

**TREASURER OF STATE[781]**

**Notice of Intended Action**

**Proposing rule making related to Iowa educational savings plan trust and providing an opportunity for public comment**

The Treasurer of State hereby proposes to rescind Chapter 16, “Iowa Educational Savings Plan Trust,” Iowa Administrative Code, and to adopt a new Chapter 16 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 12D.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 12D.

*Purpose and Summary*

This proposed rule making updates rules on the administration of the Iowa educational savings plan trust.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Treasurer of State for a waiver of the discretionary provisions, if any, pursuant to 781—Chapter 19.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Office of the Treasurer of State no later than 4:30 p.m. on December 11, 2018. Comments should be directed to:

Daniel Wasta  
Office of the Treasurer of State  
State Capitol, Room 114  
1007 East Grand Avenue  
Des Moines, Iowa 50319  
Email: [daniel.wasta@tos.iowa.gov](mailto:daniel.wasta@tos.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 13, 2018  
1 to 2 p.m.

Lucas State Office Building, First Floor  
321 East 12th Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Treasurer of State's office and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 781—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16  
IOWA EDUCATIONAL SAVINGS PLAN TRUST

**781—16.1(12D) Purpose.** The purpose of these rules is to provide for the administration and operation of the Iowa educational savings plan trust.

**781—16.2(12D) Definitions.** In addition to the terms defined in Iowa Code section 12D.1, the following terms apply to this chapter:

*“Account”* means an account established and maintained under the Iowa educational savings plan trust for a beneficiary.

*“Account balance”* means the fair market value of an account.

*“Account balance limit”* means the amount determined periodically by the program administrator as necessary to provide for the qualified higher education expenses of a beneficiary in accordance with Section 529. The account balance limit shall apply to the total of all accounts in the plans for the benefit of a beneficiary.

*“Account owner”* means the participant or other owner of an account.

*“Adjusted maximum annual amount”* means the amount that a participant may annually contribute to an account for a beneficiary and deduct from Iowa income taxes pursuant to Iowa Code chapter 422.

*“Beneficiary”* means the individual designated as the beneficiary of an account.

*“College savings Iowa”* means the name and logo registered under Iowa law to represent the direct-sold plan under the Iowa educational savings plan trust.

*“Contractor”* means any party retained by the program administrator to assist in the day-to-day operations of a plan, including record-keeping, investment advisory and administrative services. The program administrator may delegate any responsibilities with respect to day-to-day operations of a plan to one or more contractors.

*“Contribution”* means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the applicable program description.

*“Eligible educational institution”* means an eligible educational institution as defined in Section 529.

*“Iowa advisor 529 plan”* means the name and logo registered to represent the advisor-sold plan under the Iowa educational savings plan trust.

*“K-12 institution”* means any elementary or secondary public, private, or religious school.

*“Member of the family”* means a member of the family as defined in Section 529, except that for a qualified rollover to a Section 529A ABLER account, “member of the family” shall mean as defined in Section 529A of the Internal Revenue Code.

*“Nonqualified withdrawal”* means a withdrawal from an account that is not a qualified withdrawal or a qualified rollover.

*“Participant”* means the owner of an account.

“*Participation agreement*” means the form that the participant submits to the plan to identify the participant, beneficiary, plan, and other information that may be requested by the plan.

“*Plan*” means either (1) college savings Iowa, (2) Iowa advisor 529 plan, or (3) any other college savings plan established by the program administrator under the Iowa educational savings plan trust.

“*Program administrator*” means the treasurer of state.

“*Program description*” means the description of each plan provided to participants setting forth information with respect to the plan.

“*Qualified higher education expenses*” means qualified higher education expenses as defined in Section 529. Any reference to qualified higher education expenses includes a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private or religious school.

