



Request for Proposal (RFP)

- Issue Date: Tuesday, January 20, 2009
- Title: Qualified Tuition Savings Program Services for
Kentucky Education Savings Plan Trust (Kentucky's 529
Savings Plan)
- Proposal Deadline: Responses must be received by 4:30 p.m. (EST), Friday,
February 27, 2009.
- Contact Name: All inquiries regarding this proposal must be in writing (via
fax, e-mail or mail) by 4:30 p.m. (EST), Wednesday,
January 28, 2009 and should be directed to:
Elaine Prescott, Purchasing Manager
Kentucky Higher Education Student Loan Corporation
10180 Linn Station Road, Suite C200
Louisville, KY 40223
E-mail: eprescott@kheslc.com
Phone: (502) 329-7134
Fax: (502) 329-7208
- Response to Inquiries: Responses to all submitted inquiries will be posted at
<http://www.kheaa.com/website/kheaa/pressroom> no later than 4:30
p.m. (EST), Wednesday, February 4, 2009.
-



Table of Contents

Section	Item	Page
I.	Introduction	3
II.	Background Information	3
	A. Kentucky Higher Education Assistance Authority	3
	B. KESPT Statistics	4
III.	Scope of Work	5
	A. Administration and Customer Service	5
	B. Plan Implementation	5
	C. CSPN Guidelines and Data Submission	5
	D. Program Marketing	5
	E. Investment Management	6
	F. Distribution	6
IV.	Questions	6
	A. Organizational Background	6
	B. Investment Management and Experience	8
	C. Implementation, Administration and Customer Service	8
	D. Marketing and Distribution	10
	E. Fee Structure	10
V.	Proposal Requirements	12
VI.	Contract Information	13
VII.	Proposal Timeline	13
VIII.	Selection	14
	Attachment A	
	Attachment B	
	Attachment C	
	Attachment D	



I. Introduction

Kentucky Higher Education Assistance Authority (“KHEAA”) is requesting proposals from qualified financial services companies (“Respondents”) who wish to offer investment, administrative, customer service and marketing services for the Kentucky Education Savings Plan Trust (“KESPT” or the “Savings Program”), a qualified tuition program under Section 529 of the Internal Revenue Code of 1986, as amended (“Section 529” and the “IRC”). KESPT is governed by Kentucky Revised Statute (“KRS”) Chapter 164A.300 through 164A.380 and is regulated by 11 Kentucky Administrative Regulations (“KAR”) 12:010 through 12:090 (*See Attachments A and B*).

KHEAA seeks proposals from firms or groups of firms interested in providing management services for a savings plan offered directly to the public (the “Direct Plan”). KHEAA recognizes that some college savers may desire the professional services offered by financial professionals; (an “Advisor Plan”). Therefore, KHEAA is also open to offering an Advisor Plan. The Savings Program is currently offered directly to the public.

The Direct Plan must offer a sound and diversified choice of investment options for investors at a reasonable cost. The Direct Plan should focus advertising throughout the Commonwealth of Kentucky, reaching both rural and urban locations and the full range of socio-economic groups, including non-traditional investors. This includes outreach relationships throughout the Commonwealth with interested organizations and constituent bodies, such as public and private school districts (K-12), parent-teacher organizations, hospitals, and similar entities, and payroll deduction options for employers or employer groups.

KHEAA is seeking proposals from entities that are committed to helping Kentuckians save for higher education. Accordingly, non-financial services firms that respond to this RFP must be able to offer all services outlined in this RFP, as KHEAA intends to continue to offer a 529 savings plan to its residents. To that end, all Respondents interested in providing program management services must respond to all questions presented herein and meet the Proposal Requirements in Section V of this proposal.

II. Background Information

A. Kentucky Higher Education Assistance Authority (KHEAA)

KHEAA is a public corporation and governmental agency and instrumentality of the Commonwealth established in 1966 by the Kentucky General Assembly to serve the following public purposes:

- Improving opportunities for higher education by insuring Federal Family Education Loans for eligible students under the Federal Higher Education Act.
- Administering financial aid programs to help qualified students pay for their higher education.
- Offering information related to KHEAA programs to students and their families.



The Kentucky savings program, established by the 1988 Kentucky’s Acts Chapter 88, Section 1, was designed to help Kentucky families save for college. It was housed in the Governor’s Office until 1990, when it was transferred to KHEAA. With enactment of Section 529 in 1996 and as further modified in 1997, the Savings Program became a qualified tuition program. Today, it is managed in accordance with an investment policy adopted by the KHEAA Board of Directors (11 KAR 12:020), which specifies the acceptable rating agency categories for authorized investments for the current Investment Policy Statement.

KHEAA also administers Kentucky’s Affordable Prepaid Tuition (“KAPT”) program, which is a Section 529 qualified tuition program. The KESPT Program Manager provides assistance in determining, administering, and coordinating maximum contribution limits between beneficiaries of KAPT and KESPT in accordance with an agreed upon process. The Program Manager selected will be expected to provide these same services to KHEAA.

B. KESPT Statistics

The Savings Program began its operation on July 1, 1990, and is currently offered directly to the public. KESPT offers five investment options and is managed and distributed by TIAA-CREF Tuition Financing, Inc. (“TIAA-CREF”). Recordkeeping services are provided by Boston Financial Data Services (“BFDS”) on behalf of TIAA-CREF. As of December 31, 2008, KESPT had 11,350 accounts totaling approximately \$88 million.

Investment Option	Assets	Accounts
Managed Allocation	\$63.2 Million	7,670
100% Equity	\$18.0 Million	2,760
Active Equity (Launched September 2008)	\$.05 Million	50
Fixed Income (Launched September 2008)	\$.06 Million	20
Guaranteed	\$ 7.2 Million	850
Total	\$88.5 Million	11,350

If a firm other than TIAA-CREF is the successful Respondent, that firm will be required to work agreeably with TIAA-CREF during the transition period with regard to the conversion of recordkeeping, administrative and financial services. KESPT assets will be transferred to similar investment options offered by the Program Manager.

In the event of a transfer of KESPT assets from TIAA-CREF to a new Direct Plan, the new Program Manager will be responsible for the costs of the system conversion and the transfer of investments to the applicable new investment option(s). Additionally, the new Program Manager will be responsible for the aggregation of all KESPT accounts, including those remaining in the current guaranteed option, if applicable, which is supported by a funding agreement with the TIAA Life Insurance Company.



III. Scope of Work

KHEAA is seeking proposals from firms or other entities interested in serving as Program Manager for the Direct Plan, which would be comparable, but not limited to, the current structure of KESPT investment offerings. KHEAA also invites Respondents to propose an Advisor Plan. Respondents may propose to serve as Program Manager for a Direct Plan alone or in conjunction with an Advisor Plan, but Respondents may not propose an Advisor Plan alone. Thus, to the extent that KHEAA chooses to include an Advisor Plan within KESPT, it will engage just one Program Manager for both plans.

