

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize the establishment of college savings accounts and to provide guidelines for the maintenance of the accounts; to apply distributions from the account toward expenses at institutions of higher education; to establish the District of Columbia College Savings Program; to establish residency requirements for program participants; to establish the District of Columbia College Savings Program Advisory Board; to specify membership, appointments, and terms of members of the Advisory Board; to authorize the Chief Financial Officer to adopt regulations to carry out his or her responsibilities; to authorize the use of financial institutions as college savings depositories or program managers; to authorize the Chief Financial Officer to audit account depositories and program managers; to establish provisions for the discontinuance of any agreement with an account depository or program manager; to exempt the Program from District of Columbia taxation; to authorize the Chief Financial Officer to provide for circumstances under which money may be withdrawn from the Program; to specify requirements concerning accounts; to require the Chief Financial Officer to provide for certain changes in circumstances of account owners and designated beneficiaries; to provide for refunds, less applicable penalties, under certain circumstances; to prohibit the legal attachment of funds of an account; to authorize payroll deductions by District of Columbia agencies for employees to contribute to accounts; to require an annual audit of the Program; and to require the Chief Financial Officer to report to the Mayor and Council annually.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "College Savings Act of 2000".

Sec. 2. Title 47 of the District of Columbia Code is amended as follows:

(a) The table of contents for the title is amended by adding the chapter designation "Chapter 45. College Savings Program."

(b) A new Chapter 45 is added to read as follows:

"CHAPTER 45. COLLEGE SAVINGS PROGRAM.

"Sec.

"47-4501. Definitions.

"47-4502. Program established.

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- "47-4503. College savings accounts.
- "47-4504. District of Columbia College Savings Program Advisory Board.
- "47-4505. Administration of the Program.
- "47-4506. Implementation of the Program.
- "47-4507. Program limitations.
- "47-4508. Residency requirement.
- "47-4509. Local tax exemption.
- "47-4510. Seizure of accounts prohibited.
- "47-4511. Payroll deductions.
- "47-4512. Audit of Program.

"§47-4501. Definitions.

"For the purposes of this chapter, the term:

"(1) "Account" means a college savings account established under § 47-4503.

"(2) "Account owner" means the individual who enters into a college savings agreement under this chapter establishing an account. The account owner may also be the designated beneficiary of the account.

"(3) "Advisory Board" means the District of Columbia College Savings Program Advisory Board.

"(4) "Designated beneficiary" means an individual who is:

"(A) Eligible to apply college savings payments to undergraduate or graduate tuition at an eligible institution under this chapter; and

"(B) A resident of the District of Columbia when the account owner enters into a college savings agreement.

"(5) "Eligible institution" means an institution of higher education as defined in § 481 of the Higher Education Act of 1965, approved October 3, 1980 (94 Stat. 1444; 20 U.S.C. § 1088).

"(6) "Internal Revenue Code" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. §1 *et seq.*).

"(7) "Nonqualified withdrawal" means a withdrawal from an account:

"(A) Other than a qualified withdrawal;

"(B) Made as the result of the death or disability of the designated beneficiary of an account; or

"(C) Made on account of a scholarship.

"(8) "Program" means the District of Columbia College Savings Program established under § 47-4502.

"(9) "Qualified higher education expenses" means:

"(A) Tuition, fees, and the costs of books, supplies, and equipment required for enrollment or attendance of a qualified beneficiary at an eligible institution; or

"(B) The costs of room and board of a qualified beneficiary incurred while attending an eligible institution; provided, that the amount of room and board shall not exceed

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the minimum room and board allowance determined in calculating costs of attendance for federal financial aid programs under § 472 of the Higher Education Act of 1965, approved October 17, 1986 (100 Stat. 1454; 20 U.S.C. §1087 ll), or any successor legislation and implementing regulations.

"(10) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

"47-4502. Program established.

"There is established the District of Columbia College Savings Program, which authorizes the creation of college savings accounts to enable residents of the District of Columbia to benefit from the tax incentives provided for qualified state tuition programs under the Internal Revenue Code.

"47-4503. College savings accounts.

"(a) An account may be established by any person who desires to save money for the payment of qualified higher education expenses of a designated beneficiary by entering into a college savings agreement.