“*Qualified rollover*” means a distribution of amounts from a plan which, within 60 days of such distribution, is transferred: (1) to another qualified tuition program for the benefit of the same beneficiary, provided that it has been at least 12 months from the date of a previous transfer to a qualified tuition program for that beneficiary; (2) to another qualified tuition program (or an account in another plan) for the benefit of a member of the family of the beneficiary; or (3) to a Section 529A ABLÉ account for the beneficiary or member of the family of the beneficiary, subject to ABLÉ account contribution limits.

“*Qualified withdrawal*” means a withdrawal from an account used to pay qualified higher education expenses.

“*Section 529*” means Section 529 of the Internal Revenue Code.

“*Successor participant*” means a successor to the ownership of an account designated as such in accordance with rule 781—16.10(12D) and the applicable program description.

**781—16.3(12D) Participation agreement and program description.** The following material shall be used to administer the Iowa educational savings plan trust.

**16.3(1)** Each participant shall submit a participation agreement in order to open an account. The participation agreement shall be signed and dated by the participant to verify that the participant agrees to the terms and conditions of the program. For online applications, participants must confirm that they have read the terms and conditions prior to submitting the application.

**16.3(2)** Each plan will have a program description setting forth the terms of the plan and describing the investments, procedures and fees applicable to that plan. Each program description shall also set forth the privacy policy adopted by the program administrator for that plan. Persons interested in a plan should consult the program description. A program description may be changed at any time by the program administrator, and any such change may impact the rights of participants and beneficiaries under the plan.

**781—16.4(12D) Forms.**

**16.4(1)** Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions listed below. Current forms are available online at [www.collegesavingsiowa.com](http://www.collegesavingsiowa.com) for college savings Iowa and at [www.iowaadvisor529.com](http://www.iowaadvisor529.com) for the Iowa advisor 529 plan. Actions which require the completion of an appropriate form include the following:

- a. Participation.
  - (1) Open or close an account.
  - (2) Reserved.
- b. Account changes.
  - (1) Update the participant or beneficiary contact information.
  - (2) Change the beneficiary.
  - (3) Add, change or remove a successor or interested party.
  - (4) Transfer ownership rights of an account to another person.
- c. Investment changes.
  - (1) Exchange existing investments.

- (2) Change the direction of future contributions.
- d.* Contribution changes.
  - (1) Establish, delete or change automatic investments or payroll deduction.
  - (2) Establish, delete or change banking information.
  - (3) Establish or make an electronic bank transfer or an additional purchase by check.
  - (4) Transfer funds from a qualified U.S. savings bond, education savings account or another 529 plan (directly or indirectly).
- e.* Withdrawals.
  - (1) Request a full or partial withdrawal.
  - (2) Request a qualified rollover.
- f.* Authorization.
  - (1) Establish, delete or change an authorized agent, limited power of attorney or power of attorney on an account.
  - (2) Authorize or change a financial advisor or agent who can obtain information regarding the account.
  - (3) Identify the current trustee of a trust.
  - (4) Identify officers of an organization who can act upon an account.

**16.4(2)** The contractor may from time to time provide additional forms for use by participants and beneficiaries in connection with actions involving a plan and will make those forms available online and in paper format and may authorize substitute forms for a plan or a process in lieu of existing forms.

**781—16.5(12D) Participant eligibility.** Participants must meet the following requirements:

**16.5(1)** The participant must be an individual, individual's legal representative, trust, estate, or 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.

**16.5(2)** An individual participant must be at least 18 years old and a United States citizen or resident alien with a valid social security number or tax identification number.

**16.5(3)** A participant shall execute a participation agreement that specifies the plan selected by the participant and the terms and conditions under which the participant shall participate in the trust.

**16.5(4)** A participant shall, on signing a participation agreement, provide the plan with the participant's social security number or tax identification number and the other information required on the participant agreement.

**16.5(5)** Participants which are trusts must submit evidence that the individual trustee is so authorized and agrees to the terms and conditions of the participation agreement and must provide the information requested by the program administrator. Participants which are described in Section 501(c)(3) of the Internal Revenue Code must provide their tax identification number and any other information requested by the program administrator.

**781—16.6(12D) Beneficiary eligibility.** A beneficiary of a participation agreement may be designated at any time after birth and assignment of a social security number. This rule establishes the eligibility criteria for a beneficiary.

**16.6(1)** A beneficiary may be a resident of any state.

**16.6(2)** A participant shall, on signing a participation agreement, provide the contractor a valid social security number for the beneficiary.

**781—16.7(12D) Program administrator rights and responsibilities.**

**16.7(1)** The program administrator reserves the right to:

- a.* Freeze an account or suspend account services or do both when a plan has received reasonable notice of a dispute regarding the assets in an account, including notice of a dispute in account ownership or when the plan reasonably believes a fraudulent transaction may occur or has occurred;

*b.* Freeze an account or suspend account services or do both upon the notification to the plan of the death of a participant until the plan receives required documentation in good order and reasonably believes that it is lawful to transfer the account ownership to the successor participant;

*c.* Redeem an account, without the participant's permission, in cases of threatening conduct or suspicious, fraudulent, or illegal activity; and

*d.* Reject a contribution for any reason, including contributions that the plan believes are not in the best interests of the plan, a portfolio, or the participants.

**16.7(2)** The risk of market loss, tax implications, penalties, and any other expenses, as a result of such an account freeze, account redemption, or contribution rejection, will be solely the participant's responsibility.

**16.7(3)** The contractor will provide each participant a fourth-quarter statement. In addition, the program administrator will provide each participant that had an account with either contributions or withdrawals in the first, second, or third quarter with a quarterly statement for that account.

**781—16.8(12D) Contributions.** Contributions are deductible in accordance with Iowa income tax laws and administrative rules of the department of revenue. Participation agreements shall be for the benefit of a specific beneficiary. This rule provides for implementation of this provision.

**16.8(1)** Participants are allowed to make contributions at any time during the calendar year provided that each contribution is made in accordance with the minimum contribution and other requirements set forth in the program description.

**16.8(2)** The program administrator shall actuarially determine the account balance limit. No additional contributions may be made on behalf of a beneficiary if the total of the account balances of all accounts held for the beneficiary exceeds the applicable account balance limit.

**16.8(3)** The program administrator shall determine the adjusted maximum annual amount that a participant may contribute and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of a beneficiary for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum amount shall be communicated to participants in the plans and to the public in any reasonable manner determined by the program administrator.

**781—16.9(12D) Substitution or change of beneficiary.** Beneficiaries may be changed subject to the rules and regulations of the program administrator. This rule establishes the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the applicable program description.

**16.9(1)** At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—16.6(12D) and must be a member of the family of the beneficiary being replaced.

**16.9(2)** A participant may request that a beneficiary be substituted by submitting the appropriate form to the contractor.

**781—16.10(12D) Change of participant or account owner.** The participant is the owner of the account and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary in accordance with these rules and the applicable program description.

**16.10(1)** A participant may transfer the participant's current ownership rights in an account to another eligible individual, an individual's legal representative, a trust, an estate, or 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 or to a beneficiary. To do so, the participant shall complete the appropriate form.

**16.10(2)** A participant may also designate a successor on the participation agreement. A participant may change the designated successor by completing the appropriate form. The designated successor shall succeed to the ownership of the account in the event of the death of the participant. Upon the death of the participant, the successor participant must notify the plan by submitting a completed participant agreement form and a certified copy of the death certificate. The change in ownership of the account will become effective for the successor participant once this paperwork has been received and processed.

**16.10(3)** In the event a participant or other account owner dies and has not designated a successor to the account, the following criteria will be used.

*a.* The designated beneficiary, if 18 years of age or older, shall become the owner of the account as well as remain the beneficiary upon filing the appropriate forms.