The Program Manager selected will provide the following services:

A. Administration and Customer Service

The Program Manager will manage the Plan in compliance with the IRC rules and regulations governing Section 529 plans, applicable federal and Kentucky laws and regulations, and the Management Agreement entered into with KHEAA. The Program Manager will process all fulfillment requests and account activity on a timely basis and provide up-to-date record keeping and satisfactory customer service in accordance with the standards set forth in the Management Agreement. The Program Manager will also provide domestic call center services as part of its management of the Program.

B. Plan Implementation

In the event that this RFP results in the selection of a new Program Manager, a transfer of Program records and conversion of assets from TFI to a new Program Manager will be required. The selected Program Manager will work with TFI to ensure a systematic, well-organized, and timely transfer of assets and accounts.

C. CSPN Guidelines and Data Submission

The Program Manager will comply with all College Savings Plans Network (“CSPN”) requirements, guidelines, and/or best practices, including the CSPN Disclosure Principles Restatement No. 2 and any successor Disclosure Principles adopted by CSPN. The Program Manager will timely submit to CSPN Program data required for maintenance of Savings Plan information on the CSPN website.

D. Program Marketing

The Program Manager will be responsible for marketing the Direct Plan in Kentucky and, as appropriate, nationwide. The Program Manager will coordinate marketing with KHEAA and, where necessary, provide practical support and assistance for meetings and local presentations. The Program Manager will work cooperatively with KHEAA to make sure that materials for the Direct Plan target Kentucky investors. Further, the Program Manager will manage and host the Program website. The Program Manager may also create a unique national marketing effort in consultation with KHEAA staff. The Program Manager will present annually its marketing plans to KHEAA, as well as fund and implement the Plan’s marketing campaign in Kentucky and, if applicable, nationwide. Marketing



campaigns will be subject to KHEAA's approval. The Program Manager will be expected to provide benchmarks against which to judge the effectiveness of marketing initiatives. Quarterly (and, where applicable, monthly) marketing reports to be filed in a timely manner with KHEAA staff will include the Plan's performance against mutually agreed upon marketing benchmarks.

E. Investment Management

Investments in the Direct Plan should include simple, low-cost options that will appeal to a wide range of investors. KHEAA is amenable to offering more investment options than the number currently offered through TIAA-CREF, provided the additional offerings do not over-complicate the examination and selection of options by investors acting without professional financial advice. The Program currently offers a Guarantee Option and seeks a similar option to be managed by the Program Manager. Additionally, KHEAA seeks the flexibility to change investment options during the term of the Management Agreement if common market conditions suggest that change would be beneficial to the Plan participants. If the Respondent also proposes an Advisor Plan, the investments in that plan must be separate from those offered in the Direct Plan. The Program Manager will manage investments as a fiduciary for both the account owners and KHEAA and will be expected to act in accordance with the investment principles set forth in 11 KAR 12:020. The Program Manager will provide quarterly investment performance reports (including a fourth quarter annual summary) in a timely manner to be agreed upon in the Management Agreement.

F. Distribution

The Program Manager will offer the Direct Plan directly to Kentucky investors by means of on-line enrollment and through a central mailing site. The Program Manager may distribute the Direct Plan nationwide at its discretion. If the Program Manager proposes to provide an Advisor Plan, it will enter into selling agreements with in-state, regional and national third party distributors for distribution through a variety of professional financial advisors.

IV. Questions

The Respondent must provide the necessary information or answers to the following requirements/questions below in order to demonstrate the capability of the Respondent to provide the required services or it may be rejected as noncompliant.

A. Organizational Background

1. Provide an Executive Summary of the Respondent's firm including organizational and investment structure. The summary should also include Respondent's understanding of the Program and its objectives. Please plainly identify the entity that will serve as the Program Manager, as well as all affiliates, subsidiaries, and other entities that will provide services to meet the requirements of this RFP. If the Program Manager is not a parent entity, then please indicate willingness to provide a



parent guarantee or propose a suitable alternative to ensure performance of the services solicited by this RFP.

2. Please identify all key personnel who will be responsible for performing services, including the overall business leader responsible for this engagement, the day-to-day manager, the investment professional responsible for the 529 portfolios, the senior marketing professional, and the senior professional(s) responsible for operations, recordkeeping, and customer service.
3. Does your firm currently manage or otherwise provide services to any other 529 plans? If so, please provide in table format the following information:
 - The type of 529 program (e.g., prepaid, savings, direct-sold, advisor-sold)
 - Number of accounts and total amount of assets managed
 - Nature of the engagement and number of years of service in such engagement
4. If your firm does not currently manage a 529 plan, please describe your experience in administering similar plans for institutional clients, including any 401(k) or other retirement plans.
5. If your firm is currently a 529 program manager, please include a copy of the latest disclosure statement for each program in which you are engaged to demonstrate compliance with the latest CSPN Disclosure Principles. If your firm is not a program manager, how do you intend to comply with the Disclosure Principles?
6. Please describe any existing relationships that would limit your firm's ability to distribute KESPT nationwide.
7. How would you avoid conflicts with any other 529 contracts or relationships your firm might have?
8. If relevant, describe the accomplishments your firm or entity has experienced in converting other 529 plans. As applicable, include annual growth in both assets and accounts over the past three years.
9. Has your firm ever been terminated for cause from any 529 contract, and if so, why?
10. If your firm is a consortium or will be using subcontractors, please describe in detail each partner or subcontractor, their exact aptitudes and responsibilities as they relate to this assignment, and how the relationships between the groups will function.
11. Have any entities included in your proposal been involved in an enforcement action by or had an audit or inquiry from the SEC or any other federal or state governmental regulatory agency, or been named a defendant in litigation, or entered into a settlement where there was an allegation of violation of fiduciary responsibility related to the firm's 529 or other investment management business?



B. Investment Management and Experience

1. List the mutual funds your firm plans to include in the Direct Plan and the Advisor Plan (if applicable) separately. For each fund, provide the following information: inception date, benchmark, and assets under management.
2. Please complete the following table for each of the funds identified above (B1).

Fund Name				
Asset Class				
Style				
Investment Approach				
Share Class				
Share Class Fees				
Portfolio Manager*				

* Include resume of each portfolio manager.

3. Please identify all proposed 529 portfolios (investment options). For proposed 529 portfolios containing multiple mutual funds, list the funds and their percentage weighting in each portfolio. Please also provide an appropriate benchmark against which portfolio performance will be measured. Are your proposed 529 portfolios included in other 529 plans? If so, please identify those plan(s).
4. Please provide three years of quarterly returns for each of the funds and portfolios of funds listed in 1) and 3) above on a net basis using an MS Excel spreadsheet.
5. What are the backup procedures should the key investment professional assigned to KESPT leave your firm during your engagement with KHEAA?
6. Provide an example of a client report similar to what you would provide to KHEAA on a monthly or quarterly basis as it relates to investments.
7. What proxy rights will KHEAA have with respect to the mutual funds included in the Plan(s)?

C. Implementation, Administration and Customer Service

1. Please describe your experience with data transfers and investment resettlement on a large scale basis. Please address any issues that might arise in a 529 program transition.



