made after amounts are held in such account for the minimum length of time permitted if at all by section 529 of the *Internal Revenue Code* without the imposition of a penalty. Such account owner may request such distribution by submitting a completed request for a distribution to the board in such form as the board may specify from time-to-time.

(D) Non-Qualified Withdrawals; Penalties. An account owner may request a non-qualified withdrawal by submitting a completed non-qualified withdrawal request form to the board in such form as the board may specify from time-to-time. Any such non-qualified withdrawal shall be subject to the penalty

described in this subsection (6)(D). A penalty shall be withheld, and paid to the board from an account with respect to each non-qualified withdrawal, in an amount equal to ten percent (10%) of the earnings portion of such withdrawal. Such penalty amount is a more than *de minimis* penalty for the purposes of section 529 of the *Internal Revenue Code*. If required, such penalty amount shall be increased to the minimum amount identified by the Internal Revenue Service as a “safe harbor” in order for it to be more than *de minimis* for the purposes of section 529 of the *Internal Revenue Code*. Penalties shall be imposed, collected and applied in a manner consistent with section 529 of the *Internal Revenue Code*.

(E) Distribution Limitations. No distributions may be made within thirty (30) days of receipt by the board of a completed change of account owner form or request to change the mailing address of the account owner, unless the current account owner’s signature is signature guaranteed on the request.

(F) Security. An account owner or beneficiary may not use any account or other interest in the savings program or any portion thereof as security for a loan.

(7) Investments.

(A) General (Investment Standards and Objectives). The board shall invest the funds received from participants, together with any income thereon, in such investments as the board shall reasonably determine will achieve a long-term total return through a combination of capital appreciation and current income. In exercising or delegating its investment powers and authority, the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In accordance with the standards established herein and in the statute, the board may invest, through the board or any investment manager, funds received pursuant to the savings program. Any such investment shall be made solely in the interest of the account owners and beneficiaries and for the exclusive purposes of providing benefits to beneficiaries and defraying reasonable expenses of administering the program. An account owner or beneficiary may not directly or indirectly direct the investment of any contributions or earnings of the savings program.

(B) Delegation of Investment Discretion. The board may delegate to its duly appointed investment counselor authority to act in place of board in the investment or reinvestment of all or part of the funds, and may also delegate to such counselor the authority to act in place of the board in the holding, purchasing, sell-

ing, assigning, transferring or disposing of any or all of the securities and investments in which such funds shall have been invested, as well as the proceeds of such investments and such moneys. Such investment counselor shall be registered as an investment advisor with the United States Securities and Exchange Commission.

(8) Costs of Administration. All costs of administration of the savings program shall be borne by the account owners, from amounts paid as penalties on account of non-qualified withdrawals or early qualified withdrawals and from amounts on deposit in the accounts, as described in more detail in the participation agreements.

(9) Severability. If any provision of this rule, or the application of it to any person or circumstance, is determined to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this regulation which can be given effect without the invalid provision or application, and to that end, the provisions of this regulation are severable.

AUTHORITY: section 166.415, RSMo Supp. 1998. Emergency rule filed Aug. 30, 1999, effective Sept. 14, 1999, expired March 12, 2000. Original rule filed Aug. 30, 1999, effective Feb. 29, 2000.*

**Original authority: 166.415, RSMo 1998.*