

**Superseded 5/12/2015**

**53B-8a-106 Account agreements.**

The plan may enter into account agreements with account owners on behalf of beneficiaries under the following terms and agreements:

- (1)
  - (a) An account agreement may require an account owner to agree to invest a specific amount of money in the plan for a specific period of time for the benefit of a specific beneficiary, not to exceed an amount determined by the executive director.
  - (b) Account agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.
  - (c) An account owner may make additional optional payments as long as the total payments for a specific beneficiary do not exceed the total estimated higher education costs as determined by the executive director.
  - (d) Subject to Subsections (1)(f) and (g), the maximum amount of a qualified investment that a corporation that is an account owner may subtract from unadjusted income for a taxable year in accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is \$1,710 for each individual beneficiary for the taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010.
  - (e) Subject to Subsections (1)(f) and (g), the maximum amount of a qualified investment that may be used as the basis for claiming a tax credit in accordance with Section 59-10-1017, is:
    - (i) for a resident or nonresident estate or trust that is an account owner, \$1,710 for each individual beneficiary for the taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010;
    - (ii) for a resident or nonresident individual that is an account owner, other than a husband and wife who are account owners and file a single return jointly under Title 59, Chapter 10, Individual Income Tax Act, \$1,710 for each individual beneficiary for the taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010; or
    - (iii) for a husband and wife who are account owners and file a single return jointly under Title 59, Chapter 10, Individual Income Tax Act, \$3,420 for each individual beneficiary:
      - (A) for the taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2010; and
      - (B) regardless of whether the plan has entered into:
        - (I) a separate account agreement with each spouse; or
        - (II) a single account agreement with both spouses jointly.
  - (f)
    - (i) For taxable years beginning on or after January 1, 2011, the executive director shall annually increase the maximum amount of a qualified investment described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage equal to the increase in the consumer price index for the preceding calendar year.
    - (ii) After making an increase required by Subsection (1)(f)(i), the executive director shall:
      - (A) round the maximum amount of the qualified investments described in Subsections (1)(d) and (1)(e)(i) and (ii) increased under Subsection (1)(f)(i) to the nearest 10 dollar increment; and
      - (B) increase the maximum amount of the qualified investment described in Subsection (1)(e)(iii) so that the maximum amount of the qualified investment described in Subsection (1)(e)(iii) is equal to the product of:
        - (I) the maximum amount of the qualified investment described in Subsection (1)(e)(ii) as rounded under Subsection (1)(f)(ii)(A); and

(II) two.

- (iii) For purposes of Subsections (1)(f)(i) and (ii), the executive director shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.
  - (g) For taxable years beginning on or after January 1, 2011, the executive director shall keep the previous year's maximum amount of a qualified investment described in Subsections (1)(d) and (1)(e)(i) and (ii) if the consumer price index for the preceding calendar year decreases.
- (2)
- (a) Beneficiaries designated in account agreements must be designated after birth and before age 19 for an account owner to:
    - (i) subtract a qualified investment from income under Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
    - (ii) use a qualified investment as the basis for claiming a tax credit in accordance with Section 59-10-1017.
  - (b) Account owners may designate a beneficiary age 19 or older, but investments for that beneficiary are not eligible to be:
    - (i) subtracted from income under Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
    - (ii) used as the basis for claiming a tax credit in accordance with Section 59-10-1017.
- (3) Each account agreement shall state clearly that there are no guarantees regarding money in the plan as to the return of principal and that losses could occur.
- (4) Each account agreement shall provide that:
- (a) a contributor to, or designated beneficiary under, an account agreement may not direct the investment of any contributions or earnings on contributions;
  - (b) any part of the money in any account may not be used as security for a loan; and
  - (c) an account owner may not borrow from the plan.
- (5) The execution of an account agreement by the plan may not guarantee in any way that higher education costs will be equal to projections and estimates provided by the plan or that the beneficiary named in any account agreement will:
- (a) be admitted to an institution of higher education;
  - (b) if admitted, be determined a resident for tuition purposes by the institution of higher education;
  - (c) be allowed to continue attendance at the institution of higher education following admission; or
  - (d) graduate from the institution of higher education.
- (6) A beneficiary may be changed as permitted by the rules and regulations of the board upon written request of the account owner prior to the date of admission of any beneficiary under an account agreement by an institution of higher education so long as the substitute beneficiary is eligible for participation.
- (7) An account agreement may be freely amended throughout the term of the account agreement in order to enable an account owner to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.
- (8) Each account agreement shall provide that:
- (a) the account agreement may be canceled upon the terms and conditions, and upon payment of the fees and costs set forth and contained in the board's rules and regulations; and
  - (b) the executive director may amend the agreement unilaterally and retroactively, if necessary, to maintain the plan as a qualified tuition program under Section 529, Internal Revenue Code.