2. Please develop and submit a work plan or schedule for establishing the new Direct-Sold and Advisor Plans (if applicable) and the transitioning of existing accounts to the new Direct Plan. Identify each major assignment and/or specific objectives by which progress can be measured.
3. What procedures do you have in place to guarantee compliance with Section 529 and other applicable laws?
4. Please provide a current example of a customer quarterly statement for a 529 program or similar investor quarterly statement, showing all information provided to individual investors.
5. Describe your firm's procedures to ensure customer confidentiality of accounts.
6. Please name the auditor that reviews your funds annually, and provide information on the audit activities you will conduct as it relates to 529 recordkeeping. Please provide a SAS 70 report, if available, or a similar report providing like information. If you do not have a SAS 70, would your firm be willing to provide one in the future?
7. Please outline the monthly, quarterly, and annual reports that your firm will provide to KHEAA and when they will be available.
8. What will be the minimum deposit requirement that your firm would impose both for initial deposits when opening an account and for subsequent deposits?
9. Please designate the location where the contracted services will be performed and whether or not any of the work necessary to provide services will be performed at a site outside the United States.
10. Please outline the performance standards that your firm currently uses to measure your administration and customer service functions. Would those performance standards be the same for Kentucky?
11. Please describe how you will preserve account data to ensure that current information is available to all account holders on a daily basis.
12. Please describe the payroll deduction system that you will offer.
13. Please describe any information you will provide or require regarding rollovers to and from other 529 savings and prepaid programs.
14. Please provide the plans for on-line account opening and customer service. Include a description of your website and whether you currently provide online enrollment or other account functions for your customers.



D. Marketing and Distribution

1. Please complete the below table showing your firm’s annual marketing commitment in Kentucky. Please note that you will be expected to spend the entire marketing commitment in each year and that the marketing commitment will be used for actual marketing and advertising expenses but not program operational costs. If marketing dollars remain unspent at the end of any year, the moneys will roll forward to the following year:

Contract Year (Oct. 1- Sept. 30)	Annual Marketing Commitment
2009-2010	
2010-2011	
2011-2012	
2012-2013	
2013-2014	
Total	

2. Please describe your firm’s marketing approach for in-state promotion. Please be specific in terms of field support that will be available to market the Direct Plan to Kentucky community groups, schools, financial professionals, and employers.
3. Please explain how your firm will distribute the Kentucky Direct Plan. Please demonstrate other successes your firm has had in the direct market for other states.
4. If you are proposing an Advisor Plan, please describe the size and geographic assignments of your wholesalers. Include details on your firm’s presence in and coverage of Kentucky.
5. Please identify the set of performance standards that would be used to measure your marketing efforts in Kentucky.

E. Fee Structure

1. Please complete the following chart with your proposed fee structure for the Direct Plan. Your answer should be clear as to whether you are proposing all-in/fixed fees, variable fees, or some combination of both.

Investment Management Fees	Program Management Fee	Total Asset Based Fees	Other



2. Will the Direct Plan fees decrease as the asset base increases? If so, please show those decreases.
3. Are you proposing any differentiation in fees between residents and non-residents of Kentucky? If so, please identify the fees that will differ and explain the basis for the account's categorization.
4. If you are proposing an Advisor Plan, please complete the following chart. If you are not proposing similar share classes, then describe the share classes or fee structure you will offer.

Share Class	Estimated Investment Fees	Upfront Sales Load	CDSC	Trail	Program Management Fee	Estimated Total Fees
A*						
B*						
C						
Other (specify)						

*Please specify the point at which B shares convert to A shares and provide all information on CDSCs.

5. If you are proposing an Advisor Plan, please complete the following chart. Be sure to indicate whether different commission structures apply to different investment options.

Amount Contributed	Selling Commission	On-Going Sales Fee
A Shares		
Less than \$_____		
\$_____ - _____		
\$_____ - _____		
Above \$_____		
B Shares		
C Shares		
Other (specify)		



6. Describe any fee sharing or other financial arrangements that your firm will establish (or that are already in place) with other distributors, investment managers, subcontractors or other services in the management of an Advisor Plan.

V. *Proposal Requirements*

The proposal must provide the following minimal information to demonstrate the capability of the Respondent to provide the required product and services or it may be rejected as noncompliant. The Respondent is encouraged to provide any other information that will be beneficial in reviewing product and service capabilities.

1. The Respondent must maintain at least \$1 billion in assets*.
2. The Respondent has been in business for at least five (5) years (including predecessor organizations)*.
3. The Respondent has been rated by two (2) or more nationally recognized rating services within the three (3) highest rating categories and operational performance in the financial markets. If the Respondent is privately held and has not been rated by a nationally recognized rating service, the Respondent must describe the conditions under which such ratings have not been conducted. The Respondent shall also describe any alternative financial condition and operational performance measures that it believes will be helpful in considering the minimum qualifications of the Respondent*.
4. Proposals must provide a minimum of three (3) references.
5. Proposals must demonstrate a minimum of three (3) years continuous participation in 529 program management or applicable industry as a distinct company, providing services comparable to college savings program management. Respondents may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the management agreement.
6. The Respondent has maintained all applicable federal licenses and registrations necessary to conduct a financial services business (e.g. – registered Investment Advisor, Investment Company and/or Broker/Dealer, as applicable).
7. The Respondent must provide answers and/or information to all questions and requirements as specified in this proposal in order to be considered for contract award. All questions must be answered in sufficient detail for effective evaluation of the Respondent's services. Proposals that contain a Respondent's own special terms and conditions in conflict with terms of the proposal and/or state statutes and regulations may be rejected.
8. Comply with the Disclosure Principles Restatement No. 2 adopted by CSPN and any successor Disclosure Principles adopted by CSPN.
9. The Respondent shall provide a Federal Identification Number and/or Social Security Number (if an individual).



10. A completed, signed and notarized Required Affidavit for Bidders or Offerors (*Attachment C*).
11. A completed, signed and notarized Vendor Business Practice Statement (*Attachment D*).
12. The proposal must be signed by an officer or person with authority to bind the company.

* If the Respondent is a partnership or other consortium of entities, qualifications 1 through 3 may be satisfied by the members of such partnership or consortium collectively. In addition, experience in the 529 marketplace is preferred but not mandatory.

VI. Contract Information

1. *Subcontracting*: If the Respondent intends to subcontract any part of this service, the Respondent must provide full disclosure of the subcontractor's name and a description of the relationship. KHEAA must approve such an agreement. The Respondent remains fully liable for all work performed.
2. *Confidentiality*: The Respondent shall comply with the provisions of the Privacy Act of 1974 and consumer privacy and data security provisions of the Gramm-Leach-Bliley Act and any other applicable Federal or State privacy laws. Additionally, the Respondent will instruct its employees to use the same degree of care as it uses with its own data to keep information concerning client data and the financial affairs of KHEAA confidential.
3. *Conflict of Interest*: The Respondent covenants that it will have no interest, direct or indirect, that will conflict in any manner or degree with the performance of its contract services. The Respondent further covenants that, in the performance of the contract, the Respondent shall employ no person having any such known interests.
4. *Contract Requirements*: Any requirements contained in this proposal must be agreed upon contractually. The Respondent and any subcontractor(s) must be authorized to do business in Kentucky and have all required licenses. The contract will be administered by the laws of the Commonwealth of Kentucky, and any suit will be filed in Kentucky. If a contract is awarded, it may be subject to Government Service Contract Committee requirements and may require a 30-day cancellation provision.

