

Arizona State Legislature  
Title 15  
Education  
Article 7  
{15-1871 through 15-1879}

### **15-1871. Definitions**

In this article, unless the context otherwise requires:

1. "Account" means an individual trust account in the fund established as prescribed in this article.
2. "Account owner" means the person who enters into a tuition savings agreement pursuant to this article, who is an account owner within the meaning of section 529 of the internal revenue code and who is designated at the time an account is opened as having the right to withdraw monies from the account before the account is disbursed to or for the benefit of the designated beneficiary.
3. "Commission" means the commission for postsecondary education established by section 15-1851.
4. "Committee" means the family college savings program oversight committee.
5. "Designated beneficiary" means a person who qualifies as a designated beneficiary under section 529 of the internal revenue code and, except as provided in section 15-1875, subsections R and S, with respect to an account, who is designated at the time the account is opened as the person whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 15-1875, subsections E, F and G, the replacement beneficiary.
6. "Eligible educational institution" means an institution of higher education that qualifies under section 529 of the internal revenue code as an eligible educational institution.
7. "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm or other similar entity that is authorized to do business in this state.
8. "Fund" means the family college savings program trust fund that constitutes a public instrumentality of this state established by section 15-1873.
9. "Member of the family" means any of the following:
  - (a) A son or daughter of a person or a descendant of the son or daughter of the person.
  - (b) A stepson or stepdaughter of a person.

- (c) A brother, sister, stepbrother or stepsister of a person. For the purposes of this subdivision, "brother" and "sister" includes a brother or sister by the half-blood.
- (d) The father or mother of a person or the ancestor of the father or mother of a person.
- (e) A stepfather or stepmother of a person.
- (f) A son or daughter of a person's brother or sister. For the purposes of this subdivision, "brother" and "sister" includes a brother or sister by the half-blood.
- (g) A brother or sister of the person's father or mother. For the purposes of this subdivision, "brother" and "sister" includes a brother or sister by the half-blood.
- (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law of a person.
- (i) The spouse of a person or the spouse of any individual described in this paragraph.
- (j) A first cousin of a person.
- (k) Any individual who meets the criteria for family membership described in this paragraph as a result of legal adoption.

10. "Nonqualified withdrawal" means a withdrawal from an account other than one of the following:

- (a) A qualified withdrawal.
- (b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account.
- (c) A withdrawal that is made on the account of a scholarship, or the allowance or payment described in section 135(d)(1)(B) or (C) of the internal revenue code, and that is received by the designated beneficiary, but only to the extent of the amount of this scholarship, allowance or payment.
- (d) A rollover or change of designated beneficiary.

11. "Person" means an individual, an individual's legal representative or any other legal entity authorized to establish a savings account under section 529 of the internal revenue code and the corresponding regulations.

12. "Program" means the family college savings program established under this article that constitutes a qualified tuition program as defined in section 529 of the internal revenue code.

13. "Qualified higher education expenses" means tuition, fees, books, supplies, room and board and equipment required for enrollment or attendance of a designated beneficiary at an eligible educational institution and expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with enrollment or attendance, if these expenses meet the definition of qualified higher education expenses in section 529 of the internal revenue code.

14. "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this article.

15. "Section 529 of the internal revenue code" means section 529 of the internal revenue code of 1986, as amended, and the final regulations issued pursuant to that section.

16. "Trust interest" means an account owner's interest in the fund created by a tuition savings agreement for the benefit of a designated beneficiary.

17. "Tuition savings agreement" means an agreement between the commission, as trustee of the fund, and an account owner that creates an interest in the fund and that provides for participation in the program.

**15-1872. Family college savings program oversight committee; membership; powers and duties**

A. The family college savings program oversight committee is established in the commission for postsecondary education. The committee consists of the following members:

1. The state treasurer or the state treasurer's designee.
2. The chairperson of the state board for private postsecondary education or the chairperson's designee.
3. Three members of the general public, each of whom possesses knowledge, skill and experience in accounting, risk management or investment management or as an actuary. The governor shall appoint these members to serve staggered four year terms pursuant to section 38-211. The initial members appointed pursuant to this paragraph shall assign themselves by lot to serve two, three and four year terms. The chairperson shall notify the governor's office on appointments of these terms. All subsequent members appointed pursuant to this paragraph serve four year terms.
4. A certified financial planner who is appointed by the governor.
5. A certified public accountant who is appointed by the governor.
6. An attorney with a state bar of Arizona certification in estates and trusts who is appointed by the governor.
7. An individual with investment, asset management and financial related expertise who is appointed by the governor.
8. An individual employed by a community college or university with investment, asset management and financial related expertise who is appointed by the governor.

B. The commission shall select a chairperson and a vice-chairperson from among the committee's membership. A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once each calendar quarter. The chairperson may call additional meetings.

C. The member of the family college savings program oversight committee appointed pursuant to subsection A, paragraph 6 of this section is eligible to receive compensation as determined pursuant to section 38-611 for each day of attendance at committee meetings, except that the compensation of the member shall not exceed five hundred dollars in any year. The commission shall pay compensation pursuant to this subsection from monies of the commission.

D. The committee shall recommend financial institutions for approval by the commission to act as the depositories and managers of family college savings accounts pursuant to section 15-1874.

E. The committee may submit proposed rules to the commission to assist in the implementation and administration of this article.

F. Members of the committee are immune from personal liability with respect to all actions that are taken in good faith and within the scope of the committee's authority.

**15-1873. Commission for postsecondary education; powers and duties; family college savings program trust fund**

A. The commission shall:

1. Develop and implement the program in a manner consistent with this article through the adoption of rules, guidelines and procedures.
2. Retain professional services, if necessary, including accountants, auditors, consultants and other experts.
3. Seek rulings and other guidance from the United States department of the treasury and the internal revenue service relating to the program.
4. Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the internal revenue code.
5. Interpret, in rules, policies, guidelines and procedures, the provisions of this article broadly in light of its purpose and objectives.
6. Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program.
7. Negotiate and select the financial institution or institutions to act as the depository and manager of the program in accordance with this article.
8. As an agency of this state, act as trustee of the fund.
9. Maintain the program on behalf of this state as required by section 529 of the internal revenue code.
10. Enter into tuition savings agreements with account owners pursuant to this article.

B. The family college savings program trust fund is established consisting of the assets of the family college savings program. The commission shall administer the fund and shall act as the sole trustee of the fund. Monies in the fund are continuously appropriated. The fund is designated a public instrumentality of this state that is created for an essential public purpose. Trust interests in the fund shall be designated by the commission for each account owner. The fund shall be separated into a trust account and an operating account. The trust account shall include amounts received by the family college savings program from account owners pursuant to tuition savings agreements and interest and investment income earned by the fund. The commission shall make transfers from the trust account to the operating account as necessary for the immediate payment of obligations under tuition savings agreements, operating expenses and administrative costs of the family

college savings program. The commission shall deposit and invest monies or other amounts in the fund with financial institutions in accordance with section 15-1874.

## **15-1874. Use of contractor as account depository and manager**

A. The commission shall implement the operation of the program through the use of one or more financial institutions to act as the depositories of the fund and managers of the program. Under the program, persons may submit applications for enrollment in the program and establish accounts in the fund at the financial institution. Monies paid by account owners to the fund for deposit in accounts maintained by the fund at a financial institution shall be paid to the financial institution as an agent of the fund and the tuition savings agreements shall provide that all monies paid by account owners to fund accounts held at financial institutions are being paid to the fund.

B. The committee shall solicit proposals from financial institutions to act as the depositories of fund monies and managers of the program. Financial institutions that submit proposals must describe the financial instruments that will be held in accounts. The commission shall select proposals from financial institutions to act as depositories and managers and that the solicitation and selection process is exempt from the procurement code requirements of title 41, chapter 23.

C. On the recommendation of the committee, the commission shall select the financial institution or institutions to implement the operation of the program from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and this state, of the following factors:

1. Financial stability and integrity.
2. The safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments.
3. The ability of the investment instruments to track estimated costs of higher education as calculated by the commission and provided by the financial institution to the account holder.
4. The ability of the financial institutions, directly or through a subcontract, to satisfy record keeping and reporting requirements.
5. The financial institution's plan for promoting the program and the investment it is willing to make to promote the program.
6. The fees, if any, proposed to be charged to persons for maintaining accounts.
7. The minimum initial deposit and minimum contributions that the financial institution will require for the investment of fund monies and the willingness of the financial institution to accept contributions through payroll deduction plans and other deposit plans.

8. Any other benefits to this state or its residents included in the proposal, including an account opening fee payable to the commission by the account owner and an additional fee from the financial institution for statewide program marketing by the commission.

D. The commission shall enter into a contract with a financial institution, or except as provided in subsection E of this section, contracts with financial institutions, to serve as program managers and depositories. Program management contracts shall provide the terms and conditions by which financial institutions shall sell interests in the fund to account owners, invest monies in the fund and manage the program.

E. The commission may select more than one financial institution and investment for the program if both of the following conditions exist:

1. The United States internal revenue service has provided guidance that giving a contributor a choice of two investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the internal revenue code.

2. The commission concludes that the choice of instrument vehicles is in the best interest of college savers and will not interfere with the promotion of the program.

F. A program manager shall:

1. Take all action required to keep the program in compliance with the requirements of this article and all action not contrary to this article or its contract to manage the program so that it is treated as a qualified tuition plan under section 529 of the internal revenue code.

2. Keep adequate records of each of the fund's accounts, keep each account segregated from each other account and provide the commission with the information necessary to prepare statements required by section 15-1875, subsections O, P and Q or file these statements on behalf of the commission.

3. Compile and total information contained in statements required to be prepared under section 15-1875, subsections O, P and Q and provide these compilations to the commission.

4. If there is more than one program manager, provide the commission with this information to assist the commission to determine compliance with section 15-1875, subsection N.

5. Provide representatives of the commission, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract.

6. Hold all accounts in the name of and for the benefit of the fund and this state.

G. Any contract executed between the commission and a financial institution pursuant to this section shall be for a term of at least three years and not more than seven years.

H. The commission may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the commission shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar to the original investments as possible.

I. If the commission determines not to renew the appointment of a financial institution as a program manager, the commission may take action consistent with the interests of the program and the accounts and in accordance with its duties as the trustee of the fund, including termination of all services or continuation of certain management and administrative services of that financial institution for accounts of the program managed by that financial institution during its term as a program manager, if any continuation of services is only permitted under the following conditions:

1. The commission and the financial institution enters into a written agreement specifying the rights of the program and the commission and the responsibilities of the financial institution, including the standards that continue to be applicable to the accounts as accounts of the program.
2. Any services provided by the financial institution to accounts continue to be subject to the control of the commission as the trustee of the fund with responsibility of all accounts of the program.

## **15-1875. Program requirements**

A. The program shall be operated through the use of accounts in the fund established by account owners. Payments to the fund for participation in the program shall be made by account owners pursuant to tuition savings agreements. An account may be opened by any person who desires to invest in the fund and to save to pay qualified higher education expenses by satisfying each of the following requirements:

1. Completing an application in the form prescribed by the commission. The application shall include the following information:

(a) The name, address and social security number or employer identification number of the contributor.

(b) The name, address and social security number of the account owner if the account owner is not the contributor.

(c) The name, address and social security number of the designated beneficiary.

(d) The certification relating to no excess contributions required by subsection N.

(e) Any other information that the commission may require.

2. Paying the one-time application fee established by the commission.

3. Making the minimum contribution required by the commission or by opening an account.

4. Designating the type of account to be opened if more than one type of account is offered.

B. Any person may make contributions to an account after the account is opened.

C. Contributions to accounts may be made only in cash.

D. Account owners may withdraw all or part of the balance from an account on sixty days' notice, or a shorter period as may be authorized by the commission, under rules prescribed by the commission. These rules shall include provisions that will generally enable the commission or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may, but need not, require one or more of the following:

1. Account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses or other supporting material.

2. Qualified withdrawals from an account shall be made only by a check payable as designated by the account owner.

3. Withdrawals not meeting certain requirements shall be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner must seek refunds of penalties, if any, directly from the commission.

E. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the commission.

