

ORDER

The Wisconsin Office of State Treasurer proposes an order to create Treas 1 of the Wisconsin Administrative Code, relating to the college savings program.

Analysis prepared by the Office of the State Treasurer.

Statutory authority: s. 14.64 (2) (e), Stats., and section 15, 2001 Wisconsin Act 7.

Statutes interpreted: ss. 14.64, 16.255, and 25.17(2)(f), Stats.

The Wisconsin College Savings Program Board (“Board”) establishes a rule for the operation of the College Savings Program. The purpose of the Wisconsin College Savings Program is to allow individuals to invest funds in investment accounts for eventual use by individual beneficiaries to pay the cost of attending an institution of higher education. Because the state does not have the necessary expertise to develop and administer a complex investment program of this nature, the Legislature required a partnership with the private-sector (utilizing a competitive procurement process) to develop and maintain the program. The program manager (the private-sector partner) has to have the necessary human and financial resources and the expertise to be able to offer diverse investment vehicles as well as diverse means for participants (i.e. investors) to contribute to their investment accounts. This rule is designed to grant maximum flexibility to the program managers to accomplish these goals.

Therefore, Treas 1 provides a broad, core structure under which the program manager must operate when offering its services to program participants. This ensures that the program manager operates within the strictures of federal and state laws and regulations, in order to maintain the eligibility of the Wisconsin College Savings Program as a “qualified tuition program” under Internal Revenue Code. On the other hand, it provides for the flexibility needed to offer diverse investment opportunities to account for peoples’ investment patterns—from conservative to higher risk.

The detail often included in administrative rules is instead found in the State’s contract with the program manager and the Program Description and Participation Agreement. The contract is actually a series of four contracts covering administrative services, professional services, investment management, and distribution of funds. It details the basic relationship between the program manager and the state. On the other hand, the relationship between the program manager and the individual program participant (e.g. investor) is set forth in the Program Description and Participation Agreement. This document is essentially a contract between the participant and the program manager, and it also acts as the program application form. Treas. 1 provides the basic framework under which both the contract and the Program Description and Participation Agreement are to be developed and administered.

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to go about it. Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account, while sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to “rollover” an account balance to another section 529 program. IRS requirements relating to investment direction are also included. Treas 1.10 requires separate records and accounting for each individual account.

Treas 1.11 describe account distributions to beneficiaries. Treas 1.12 addresses when refunds of distribution payments are required, while Treas 1.13 sets forth some conditions under which the Board may terminate an account, such as the death or disability of the beneficiary or receipt of a scholarship. Sections Treas 1.14 and 1.15 allow the Board to assess fees and penalties.

Final Regulatory Flexibility Analysis:

Pursuant to section 227.114, Stats., this rule is not expected to negatively impact small businesses.

TEXT OF RULE:

SECTION 1: Treas 1 is created to read as follows:

TREAS 1 WISCONSIN COLLEGE SAVINGS PROGRAM BOARD

Treas 1.01 Purpose and Analysis. This chapter establishes the procedures, standards and eligibility requirements for investment in accounts under the Wisconsin college savings program, into which a participant may invest funds to be used by individual beneficiaries to pay the cost of attendance at an institution of higher education. The Wisconsin college savings program is established as a qualified tuition program pursuant to section 529 of the internal revenue code [26 USC 529], and is administered by the Office of State Treasurer.

Note: The application form referenced in s. Treas 1.04(1) and the distribution request form referenced in s. Treas 1.11(2) are available on the Wisconsin College Savings Program website at: www.edvest.com, or by writing to: EDVEST, P.O. Box 7871, Madison, WI 53707-7871.

Treas 1.02 Definitions. In this chapter:

- (1) “Account” means a formal record of transactions maintained for a particular designated beneficiary to meet qualified higher education expenses under the program.
- (2) “Account owner” has the meaning set forth in s.14.64 (1)(a), Stats.
- (3) “Board” means the Wisconsin college savings program board.