"(b) An application for an account shall be in the form prescribed by the Chief Financial Officer and contain the following information:

"(1) The name, address, and social security number or employer identification number of the account owner;

"(2) The designation of a designated beneficiary;

"(3) The name, address, and social security number of the designated beneficiary;

"(4) The certification relating to no excess contributions; and

"(5) Such other information as the Chief Financial Officer may require.

"(c) The Chief Financial Officer may establish a nominal fee for the application.

"(d) Contributions to accounts shall be made only in cash.

"(e) An account owner may withdraw all or part of the balance from an account upon 60 days notice or such shorter period as may be authorized by the Chief Financial Officer. The Chief Financial Officer shall promulgate regulations to determine whether a withdrawal is a nonqualified withdrawal or qualified withdrawal.

"(f) An account owner may change the designated beneficiary of an account in accordance with procedures established by the Chief Financial Officer.

"(g) An account owner may transfer all or a portion of an account to another account whose designated beneficiary is a member of the family.

"(h) Changes in designated beneficiaries and transfers shall not be permitted to the extent that they would constitute excess contributions or unauthorized investment choices.

"(i) In the case of a nonqualified withdrawal from an account, an amount equal to 10% of the portion of the withdrawal constituting income under § 529 of the Internal Revenue Code shall be withheld as a penalty and paid to the Program fund established by the Chief Financial Officer.

"(j) The penalty described in subsection (i) of this section may be adjusted by the Chief Financial Officer so that the penalty is not de minimis under § 529 of the Internal Revenue Code;

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provided, that the Chief Financial Officer shall adjust the penalty to an amount that is not greater than is required under § 529 of the Internal Revenue Code; provided further, that the penalty, when combined with other revenue generated under this chapter, shall produce more revenue than is required to meet the costs of operating the Program and recover any prior costs not previously recovered.

"(k) If an account owner makes a nonqualified withdrawal and no penalty is withheld under subsection (i) of this section, or the amount withheld was less than the penalty required to be paid, the account owner shall pay the unpaid portion of the penalty to the Program upon the earlier of:

"(1) The filing of the account owner's District of Columbia income tax return for the taxable year of the withdrawal (determined with respect for any authorized extensions); or

"(2) If the account owner does not file a return, the due date for the return.

"(l) The Program shall provide a separate accounting for each designated beneficiary.

"(m) No account owner or designated beneficiary shall be permitted to direct the investment of contributions to an account or the earnings on the account.

"(n) An account owner or a designated beneficiary shall not use an interest in an account as security for a loan. A pledge of an interest in an account shall be void.

"(o) The Chief Financial Officer shall promulgate regulations to prevent contributions on behalf of a designated beneficiary in excess of the amount determined by actuarial estimates necessary to pay qualified higher education expenses. The regulations shall include a requirement that an excess balance with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or transfer to another account.

"(p) If there is a distribution from an account to an individual or for the benefit of an individual during a calendar year, the distribution shall be reported to the Internal Revenue Service by the account owner, the designated beneficiary, or the distributee to the extent required by federal law or regulation. Statements shall be provided to each account owner at least once each year within 60 days after the end of the 12-month period to which they relate. The statement shall identify the contributions made during a preceding 12-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the Chief Financial Officer shall require to be reported to the account owner. Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

"(q) A nonprofit organization described in § 501(c)(3) of the Internal Revenue Code may establish and become the account owner of an account to fund scholarships for persons whose identity will be determined upon disbursement. In the case of an account established under this subsection, the requirement that a designated beneficiary be designated when an account is opened shall not apply and each individual who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

"(r) An annual fee may be imposed upon the account owner for the maintenance of the account.

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"(s) The following information shall be disclosed to each account owner:

"(1) The terms and conditions for an account;

"(2) Restrictions on the substitution of designated beneficiaries;

"(3) The person or entity entitled to terminate the college savings agreement;

"(4) The terms and conditions under which money may be wholly or partially withdrawn from the Program, including charges and fees that may be imposed for withdrawal;

"(5) The probable tax consequences associated with contributions to, and distributions from, accounts; and

"(6) Other terms, conditions, and provisions considered necessary or appropriate by the Chief Financial Officer.

"§ 47-4504. District of Columbia College Savings Program Advisory Board.

"(a) The District of Columbia College Savings Program Advisory Board is established to advise the Chief Financial Officer on the administration of the Program, including public information and outreach, implementing regulations, investment policy, and procedures governing applications, account management, and the disbursal of funds.