F. On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

G. Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following:

1. Subsection N, relating to excess contributions.
2. Subsection K, relating to investment choice.

H. In the case of any nonqualified withdrawal from an account, a penalty may be imposed if the penalty is required for purposes of qualifying the program as a qualified tuition program under section 529 of the internal revenue code. The commission may adopt rules to establish the parameters for the assessment of penalties. Any penalties assessed shall be paid to the commission for use in operating and marketing the program and for student financial aid.

I. Each account shall be maintained separately from each other account under the program.

J. Separate records and accounting shall be maintained for each account for each designated beneficiary.

K. No contributor to, account owner of or designated beneficiary of any account may direct the investment, within the meaning of section 529 of the internal revenue code, of any contributions to an account or the earnings from the account.

L. If the commission terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the commission shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial

institutions that are then contractors would not cause a plan to cease to be a qualified tuition plan.

M. Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

N. On the recommendation of the committee, the commission shall adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules shall address the following:

1. Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary.
2. The establishment of a maximum total balance for the purpose of prohibiting contributions to accounts established for a designated beneficiary if the contributions would cause the maximum total balance to be exceeded.
3. The commission shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified tuition programs, as defined in section 529 of the internal revenue code, of which that person is the designated beneficiary does not exceed the lesser of:
  - (a) A maximum college savings amount established by the commission from time to time.
  - (b) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur.
4. Requirements that any excess contributions with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.

O. If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

P. The financial institution shall provide statements to each account owner at least once each year within thirty-one days after the twelve month period to which they relate. The statement shall identify the contributions made during a preceding twelve month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the commission requires be reported to the account owner.

Q. Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

R. A state or local government or organizations described in section 501(c)(3) of the internal revenue code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

S. In the case of any account described in subsection R, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

T. Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the commission are confidential, are not public records and shall not be released by the commission.

U. An account owner may transfer ownership rights to another eligible account owner.

V. An account owner may designate successor account owners.

**15-1876. Higher education expenses; exemption from taxation**

Notwithstanding any other law, the amount of any distribution to a designated beneficiary, as defined in section 529(e)(1) of the internal revenue code, from an individual trust account or savings account established under this article is exempt from taxation under title 43 but only to the extent that this income is used to pay qualified higher education expenses of the designated beneficiary.

## **15-1877. Scholarships and financial aid provisions**

A. Any student loan program, student grant program or other financial assistance program established or administered by this state shall treat the balance in an account of which the student is a designated beneficiary as neither an asset of the parent of the designated beneficiary nor as a scholarship, a grant or an asset of the student for determining a student's or parent's income, assets or financial need.

B. Subsection A applies to any state appropriated financial assistance program administered by a college or university in this state including the financial aid trust fund, established by section 15-1642, the leveraging educational assistance program established by section 1203 of the higher education act amendments of 1998 (P.L. 105-244; 112 Stat. 1581; 20 United States Code section 1001) and the private postsecondary education student financial assistance program established by section 15-1854.

C. Subsections A and B do not apply if any of the following conditions exist:

1. Federal law requires all or a portion of the amount in an account to be taken into consideration in a different manner.
2. Federal benefits could be lost if all or a portion of the amount in an account is not taken into consideration in a different manner.
3. A specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into consideration.

## **15-1878. Limitations of article**

A. Nothing in this article shall be construed to:

1. Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner.
2. Guarantee that a designated beneficiary will be admitted to an eligible educational institution or be allowed to continue enrollment at or graduate from an eligible educational institution located in this state after admission.
3. Establish state residency for a person merely because the person is a designated beneficiary.
4. Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

B. Nothing in this article establishes any obligation of this state or any agency or instrumentality of this state to guarantee for the benefit of any account owner, contributor to an account or designated beneficiary any of the following:

1. The return of any amounts contributed to an account.
2. The rate of interest or other return on any account.
3. The payment of interest or other return on any account.
4. Tuition rates or the cost of related higher education expenditures.

C. Under rules adopted by the commission, every contract, application, deposit slip or other similar document that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by this state and neither the principal deposited nor the investment return is guaranteed by this state.

**15-1879. Annual report**

The commission shall submit an annual report to the speaker of the house of representatives, the president of the senate and the governor by February 1 that summarizes the commission's findings and recommendations concerning the program established by this article.