(4) “Cash” includes checks, money orders, wire transfers, or electronic funds transfers through payroll deduction, automatic contribution plans or similar methods, but does not include currency.

(5) “Contribution” means any payment directly allocated to an account for the benefit of a designated beneficiary or that is used to pay administrative or other fees associated with the account.

(6) “Department” means the Wisconsin department of administration.

(7) “Designated beneficiary” has the meaning found in section 529(e)(1) of the internal revenue code.

(8) “Eligible educational institution” has the meaning found in section 529(e)(5) of the internal revenue code.

(9) “Maximum contribution limit” is the sum total market value amount established by the board that may be accumulated in the accounts of a designated beneficiary to meet qualified higher education expenses.

(10) “Member of the family” has the meaning found in section 529(e)(2) of the internal revenue code.

(11) “Non-qualified distribution” means any distribution of funds from an account that is not a qualified distribution.

(12) “Person” includes an individual, a trust, or a body corporate or politic.

(13) “Program” means the qualified tuition program established under s.14.64, Stats.

(14) “Program description and participation agreement” means the contract between an account owner and the board setting forth the terms and conditions under which the account owner participates in the program.

(15) “Program manager” means the entity under contract with the department to serve as the program administrator, marketing agent and investment manager of the program.

(16) “Qualified distribution” means any distribution of funds, as defined in section 529 of the internal revenue code, for qualified higher education expenses from an account pursuant to a distribution request from the account owner.

(17) “Qualified higher education expenses” has the meaning found in section 529(e)(3) of the internal revenue code.

(18) “Qualified tuition program” means a savings program to help defray the cost of college expenses under section 529 of the internal revenue code.

(19) “Rollover contribution” means the transfer of all or part of an account from one qualified tuition program account to another qualified tuition program account.

Treas 1.03 Account owner eligibility. Any person legally able to contract under applicable state law is eligible to establish an account for the benefit of a designated individual. There shall be only one account owner per account.

Treas 1.04 Opening an account. (1) To open an account, an applicant shall submit a properly completed and signed application, which incorporates the program description and participation agreement, to the program manager. A contribution may be made as provided in s. Treas 1.09 or by any alternate method established by the board or the program manager.

(2) An applicant shall select an available investment option in which all contributions to the account shall be invested. After an account has been opened, the investment option selected may only be changed as permitted under section 529 of the internal revenue code and any regulations issued thereunder.

(3) The participation agreement shall be accompanied by a program description supplied by the program manager disclosing the program characteristics, including the investment options, investment risks, program fees, and other information as determined by the board and the program manager.

(4) Acceptance by the program manager of application materials, the initial contribution, or selection of contribution method for processing shall not be deemed an agreement to open an account.

(5) The program manager shall accept applications to open accounts and accept subsequent contributions for a designated beneficiary in the order they are received, up to the maximum contribution limit.

(6) Upon determining that an application has met all the requirements for opening an account, the program manager shall notify the applicant in writing that an account has been established.

Treas 1.05 Refusal to open an account. The program manager or the board may refuse to open an account for any of the following reasons:

(1) The applicant is not an eligible account owner.

(2) The applicant has not provided all of the information required in the application.

(3) The maximum contribution level for the proposed designated beneficiary has already been met.

- (4) The execution of a participation agreement violates any federal or state law.
- (5) The board determines that the number of accounts in the program should be limited.

Treas 1.06 Change of account ownership. (1) An account owner may designate a successor who shall become the new account owner automatically upon the death of the account owner. This designation may be made at any time by submitting a written designation of the successor to the program manager containing the information set forth in the account change request form.. Designation of a successor shall be effective upon registration in the records of the program manager.

(2) If a change in the ownership of an account is required by a court order directing such change, or by an affidavit or declaration that is recognized under applicable law as requiring transfer of ownership upon death without a court order, such change shall be effective upon receipt by the program manager of such information unless otherwise required by law.