"(b) The Advisory Board shall consist of 9 members: 6 public members and 3 *ex officio* members. The Mayor shall appoint 3 of the public members and the Council shall appoint 3 of the public members. The Mayor shall appoint one of the public members of the Advisory Board as Chairperson. The public members shall be residents of the District of Columbia who have significant experience in finance, accounting, investment management, higher education, or other areas that relate to the duties of the Advisory Board. The public members shall serve for 3-year terms, except that for the first 3 individuals appointed by the Mayor and the Council, respectively, one shall serve a one-year term, one shall serve a 2-year term, and one shall serve a 3-year term. The 3 *ex officio* members shall be the Chairman of the Council's Committee on Finance and Revenue, the State Education Officer, and the president of the University of the District of Columbia, or their respective designees.

"(c) A member of the Advisory Board shall not receive compensation, but shall be entitled to reimbursement for reasonable travel-related expenses.

"§ 47-4505. Administration of the Program.

"(a) The Chief Financial Officer shall administer the Program. In making decisions about the administration of the Program, the Chief Financial Officer shall consult with, and obtain the advice of, the Advisory Board.

"(b) The Chief Financial Officer shall use the funds authorized in § 47-4503(c), § 47-4503(j), § 47-4503(r), and § 47-4506(b)(9) to pay for the staff and non-personal services needed to administer the Program.

"(c) The Chief Financial Officer shall develop and implement the Program in a manner consistent with this chapter. To administer the Program, the Chief Financial Officer may:

"(1) Retain the services of consultants, administrators, and other personnel, as necessary, to administer the Program:

"(2) Execute contracts, college savings agreements, and other necessary instruments;

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- "(3) Enter into agreements with eligible institutions of higher education and other public or private entities for the administration or promotion of the Program;
- "(4) Solicit and accept gifts, grants, loans, or other aid from any source or participate in any government program for purposes consistent with this chapter;
- "(5) Impose and collect reasonable administrative fees for a transaction involving college savings agreements and transactions affecting the Program;
- "(6) Procure insurance against a loss of assets of the Program;
- "(7) Endorse insurance coverage written exclusively for the purpose of protecting a college savings agreement and the account owner or designated beneficiary of the account;
- "(8) Designate terms under which money may be withdrawn from the Program;
- "(9) Establish the methods by which the funds held in accounts are disbursed;
- "(10) Establish additional procedural and substantive requirements for participation in, and the administration and promotion of, the Program;
- "(11) Seek rulings and other guidance from the Internal Revenue Service and agencies of the federal government relating to the Program;
- "(12) Make changes to the Program required for the participants in the Program to obtain the federal income tax benefits or treatment provided by § 529 of the Internal Revenue Code, or successor legislation.

"§47-4506. Implementation of the Program.

"(a) The Chief Financial Officer shall implement the Program through use of one or more financial organizations as account depositories and managers. Under the Program, individuals may establish accounts directly with an account depository.

"(b) The Chief Financial Officer shall solicit proposals from financial organizations to act as account depositories or managers of the Program. The Chief Financial Officer shall promulgate regulations that establish a procedure to, from time to time, review the method by which financial organizations are selected. Financial organizations submitting proposals shall describe the investment instrument which will be used in accounts. The Chief Financial Officer may select as account depositories or managers one or more financial organizations that demonstrate the most advantageous combination, both to potential program participants and the District of Columbia, from among 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 higher 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 it 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

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organization will require;

"(8) The ability of banking organization to accept electronic withdrawals, including payroll deduction plans; and

"(9) Other benefits to the District of Columbia or its residents included in the proposal, including fees payable to the District of Columbia to pay the expenses of the operation of the Program.

"(c) Until the Internal Revenue Service has provided guidance that the provision to a contributor of the choice of 2 or more investment instruments under a qualified state tuition program will not disqualify the program for favorable tax treatment under § 529 of the Internal Revenue Code, no management contract entered into by the Chief Financial Officer shall provide for more than one type of investment instrument.

"(d) A management contract shall include terms requiring the financial organization to:

"(1) Take any action required to keep the Program in compliance with requirements of § 47-4503 and not to take any action which would disqualify the Program as a qualified state tuition plan under § 529 of the Internal Revenue Code;

"(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the Chief Financial Officer with the information necessary to prepare the statements required by § 47-4503.