VII. Proposal Timeline

- RFP Issued: Tuesday, January 20, 2009
- Deadline for Submitting Questions: Wednesday, January 28, 2009
- Questions Answered/Posted: Wednesday, February 4, 2009
- Proposal Deadline: Friday, February 27, 2009
- Firm Interviews (if necessary): Week of March 16, 2009



- Tentative Contract Award: Week of March 30, 2009
- Contract Execution: Week of June 15, 2009
- New Plan Term Start Date: October 1, 2009

VIII. Selection

The selection of a Respondent will be based upon the review of the documentation submitted in response to this RFP. The Respondent must submit all documentation as specified in “Proposal Requirements” and may submit additional written information. No oral or faxed information will be considered. The terms and provisions of the proposal must be valid for a period of 60 days from the proposal deadline.

One (1) original, six (6) copies, and one (1) CD copy of the proposal must be received no later than 4:30 p.m. (EST), Friday, February 27, 2009.

KHEEA reserves the right to request additional information from a Respondent to assist in understanding or clarifying a proposal. This information may be considered in the evaluation of the proposal. With the exception of written inquiries regarding this RFP, no visits, electronic mail, telephone calls, or facsimiles with respect to the RFP will be accepted from the issuance date of the RFP through the completion of the evaluation period unless such contact is initiated by KHEEA.

KHEEA staff will independently review all compliant proposals. A selection, if any, will be made no later than Tuesday, March 31, 2009.

The following criteria will be considered in the selection of a Program Manager:

1. Completeness of proposal (20 Points)
2. Proposed cost (20 Points)
3. Qualifications and 529 Experience of Respondent and its staff or subcontractors (15 Points)
4. Understanding of the Plan and its relationship to KHEEA (10 Points)
5. Quality of Plan Administration and Customer Service (10 Points)
6. Design of the Investment Options (10 Points)
7. Distribution channels within Kentucky and, if applicable, nationwide (10 Points)
8. Respondent’s ability to maximize program participation among all income groups (5 Points)

While KHEEA intends to obtain a Program Manager from a single source, KHEEA reserves the right to accept or reject any or all proposals received, as deemed in the best interest of KHEEA. Each Respondent submitting a proposal will receive notification of the selection.

There is no expressed or implied obligation for KHEEA to reimburse Respondents for any expenses incurred while preparing proposals in response to this request.



KHEAA reserves the right to retain all proposals submitted. All proposals will be subject to the Kentucky Open Records law, KRS 61.870-61.884.

KHEAA will ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. Accordingly, it is further the intent of KHEAA to conduct its business in accordance with the purpose of Title VI of the Civil Rights Act of 1964.

KHEAA reserves the right to change any procedure as stated in this proposal.

Kentucky Revised Statutes

ATTACHMENT A



KENTUCKY
Education Savings Plan Trust

Chapter 164A.300-380

Kentucky Education Savings Plan Trust

164A.300	Legislative findings and intent.....1	164A.350	Ownership of contributions and interest – Cancellation of participation agreement – Transfer of ownership rights – Penalty on earnings refunded due to cancellation or nondistribution – Exemption from creditor’s execution..... 6
164A.305	Definitions for KRS 164A.300 to 164A.380.1	164A.355	Effect of payments on determination of need and eligibility for student aid. 7
164A.310	Kentucky Educational Savings Plan Trust – Powers of board.2	164A.360	Borrowing from the trust. 7
164A.315	Office facilities, clerical and administrative support for endowment trust.....3	164A.365	Annual audited financial report to Governor, General Assembly, and State Auditor. 7
164A.325	Additional powers of board as to savings plan trust.....3	164A.370	Tax exemption..... 7
164A.330	Participation agreements for savings plan trust – Confidentiality of information.4	164A.375	Property rights to assets in trust... 8
164A.335	Program and administrative funds for savings plan trust – Investment and payments from funds.5	164A.380	Liberal construction. 8
164A.337	Endowment trust for student financial assistance benefits – Authority to incorporate corporation to administer – Annual report.....5		

164A.300 Legislative findings and intent.

(1) The General Assembly of the Commonwealth of Kentucky hereby declares as a legislative finding of fact that the general welfare and well-being of the Commonwealth are directly related to the educational levels and skills of the citizens of the Commonwealth. Therefore, a vital and valid public purpose of the Commonwealth is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the Commonwealth.

(2) The General Assembly finds, declares, and recognizes that the Commonwealth has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in Kentucky and the general welfare of the citizens and the Commonwealth will be enhanced by creation of a program pursuant to which citizens and others may invest money in a public trust for future application to the payment of higher education costs in the Commonwealth and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for such future higher education application represents the carrying out of a valid and vital public purpose of the Commonwealth. In order to make available to the citizens of the Commonwealth an opportunity to fund future higher education needs for beneficiaries, it is necessary that a public trust be established in which the citizens of the Commonwealth and others may invest moneys for future educational use.

(3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create the Kentucky Educational Savings Plan Trust. The implementation and effectuation of the Kentucky Educational Savings Plan Trust as provided by KRS 164A.300 to 164A.380 constitutes the carrying out of a valid and vital public purpose for which public funds of the Commonwealth may be expended.

(4) It is in the best interest of the people of the Commonwealth to establish and provide for the operation of the Kentucky Educational Savings Plan Trust in a manner conforming to federal law that allows participants and beneficiaries federal income taxation benefits on contributions and earnings on

contributions expended by the trust for the higher education costs of a beneficiary.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 132, sec. 1, effective March 26, 1998. -- Amended 1992 Ky. Acts ch. 190, sec. 2, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 88, sec. 1, effective July 15, 1988.

164A.305 Definitions for KRS 164A.300 to 164A.380.

As used in KRS 164A.300 to 164A.380, except where the context clearly requires another interpretation:

(1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;

(2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;

(3) "Beneficiary" means:

(a) Any person designated at the commencement of participation by a participation agreement to benefit from payments for higher education costs at an institution of higher education;

(b) The new beneficiary, in the case of a change of beneficiaries pursuant to KRS 164A.330(4); or

(c) The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code;

(4) "Benefits" means the payment of higher education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an institution of higher education;

(5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;

(6) "Higher education costs" means the costs specified in section 529(e)(3) of the Internal Revenue Code of 1986 as amended for attendance at an

institution of higher education as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965, 20 U.S.C. sec. 1087II, as amended;

(7) "Institution of higher education" means an institution as defined in Section 529(e)(5) of the Internal Revenue Code of 1986, as amended;

(8) "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;

(9) "Participant" means an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code, an individual, firm, corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of higher education costs on behalf of a beneficiary;

(10) "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;

(11) "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;

(12) "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;

(13) "Tuition" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment;

(14) "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 132, sec. 3, effective March 26, 1998. -- Amended 1996 Ky. Acts ch. 11, sec. 1, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 190, sec. 3, effective July 14, 1992. -- Created

1988 Ky. Acts ch. 88, sec. 2, effective July 15, 1988.

164A.310 Kentucky Educational Savings Plan Trust – Powers of board.

There is hereby created an instrumentality of the Commonwealth to be known as the Kentucky Educational Savings Plan Trust. The board, in the capacity of trustee, shall have the power and authority to:

- (1) Sue and be sued;
- (2) Make and enter into contracts necessary for the administration of the savings plan trust pursuant to KRS 164A.300 to 164A.380;
- (3) Adopt a corporate seal and to change and amend it from time to time;
- (4) Invest moneys within the program fund in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the savings plan trust;
- (5) Enter into agreements with any institution of higher education, the Commonwealth of Kentucky, or any federal or other state agency or other entity as required for the effectuation of its rights and duties pursuant to KRS 164A.300 to 164A.380;
- (6) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund, which, in the case of any contributions from other than general funds of the Commonwealth, may be limited in application to definite classes of beneficiaries;
- (7) Enter into participation agreements with participants;
- (8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;
- (9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in KRS 164A.300 to 164A.380;

(10) Appoint a program administrator and to determine the duties of the program administrator and other staff as necessary and fix their compensation within the provisions of KRS Chapter 18A;

(11) Delegate to the program administrator general supervision and direction over the administrative function of the trust and its employees in carrying out the policies, programs, administrative regulations, and directives of the board;

(12) Make provision for the payment of costs of administration and operation of the savings plan trust;

(13) Carry out the duties and obligations of the savings plan trust pursuant to KRS 164A.300 to 164A.380 and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the savings plan trust and KRS 164A.300 to 164A.380; and

(14) Promulgate administrative regulations to implement the provisions of KRS 164A.300 to 164A.380 consistent with the federal Internal Revenue Code and administrative regulations issued pursuant to that code.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 3, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 132, sec. 2, effective March 26, 1998. -- Amended 1992 Ky. Acts ch. 190, sec. 4, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 321, sec. 9, effective July 13, 1990. -- Created 1988 Ky. Acts ch. 88, sec. 3, effective July 15, 1988.

164A.315 Office facilities, clerical and administrative support for endowment trust.

The board shall provide to the endowment trust, by agreement, administrative and clerical support and office facilities and space. Reasonable charges or fees may be levied against the endowment trust pursuant to the agreement for the services provided by the board, the provision of office space and clerical and administrative support being deemed and declared to be provided for a valid public purpose of the Commonwealth.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 190, sec. 5, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 88, sec. 4, effective July 15, 1988.

164A.325 Additional powers of board as to savings plan trust.

In addition to effectuating and carrying out all of the powers granted by KRS 164A.300 to 164A.380, the board, as trustee, shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of KRS 164A.300 to 164A.380 pertaining to the savings plan trust, including, but not limited to, the power to:

(1) Engage investment advisors to assist in the investment of savings plan trust assets;

(2) Carry out studies and projections in order to advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;

(3) Contract, in accordance with the provisions of KRS 45A.345 to 45A.460 under KRS 45A.343, for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;

(4) Participate in any other way in any federal, state, or local governmental program for the benefit of the savings plan trust;

(5) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the savings plan trust, and provide for reasonable service charges, including penalties for cancellations and late payments in respect of participation agreements;

(6) Procure insurance against any loss in connection with the property, assets or activities of the savings plan trust;

(7) Administer the funds of the savings plan trust;

(8) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and

(9) Promulgate reasonable rules and regulations for the administration of the savings plan trust.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 4, effective July 14, 2000. -- Amended 1992 Ky. Acts ch. 190, sec. 6, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 321, sec. 10, effective July 13, 1990. -- Created 1988 Ky. Acts ch. 88, sec. 6, effective July 15, 1988.

164A.330 Participation agreements for savings plan trust – Confidentiality of information.

The savings plan trust shall have the authority to enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

- (1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans and may contain penalties for failure to make contributions when scheduled;
- (2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum contribution participation agreement in connection with which a single, lump-sum contribution is made by the participant for the benefit of a beneficiary;
- (3) Execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation 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, unless the participation agreement is vested;
 - (c) Be allowed to continue attendance at the institution of higher education following admission; or
 - (d) Graduate from the institution of higher education;
- (4) Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant provided, however, that the substitute beneficiary shall be eligible;
- (5) Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;
- (6) Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky;
- (7) Each participation agreement shall provide that it may be canceled under the terms and conditions, including payment of the fees and costs, set forth in the rules and regulations promulgated by the board;
- (8) The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated higher education costs of the beneficiary;
- (9) The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;
- (10) Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:
 - (a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;
 - (b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;
 - (c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and

(d) Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 5, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 132, sec. 4, effective March 26, 1998. -- Amended 1996 Ky. Acts ch. 11, sec. 2, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 190, sec. 7, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 88, sec. 7, effective July 15, 1988.

164A.335 Program and administrative funds for savings plan trust – Investment and payments from funds.

The board, as trustee, shall segregate moneys received by the savings plan trust into two (2) funds, which shall be identified as the program fund and the administrative fund. Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by KRS 164A.300 to 164A.380. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070. All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Contributions shall be accounted for separately for each beneficiary. Deposits and interest thereon accumulated on behalf of participants in the program fund of the savings plan trust may be used for payments to any institution of higher education.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 6, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 132, sec. 5, effective March 26, 1998. -- Amended 1992 Ky. Acts ch. 190, sec. 8, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 88, sec. 8, effective July 15, 1988.

164A.337 Endowment trust for student financial assistance benefits – Authority to incorporate corporation to administer – Annual report.

(1) The board is authorized to incorporate an organization pursuant to KRS Chapter 273 for the eleemosynary, charitable, and educational purposes of administering an endowment trust. The organization so created shall be an instrumentality of the Commonwealth, but shall possess no part of the sovereign powers of the Commonwealth. The corporation shall be created to qualify as a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) The endowment trust created pursuant to subsection (1) of this section shall solicit and accept gifts, grants, donations, bequests, or other endowments, including general fund appropriations from the Commonwealth and grants from any federal or other governmental agency, for the purposes of the endowment trust.

(3) The endowment trust shall provide student financial assistance benefits, including, but not limited to, grants, scholarships, or loans to pay higher education costs of members of the public, designated as beneficiaries of participation agreements under the Kentucky Educational Savings Plan Trust, who enroll in an institution of higher education in Kentucky.

(4) The board is authorized to transfer to the endowment trust, after its qualification under Section 501(c)(3) of the Internal Revenue Code, any funds or assets then held in the endowment fund initially established pursuant to KRS 164A.335.

(5) Any gifts, grants, or donations made by any governmental unit or any person, firm, partnership or corporation to the endowment trust shall be a grant, gift, or donation for the accomplishment of a valid public, eleemosynary, charitable, and educational purpose.

(6) The endowment trust shall submit an annual audited report, in accordance with KRS 164A.365(1) and (2), to the program administrator not later than the fifteenth of each September.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 190, sec. 1, effective July 14, 1992.

164A.350 Ownership of contributions and interest – Cancellation of participation agreement – Transfer of ownership rights – Penalty on earnings refunded due to cancellation or nondistribution – Exemption from creditor’s execution.

For all purposes of Kentucky law, the following shall be applicable:

- (1) The trust shall exercise ownership of all contributions made under any participation agreement and all interest derived from the investment of the contributions made by the participant up to the date of utilization for payment of higher education costs for the beneficiary. All contributions made under any participant agreement and interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;
- (2) Any participant may cancel a participation agreement at any time, and terminate the trust’s ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee. In the event the participation agreement is terminated in part, the trust shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and not returned to the participant. The participant shall retain a reversionary right to receive upon termination the actual market value of the participant’s account at the time of the cancellation, including interest, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant’s account in accordance with subsection (8) of this section;
- (3) Any participant may cancel a participation agreement and shall be permitted to transfer funds to the Commonwealth postsecondary education prepaid tuition trust fund established in KRS 164A.701, and in compliance with administrative regulations promulgated by the board for the savings plan trust;
- (4) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant’s account, then the program administrator

shall pay the balance to the participant, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant’s account in accordance with subsection (8) of this section;

- (5) The institution of higher education shall obtain ownership of the distributions made from the participant’s account for the higher education costs paid to the institution at the time each payment is made to the institution;
- (6) Any amounts received by the trust pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section shall be owned by the trust;
- (7) A participant may transfer the participant’s rights to another eligible participant, including, but not limited to, a gift of the participant’s rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be effected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;
- (8) Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary’s higher education costs, the board may charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:
 - (a) The death, permanent disability, or mental incapacity of the beneficiary; or
 - (b) The beneficiary’s receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and
- (9) Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent,

or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 111, sec. 9, effective July 13, 2004. -- Amended 2003 Ky. Acts ch. 180, sec. 5, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 163, sec. 10, effective July 14, 2000; and ch. 382, sec. 7, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 132, sec. 6, effective March 26, 1998. -- Amended 1992 Ky. Acts ch. 190, sec. 10, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 88, sec. 11, effective July 15, 1988.

164A.355 Effect of payments on determination of need and eligibility for student aid.

No student loan program, student grant program or other program administered by any agency of the Commonwealth, except as may be otherwise provided by federal law or the provisions of any specific grant applicable thereto, shall take into account and consider amounts available for the payment of higher education costs pursuant to the Kentucky Educational Savings Plan Trust in determining need and eligibility for student aid.

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 88, sec. 12, effective July 15, 1988.

164A.360 Borrowing from the trust.

The board, as trustee, may establish, by the promulgation of administrative regulations in accordance with KRS Chapter 13A, a program of lending from any funds available to the trust, for participants and beneficiaries to borrow from the trust for the sole purpose of paying higher education costs to an institution of higher education. The interest rate payable by borrowers for any such borrowing shall be a rate established by the board from time to time. Any contribution to such loan program from the program fund or any loan made from the program fund shall be insured.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 8, effective July 14, 2000. -- Created 1988 Ky. Acts ch. 88, sec. 13, effective July 15, 1988.

164A.365 Annual audited financial report to Governor, General Assembly, and State Auditor.

(1) The board shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the savings plan trust by the first day of November to the Governor, the General Assembly, and the Auditor of Public Accounts. The annual audit shall be made by an independent certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by the following information prepared by the board:

- (a) Any studies or evaluations prepared in the preceding year;
- (b) A summary of the benefits provided by the trusts including the number of participants and beneficiaries in the trust; and
- (c) Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the savings plan trust and the endowment trust.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 190, sec. 11, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 88, sec. 14, effective July 15, 1988.

164A.370 Tax exemption.

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky or any of its political subdivisions. Investment income earned on contributions paid by any participant and used for higher education costs defined in KRS 164A.305(6) or refunded under KRS 164A.350(8)(a) or (b) shall not be subject to Kentucky income tax by either a participant or any beneficiary of a participation agreement, the purposes for which the investment income was accrued being deemed and declared to be entirely public in nature. Earnings that are not used for higher education costs as defined in KRS

164A.305(6) and are refunded shall be subject to Kentucky income tax, except for earnings refunded pursuant to KRS 164A.350(8)(a) or (b).

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 150, sec. 2, effective June 24, 2003; and ch. 180, sec. 6, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 382, sec. 9, effective July 14, 2000. -- Created 1988 Ky. Acts ch. 88, sec. 15, effective July 15, 1988.

Legislative Research Commission Note (6/24/2003).

This section was amended by 2003 Ky. Acts chs. 150 and 180, which do not appear to be in conflict and have been codified together.

164A.375 Property rights to assets in trust.

The assets of the trust, including the program fund, shall at all times be preserved, invested and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 382, sec. 10, effective July 14, 2000. -- Created 1988 Ky. Acts ch. 88, sec. 16, effective July 15, 1988.

164A.380 Liberal construction.

KRS 164A.300 to 164A.380 shall be construed liberally in order to effectuate its legislative intent. The purposes of KRS 164A.300 to 164A.380 and all provisions of KRS 164A.300 to 164A.380 with respect to powers granted shall be broadly interpreted to effectuate such intent and purposes and not as to any limitation of powers.

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 88, sec. 17, effective July 15, 1988.

Administrative Regulations

ATTACHMENT B



KENTUCKY
Education Savings Plan Trust

Title 11, Chapter 12

Kentucky Education Savings Plan Trust

11 KAR 12:010. Definitions for 11 KAR Chapter 12.....	1	11 KAR 12:050. Substitution of a beneficiary..	5
11 KAR 12:020. General rules for investments and fund transfers.....	2	11 KAR 12:060. Cancellation, partial withdrawal, and payment of refund.....	5
11 KAR 12:030. Eligibility of beneficiary and participant.	3	11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.	5
11 KAR 12:040. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements.	3	11 KAR 12:090. Transfer of ownership of Kentucky Educational Savings Plan Trust Program fund.	6

11 KAR 12:010. Definitions for 11 KAR Chapter 12.

RELATES TO: KRS 164A.300-164A.380

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. This administrative regulation establishes the definitions for 11 KAR Chapter 12.

Section 1. Definitions. (1) "Academic period" means one (1) semester or one (1) quarter or an equivalent period for a vocational technical institution.

(2) "Account" means the account in the program fund established and maintained under the trust for a beneficiary.

(3) "Account balance" means the fair market value of an account as of the accounting date.

(4) "Accounting date" means the date, not later than the last business day of each quarter as determined by the program administrator.

(5) "Administrative fund" is defined in KRS 164A.305(2).