(3) Any other request to transfer ownership to a new account owner shall be made by submitting to the program manager a written designation of a new account owner containing the information set forth in the program description and participation agreement. Transfer of ownership shall not be effective until registered in the records of the program manager.

Treas 1.07 Designated beneficiary. Any individual regardless of age or relationship to the account owner, including the account owner, may be a designated beneficiary under the program. There shall be only one designated beneficiary per account. Subject to the maximum contribution level, any number of accounts may be opened for a single designated beneficiary.

Treas 1.08 Change of designated beneficiary. (1) Only an account owner may change the designated beneficiary of an account. The designated beneficiary may only be changed to a member of the family of that designated beneficiary.

(2) To change a designated beneficiary, the account owner shall submit a written request to the program manager containing all the information set forth in the program description and participation agreement.

(3) Upon receipt of the written request, the program manager shall register the information regarding the newly designated beneficiary in the records of the program. The change of the designated beneficiary shall be effective upon registration.

Treas 1.09 Contributions. (1) CASH CONTRIBUTIONS. Any person may make a contribution to an account of a designated beneficiary. Contributions shall be made only in cash.

(2) **MAXIMUM CONTRIBUTION LIMIT.** Contributions to the accounts established for a designated beneficiary shall not, in the aggregate, exceed that amount necessary to provide for the qualified higher education expenses of the designated beneficiary. The board shall establish from time to time the maximum amount that may be contributed in the aggregate to the accounts of an individual designated beneficiary. Contributions in excess of that limit shall not be accepted and shall be returned to the contributor.

(3) **MINIMUM CONTRIBUTION LIMIT.** The minimum amount contributed at the time an account is opened under s. Treas 1.04, and the minimum amount of any additional contribution to be made to an account shall be established from time to time by the board and set forth in the program description and participation agreement.

(4) **ROLLOVER CONTRIBUTIONS.** If rollover distributions are allowed by another state's qualified tuition program, an account owner may deposit all or part of the funds from an account in that state's qualified tuition program to a new account in the program as provided under section 529 of the internal revenue code, and any regulations issued thereunder. When making a rollover contribution, the account owner shall complete the forms and make such disclosures of financial information as set forth in the program description and participation agreement. If the rollover distribution deposited in the program account would cause the total account balance of all accounts for that designated beneficiary to exceed the maximum contribution limit, the program manager shall refuse the excess funds.

(5) **INVESTMENT DIRECTION PROHIBITION.** Except as permitted under section 529 of the internal revenue code and any regulations issued thereunder, no person contributing to an account may direct the investment or investment earnings of any contribution of an account.

Treas 1.10 Separate Accounting. Separate records and accounting shall be maintained for each account established under the program. The program manager shall issue reports to each account owner at least annually.

Treas 1.11 General Distributions. (1) **CALCULATING EARNINGS ON MULTIPLE ACCOUNTS.** If an individual is the designated beneficiary of more than one account, all contributions and earnings with respect to those accounts shall be treated in a manner consistent with the requirements of section 529 of the internal revenue service for purposes of calculating the earnings portions of any distribution with respect to that designated beneficiary.

(2) **DISTRIBUTION REQUESTS.** An account owner may request a distribution of funds by submitting to the program manager at least three business days prior to the date of the requested distribution a completed distribution request form. Upon receipt, the program manager shall commence processing properly completed distribution request forms as soon as practicable.

(3) **DISTRIBUTION LIMITATION.** A designated beneficiary may not authorize distribution or withdrawal of account funds.

(4) **NONQUALIFIED DISTRIBUTION.** A distribution of funds from an account for any use other than qualified higher education expenses for the designated beneficiary constitutes a nonqualified distribution and may be subject to the additional tax imposed by section 529(c)(6) of the internal revenue code.

Treas 1.12 Refund of qualified distribution payment. An eligible educational institution that owes a full or partial refund of a qualified distribution due to an overpayment of educational expenses or for any other reason shall pay the refund directly to the program manager for credit to the applicable designated beneficiary's account. A refund may not be paid directly to the designated beneficiary or account owner.