*b.* If the designated beneficiary is under the age of 18, account ownership will be transferred to a surviving parent or other legal guardian of the beneficiary upon the filing of the appropriate forms.

**16.10(4)** The participant may name a successor to the account even though the successor may already have established or may have plans to establish a plan account.

**781—16.11(12D) Qualified withdrawals.** This rule establishes the procedures for the payment of qualified withdrawals.

**16.11(1)** The participant must initiate a withdrawal for qualified or nonqualified withdrawals. The participant must file the appropriate form with the contractor.

**16.11(2)** Qualified withdrawals will be paid in one of three ways once the form has been received by the contractor:

*a.* Directly to the eligible educational institution or K-12 institution only.

*b.* Directly to the participant.

*c.* Directly to the beneficiary at eligible educational institutions only.

**16.11(3)** Withdrawals for the payment of tuition in connection with enrollment or attendance at a K-12 institution may not exceed a maximum of \$10,000 per taxable year per beneficiary from all 529 plans.

**16.11(4)** Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the participant's account at the time of the withdrawal.

**16.11(5)** Funds that are distributed to a participant pursuant to this rule shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The participant will receive the 1099-Q for any withdrawal paid to the participant. The beneficiary will receive the 1099-Q for any withdrawal paid to the beneficiary or institution of higher education. The individual receiving the 1099-Q must determine whether the withdrawal was qualified or nonqualified.

**16.11(6)** A participant may transfer any remaining balance in one account to an existing or new account for another designated beneficiary by completing a new participation agreement with the contractor.

**16.11(7)** The Iowa state income tax treatment of contributions to and withdrawals from an account shall be as set forth in Iowa Code chapter 422.

**781—16.12(12D) Nonqualified withdrawals and cancellation.** Iowa Code section 12D.5 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

**16.12(1)** A nonqualified withdrawal is one in which the funds are used for a purpose other than the payment of or reimbursement for qualified educational expenses. A participant may at any time make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting to the contractor the appropriate form. A nonqualified withdrawal will be paid only to the participant.

**16.12(2)** If the participation agreement is canceled, the participant is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the participant after receipt by the contractor of the appropriate form.

**16.12(3)** Funds that are distributed to a participant in a nonqualified withdrawal pursuant to this rule shall be reported to the IRS on a 1099-Q in the tax year in which such withdrawal is made. The participant will receive the 1099-Q for any nonqualified withdrawals. The individual receiving the 1099-Q must determine whether the withdrawal was qualified or nonqualified. Nonqualified withdrawals may be subject to state and federal taxes and penalties.

**781—16.13(12D) Rollover.** The Iowa state income tax treatment of a qualified rollover from an account shall be as set forth in Iowa Code chapter 422. A rollover which is not a qualified rollover shall be treated as a nonqualified withdrawal.

**781—16.14(12D) Garnishment.** Pursuant to Iowa Code section 642.2, funds held by the program administrator under the trust are not subject to garnishment.

**781—16.15(12D) Appeal of decisions.** An account owner may appeal any decision of the program administrator under these rules and with respect to the plan.

**16.15(1)** An account owner may utilize the appeals process after receipt of the decision from the program administrator.

**16.15(2)** Failure to submit the appeal request within 30 calendar days of receipt of the decision from the program administrator shall constitute an acceptance of the decision.

**16.15(3)** The account owner shall submit to the program administrator a written request for an appeal along with all supporting documentation.

**16.15(4)** The program administrator shall contact the account owner and schedule an appeal meeting within 30 calendar days of receipt of the account owner's appeal request.

**16.15(5)** An appeal review shall be conducted at which time the account owner shall present evidence supporting the account owner's basis for the appeal.

**16.15(6)** Based on the evidence and additional information presented during the appeal, the program administrator will render a decision. Such final decision will be written and sent to the account owner within 30 calendar days of the appeal meeting.

These rules are intended to implement Iowa Code chapter 12D.