(6) "Beneficiary" is defined in KRS 164A.305(3).

(7) "Benefits" is defined in KRS 164A.305(4).

(8) "Board" is defined by KRS 164A.305(5).

(9) "Dependent person" means a person who is unable to meet the criteria for an independent person as defined in subsection (14) of this section.

(10) "Designated date" means the date on which each beneficiary is eligible to be designated in a participation agreement.

(11) "Domicile" or "legal residence" means a person's true, fixed, and permanent home and is the place where the person intends to remain, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(12) "Effective date" means the date which a participant may enter into a participation agreement with the trust, which is on or after July 1, 1989.

(13) "Higher education costs" is defined by KRS 164A.305(6).

(14) "Independent" means a person:

(a) Who has not been claimed by his parent as a dependent on a federal or state income tax return for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon a parent; and

(c) Whose parent's income is not taken into account by a private or governmental agency furnishing educational financial assistance to the person, including a scholarship, loan, or other assistance.

(15) "Institution of higher education" is defined in KRS 164A.305(7).

(16) "Notice to authorize payroll deduction" means the participant's written instruction to the participant's employer to deduct payments from the participant's earnings and forward that amount to the trust.

(17) "Notice to increase or decrease payments under participation agreement" means the participant's written instruction to the program administrator of the trust to increase or decrease payments under a participation agreement.

(18) "Notice to preauthorize debit" means the participant's written instruction to the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement.

(19) "Notice to substitute beneficiary" means the participant's written instruction to the program administrator of the trust to substitute a beneficiary.

(20) "Notice to terminate the participation agreement" means the participant's written instruction to the program administrator of the trust to terminate a participation agreement under the trust.

(21) "Notice to use trust benefits" means the participant's written instruction to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits paid.

(22) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if the guardianship was not established primarily to confer Kentucky residency on the person.

(23) "Participant" is defined in KRS 164A.305(9).

(24) "Participation agreement" is defined in KRS 164.305(10).

(25) "Payments" means the money paid by the participant to the trust under the participation agreement.

(26) "Program administrator" is defined in KRS 164A.305(11).

(27) "Program fund" is defined in KRS 164A.305(12).

(28) "Property settlement agreement" or "Decree of dissolution by the court" means the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement.

(29) "Trust year" means the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

(30) "Vested participation agreement" is defined in KRS 164A.305(14). (17 Ky.R. 3568; eff. 8-2-91; Am. 19 Ky.R. 433; eff. 10-1-92; 25 Ky.R. 392; 810; eff. 10-1-98.; 26 Ky.R. 85; 557; eff. 9-1-99; 2284; 27 Ky.R. 471; eff. 8-14-2000; 28 Ky.R. 1437; 1789; eff. 2-11-2002; 29 Ky.R. 985; eff. 12-18-02.)

11 KAR 12:020. General rules for investments and fund transfers.

RELATES TO: KRS 164A.310(4), 164A.325(7), 164A.335, 164A.375

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(7) authorizes the board to promulgate administrative regulations necessary for the administration of the savings plan trust. KRS 164A.310(4) requires the board to invest moneys within the program fund in investments determined by the board to be appropriate. This administrative regulation establishes the requirements for investments and fund transfers.

Section 1. Investments. (1) The program administrator, an investment manager, a trustee or depository institution holding funds received pursuant to KRS 164A.335 shall adhere to the following standards:

(a) Safety of principal at the time of a projected cash need shall be paramount for all investment situations;

(b) Liquidity of investments shall be assured for funds which may be needed to satisfy short term cash flow needs; and

(c) Except as provided in paragraphs (a) and (b) of this subsection, maximizing investment yield shall be the prime objective of an investment.

(2) In accordance with the standards established in subsection (1) of this section, the board through the program administrator or an investment manager shall invest funds received pursuant to KRS 164A.335 in any of the following solely in the interest of the participants and beneficiaries and for the exclusive purposes of providing benefits to beneficiaries and defraying reasonable expenses of administering the plan:

(a) Deposits or banker's acceptances with commercial banks whose outstanding indebtedness is rated A or better by a nationally recognized rating service, and deposits with a financial institution to the extent fully insured by the Federal Deposit Insurance Corporation or other U.S. government insurance entity;

(b) U.S. Treasury securities, obligations backed by the full faith and credit of the United States government, and U. S. government agency securities;

(c) Repurchase agreements, both overnight and term, which shall be:

1. Governed by a Public Securities Association or equivalent master repurchase agreement including the appropriate annexes; and

2. Collateralized at 100 percent with U.S. Treasury securities, U.S. government agency securities, and other obligations backed by the full faith and credit of the United States government. Collateral shall be held by a third party custodian;

(d) Bank certificates of deposit rated A/A-1 or better by a nationally recognized rating service;

(e) State or municipal obligations rated in one (1) of the two (2) top classifications by a nationally recognized rating service (at least AA or Aa, SP-2 or MIG-2/VMIG-2);

(f) Obligations of a U.S. corporation, if the obligations are rated at least AA or As by a nationally recognized rating service;

(g) Collateralized mortgage or credit card obligations, mortgage backed securities, or similar securities that are collateralized at 100 percent, if the obligations are either:

1. Fully insured by a U.S. government insurance entity; or

2. Issued by a corporation whose obligations would be an authorized investment;

(h) Commercial paper rated in the highest classification as established by a nationally recognized rating service (A-1 or Prime-1);

(i) Mutual funds, including money market funds, equity funds, international funds, growth funds, income funds, and funds combining one (1) or more of the foregoing investment options which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state; and

(j) Other investments approved by the board of directors with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with the matters would use in the conduct of an enterprise of a like character and with like aims.

Section 2. Administrative Fund. (1) The costs of administering the Kentucky educational savings plan trust shall be paid out of the administrative fund.

(2) Funds shall be transferred to the administrative fund from the program fund, as the program administrator determines is necessary to cover the administrative costs of the trust.

(3) The total amount transferred to the administrative fund during a trust year shall not exceed four (4) percent of the total investment earnings accruing and credited to the program fund during that trust year.

(4) Monies transferred to the administrative fund pursuant to KRS 164A.335 and this administrative regulation shall be deposited in accordance with KRS 41.070(2). (17 Ky.R. 3570; eff. 8-2-91; Am. 19 Ky.R. 435; eff. 10-1-92; 26 Ky.R. 86; 626; 714; eff. 10-11-99.)

11 KAR 12:030. Eligibility of beneficiary and participant.

RELATES TO: KRS 164A.330

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations necessary for the administration of the savings plan trust. KRS 164A.330 authorizes the Kentucky Educational Savings Plan Trust to enter into a participation agreement with a participant on behalf of a beneficiary. KRS 164A.380 provides that KRS 164A.300 to 164A.380 shall be construed liberally in order to effectuate its legislative intent and the powers

granted shall be broadly interpreted to effectuate the intent and purposes. This administrative regulation establishes the eligibility criteria for a beneficiary and a participant to participate in the participation agreement.