Treas 1.13 Account termination. (1) The board shall determine the conditions under which an account may be terminated, including but not limited to the following:

- (a) The account balance is below an established minimum.
- (b) The account has been inactive for an established amount of time.
- (c) Any portion of the account remains unused 10 years after the anticipated academic year of the designated beneficiary's initial enrollment in an eligible educational institution.
- (d) The account owner or the designated beneficiary provides false or misleading information to the board, the program manager, or an eligible educational institution.

(2) Prior to termination, the program manager shall give reasonable notice to the account owner of the proposed termination. The notice shall provide a reasonable period of time, as determined by the board, in which to prevent termination by either making an additional contribution or a qualified distribution as necessary. Upon termination, the account balance shall be paid to the account owner as a nonqualified distribution, subject to applicable federal or state taxes, and any additional fees as determined by the board.

Treas 1.14 Fees. The board may charge account owners a fee for the administrative expenses of the program. Fees shall be clearly identified in the program description that accompanies the participation agreement.

Treas 1.15 Penalties. The board may impose penalties as necessary to maintain eligibility as a qualified tuition program under section 529 of the internal revenue code.

Treas 1.16 Investment Policies. The board shall establish all investment guidelines for the program.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s 227.22(2), Stats.

Jack C. Voight
Wisconsin College Savings Program Board

Date

Summary of rule revisions based on comments from the Legislative Rules Clearinghouse, hearing testimony and written comments received by the Wisconsin College Savings Program Board (“Board”):

CLEARINGHOUSE RULE 01-009

CHAPTER Treas 1

BOARD RESPONSE TO RULES CLEARINGHOUSE RECOMMENDATIONS

1. STATUTORY AUTHORITY

Rules Clearinghouse comments 1 a. and b. have been addressed as suggested. The original Treas. 1.12 was deleted because it was no longer necessary due to recent changes in the tax code. The definition of the term “account owner” was changed to coincide with the definition found in section 14.64 (1)(a), Stats.

The other concern mentioned was that the rule appeared to avoid the rule-making process in numerous areas. Essentially, the Rules Clearinghouse noted that various standards and policies were to be established at some later point by the Wisconsin College Savings Program Board. This applied to such information as that required for changing account ownership or a beneficiary, the maximum contribution limits, disclosure of financial information, account termination, and fees and penalties. However, as discussed briefly in the analysis above, the State does not have the necessary human, administrative and financial resources and expertise to run such a complex investment account program. Accordingly, the State in effect privatized the program by partnering with the private sector. Because of the likelihood of changes promulgated in the federal laws and regulations involving “529” college tuition programs, and the inherent fluidity in the investment markets and investment options offered, coupled with the risks involved and need to maximize the ultimate distributions, the rules required flexibility. This was accomplished by creating a broad framework structuring the operational necessities required of the program manager, setting forth a framework for the relationship between that entity and the State.

The minutia of detail is in fact contained in the series of four contracts between the State and the program manager. The cover administrative services, professional services, investment management, and distribution of funds in great detail. Similarly, the Program Description and Participation Agreement in a straight-forward, detailed manner covers such items as the methods for opening an account and making contributions, the pertinent laws, rules and regulations involved, the investment options available, the Board’s underlying investment policies, the various reporting requirements, the mechanics of designating and changing beneficiaries, the procedures and requirements regarding withdrawal and distribution of funds, the risk involved, and the program expenses and fees.

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE

All of the Rules Clearinghouse suggestions were addressed and implemented.

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS.

All of the Rules Clearinghouse suggestions were addressed and implemented.

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE

All of the Rules Clearinghouse suggestions were addressed and implemented with the following exceptions.

BOARD'S RESPONSE TO ISSUES RAISED AT PUBLIC HEARING

No persons appeared at the hearing

BOARD'S RESPONSE TO WRITTEN COMMENTS

The Board received no written comments.