"(3) Compile information contained in statements provided to account owners;

"(4) If there is more than one program manager, provide the Chief Financial Officer with the information necessary to determine compliance with § 47-4503.

"(5) Provide the Chief Financial Officer, or its designee, 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;

"(7) Be audited at least annually by a firm of certified public accountants;

"(8) Provide the Chief Financial Officer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while it 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 Chief Financial Officer the results of any periodic examination of the manager by a federal banking, insurance, or securities commission, except to the extent the report may not be disclosed under applicable law or the rules of the commission; and

"(9) Ensure that any description of the Program, whether in writing or through the use of other media, is consistent with the marketing plan developed by the Chief Financial Officer.

"(e) The Chief Financial Officer may provide that an audit may be conducted of the operations and financial positions of the program depository or manager at any time if the Chief Financial Officer has reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program depository and manager.

"(f) During the term of a contract with a program manager, the Chief Financial Officer shall conduct an examination of the manager and its handling of accounts. The examination shall

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be conducted at least biennially if the manager is not otherwise subject to periodic examination by the Mayor, the Federal Deposit Insurance Corporation, or other similar entity.

"(g) If selection of a financial organization as a program manager or depository is not renewed, after the end of its term:

"(1) No new accounts may be placed with the financial organization;

"(2) Accounts previously established and held in investment instruments at the financial organization shall be terminated;

"(3) If accounts are not terminated, additional contributions may be made to the accounts; and

"(4) Existing accounts held by the depository shall remain subject to all oversight and reporting requirements established by the Chief Financial Officer.

"(h) If the Chief Financial Officer terminates a financial organization as a program manager or depository, the Chief Financial Officer shall cause the accounts to be transferred 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 Chief Financial Officer:

"(1) Shall preserve, invest, and expend the assets of the Program solely for the purposes of this chapter; and

"(2) Shall not loan, transfer, or use the assets of the Program for any other purpose than as provided in this chapter.

"§ 47-4507. Program limitations.

"(a) Nothing in this chapter shall be construed to:

"(1) Confer upon a designated beneficiary 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 institution of higher education;

"(3) Create residency for an individual merely because the individual is a designated beneficiary; or

"(4) Guarantee that amounts saved under the Program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

"(b) Nothing in this chapter shall create, or be construed to create, an obligation or guarantee of the District of Columbia, its agencies or instrumentalities, or the Chief Financial Officer, for the benefit of an account owner or designated beneficiary with respect to:

"(1) The rate of interest or other return on an account; and

"(2) The payment of interest or other return on an account.

"(c) 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 the District of Columbia and that the principal deposited to, or the investment return on, an account is not guaranteed by the District of Columbia.

"§ 47-4508. Residency requirement.

"(a) To establish an account, the account owner or the designated beneficiary must be a

resident of the District of Columbia when the account is established.

"(b) For the purposes of determining residency under subsection (a) of this section, the term "resident" means a person who has a principal or primary home or place of abode in the District of Columbia.

"§ 47-4509. Local tax exemption.

"Contributions made by account owners to, and earnings on, accounts shall be exempt from District of Columbia income taxation.

"§ 47-4510. Seizure of accounts prohibited.

"A person may not attach, execute, garnish, or otherwise seize a current or future benefit under a higher education tuition savings account or an asset of the Program.

"§ 47-4511. Payroll deductions.

"The District of Columbia and its agencies may agree, by contract or otherwise, to remit payments on behalf of an employee to an account through payroll deductions.

"§ 47-4512. Audit of Program.

"(a) The Mayor shall audit the Program annually.

"(b)(1) Within 90 days after the close of each fiscal year, the Chief Financial Officer shall submit to the Council a report, which shall include:

"(A) The Mayor's audit report for the year;

"(B) A financial accounting of the Program, including:

"(i) The operating and administrative budget for the Program, which shall include a complete list of revenue sources and expenditures detailing the line-item expenditures;

"(ii) The number of accounts entered into during the previous fiscal year;

"(iii) Efforts by the Chief Financial Officer in marketing the Program; and

"(iv) Any recommendations of the Chief Financial Officer concerning the operation of the Program.

"(2) The Chief Financial Officer shall make available to each account owner a copy of a summary of the report and the option to purchase the full report at a nominal charge."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 4. Effective date.

This act shall take effect following the approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility

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and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia