

75-645. Same; implementation by state treasurer; selection of depositories of accounts, procedure; management contracts, contents; audits and investigations; contracts. (a) The state treasurer may implement the program through use of financial organizations as account depositories and managers.

(b) The state treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instrument which will be held in accounts. The state treasurer shall select as program depositories and managers the financial organization, from among the bidding financial organizations, that demonstrates the most advantageous combination, both to potential program participants and this state, of the following factors:

- (1) Financial stability and integrity of the financial organization;
- (2) the safety of the investment instrument being offered;
- (3) the ability of the investment instrument to track increasing costs of postsecondary education;
- (4) the ability of the financial organization to satisfy recordkeeping and reporting requirements;
- (5) the financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;
- (6) the fees, if any, proposed to be charged to persons for opening accounts;
- (7) the minimum initial deposit and minimum contributions that the financial organization will require;
- (8) the ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and
- (9) other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(c) The state treasurer may enter into a contract with a financial organization. Such financial organization management shall provide only one type of investment instrument.

(d) The state treasurer may select more than one financial organization and investment instrument for the program when the federal internal revenue service has provided guidance that giving a contributor the choice of two or more investment instruments under a state program will not cause the program to fail to qualify for favorable tax treatment under section 529 of the federal internal revenue code of 1986, as amended.

(e) A management contract shall include, at a minimum, terms requiring the financial organization to:

- (1) Take any action required to keep the program in compliance with requirements of K.S.A. 2016 Supp. 75-640 to 75-648, and amendments thereto, and any actions not contrary to its contract to manage the program to qualify as a "qualified state tuition plan" as defined in section 529 of the federal internal revenue code of 1986, as amended;
- (2) keep adequate records of each account, keep each account segregated from each other account and provide the state treasurer with the information necessary to prepare the statements required by K.S.A. 2016 Supp. 75-646, and amendments thereto;
- (3) compile and total information contained in statements required to be prepared under K.S.A. 2016 Supp. 75-646, and amendments thereto, and provide such compilations to the state treasurer;
- (4) if there is more than one program manager, provide the state treasurer with such information as is necessary to determine compliance with K.S.A. 2016 Supp. 75-646, and amendments thereto;
- (5) provide the state treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract;
- (6) hold all accounts for the benefit of the account owner or owners;
- (7) be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the state treasurer;
- (8) provide the state treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the state treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and
- (9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of K.S.A. 2016 Supp. 75-640 to 75-648, and amendments thereto.

(f) The state treasurer may provide that an audit shall be conducted of the operations and financial position of the program depository and manager at any time if the state treasurer has any reason to be concerned about the financial position, the recordkeeping practices or the status of accounts of such program depository and manager.

(g) During the term of any contract with a program manager, the state treasurer shall conduct an examination of such manager and the manager's handling of accounts. Such examination shall be conducted at least biennially if such manager is not otherwise subject to periodic examination by the state bank commissioner, the federal deposit insurance corporation or other similar entity.

(h) (1) If selection of a financial organization as a program manager or depository is not renewed, after the end of the financial organization's term:

- (A) Accounts previously established and held in investment instruments at such financial organization may be terminated;
- (B) additional contributions may be made to such accounts;
- (C) no new accounts may be placed with such financial organization; and
- (D) existing accounts held by such depository shall remain subject to all oversight and reporting requirements established by the state treasurer.

(2) If the state treasurer terminates a financial organization as a program manager or depository, the state treasurer shall take custody of accounts held by such financial organization and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(i) The state treasurer may enter into such contracts as it deems necessary and proper for the implementation of the program.

History: L. 1999, ch. 154, § 16; May 27.