Section 1. Beneficiary Eligibility. A beneficiary shall be a resident of any state.

Section 2. Participant Eligibility. A participant shall be a resident of any state.

Section 3. (1) In order to participate in the Kentucky educational savings plan trust, a participant shall submit to the program administrator a signed participation agreement, including the valid Social Security number or federal identification number of the beneficiary and the valid Social Security number or federal identification number of the participant.

(2) A state or local government agency or instrumentality or an organization described in 26 USC 501(c)(3) that establishes an account as part of a scholarship program shall submit to the program administrator the Social Security number of the recipient upon designation of the scholarship recipient.

Section 4. Incorporation by Reference. (1) Kentucky Educational Savings Plan Trust Participation Agreement, July 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (17 Ky.R. 3571; eff. 8-2-91; Am. 19 Ky.R. 436; eff. 10-1-92; 26 Ky.R. 2285; 27 Ky.R. 472; eff. 8-14-2000; 29 Ky.R. 986; eff. 12-18-02.)

11 KAR 12:040. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements.

RELATES TO: KRS 164A.305(14), 164A.330(6)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky

Educational Savings Plan Trust. KRS 164A.330(6) requires that each participation agreement provide that for a vested participation agreement, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky. This administrative regulation establishes the standards for proof of residency of a beneficiary for a vested participation agreement

Section 1. Residency Requirement. (1) A person who has been a resident of the Commonwealth of Kentucky for at least eight (8) continuous years and was designated as a beneficiary under a participation agreement that is in full force and effect for that entire eight (8) year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.

(2) For purposes of subsection (1) of this section, a participation agreement shall be deemed to be in full force and effect if, at the end of the eight (8) year period, the total contributions of principal to the account that remain in the account balance equals \$2400 and the participation agreement has not been cancelled at the time that the beneficiary first enrolls in an institution of higher education.

Section 2. Proof of Residency. (1) Following the expiration of the period of eight (8) years of continuous residency by the beneficiary, either the participant or the beneficiary shall submit to the program administrator evidence of the residency to establish a vested participation agreement. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. An individual who enrolls in college immediately following graduation from high school and remains enrolled shall:

(a) Be treated as a dependent person unless the contrary is evident from the information submitted; and

(b) Have his domicile inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(2) A person claiming independent status shall document independent status under subsection (4) of this section and shall demonstrate by clear and convincing evidence that domicile in Kentucky has been established by that person's acts.

(3) The determination of residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

(4) The following facts, although not conclusive, shall have probative value in support of a claim for resident classification:

(a) Full-time employment in Kentucky or transfer to an employer in contiguous area while maintaining domicile in Kentucky;

(b) Filing of Kentucky resident income tax return for each applicable calendar year of claimed residency status;

(c) Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Kentucky;

(d) Abandonment of a former domicile and establishing domicile in Kentucky with attendance at an institution of higher education following and incidental to the change in domicile;

(e) Payment of occupational taxes in Kentucky;

(f) Payment of real property taxes in Kentucky;

(g) Payment of intangible personal property taxes in Kentucky;

(h) Ownership of real property in Kentucky, if the property was used as a residence during the claimed period of residency status;

(i) Long-term lease of housing during the claimed period of residency status;

(j) Kentucky automobile registration during the claimed period of residency;

(k) Kentucky driver's license during the claimed period of residency status;

(l) Registration as a Kentucky voter during the claimed period of residency; or

(m) Corroborating affidavit of a nonrelative.

(5) The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional documentation to clarify circumstances and shall formulate a decision that considers all relevant facts.

Section 3. Nontransferability of Vested Participation Agreement. Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement

shall not be used to confer residency status on a substituted beneficiary, nor shall the residency of one (1) beneficiary be taken into account in the establishment of a vestment period for a substituted beneficiary. (17 Ky.R. 3572; eff. 8-2-91; Am. 19 Ky.R. 437; eff. 10-1-92; 25 Ky.R. 393; 811; eff. 10-1-98; 26 Ky.R. 2286; eff. 8-14-2000; 28 Ky.R. 1438; 1789; eff. 2-11-2002.)

11 KAR 12:050. Substitution of a beneficiary.

RELATES TO: KRS 164A.325(5), 164A.330(4), (5)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations for the administration of the Kentucky Educational Savings Plan Trust. KRS 164A.330(4) and (5) establishes the statutory framework for the substitution of a beneficiary. KRS 164A.325(5) authorizes the board to promulgate, impose, and collect administrative fees and charges for trust transactions. This administrative regulation establishes the requirements for the substitution of a beneficiary.

Section 1. Substitution. (1) A participant may substitute a beneficiary at any time subject to KRS 164A.330(4). If a participant desires to substitute the beneficiary, the participant shall give written notice to the program administrator by submitting a "Notice to substitute beneficiary."

(2) In order for a substitution of beneficiary to be effective, the substituted beneficiary shall be already designated as a beneficiary on another account or eligible, pursuant to 11 KAR 12:030, on the date that the notice to substitute beneficiary is submitted. (17 Ky.R. 3574; eff. 8-2-91; Am. 19 Ky.R. 438; eff. 10-1-92; 23 Ky.R. 161; 1389; eff. 9-5-96; 26 Ky.R. 2287; eff. 8-14-2000; 28 Ky.R. 1439; 1790; eff. 2-11-02.)

11 KAR 12:060. Cancellation, partial withdrawal, and payment of refund.

RELATES TO: KRS 164A.325(5), 164A.350

STATUTORY AUTHORITY: KRS 164A.325(5), (9), 164A.350(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. KRS 164A.350(2) provides that a participant may cancel a participation agreement and allows a penalty to be charged by the trust. This administrative regulation establishes the procedures for cancellation of the participation agreement and refund of the account balance and specifies the penalty.

Section 1. Cancellation. To cancel a participation agreement pursuant to KRS 164A.350(2), a participant shall submit to the program administrator a notice to terminate the participation agreement.

Section 2. Partial Withdrawal. A participant may request a partial withdrawal of an account balance without cancellation of the participating agreement. To request a partial withdrawal from a Kentucky Educational Savings Plan Trust account, a participant shall submit a written request to the program administrator. The minimum partial withdrawal amount shall be \$500.

Section 3. Refund. The amount to be refunded pursuant to KRS 164A.350, shall be mailed or otherwise sent to the participant within sixty (60) days after receipt by the program administrator of notice to terminate the participation agreement or written request for partial withdrawal. (17 Ky.R. 3575; eff. 8-2-91; Am. 19 Ky.R. 439; eff. 10-1-92; 21 Ky.R. 2723; 22 Ky.R. 30; eff. 7-6-95; 25 Ky.R. 395; 812; 991; eff. 10-1-98; 26 Ky.R. 88; eff. 9-1-99; 28 Ky.R. 1440; eff. 2-11-2002; 30 Ky.R. 364; eff. 10-31-03.)

11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335, 26 U.S.C. 529

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. This administrative regulation establishes the maximum benefits payable

in an academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions for a refund of the payments for nonuse or unused benefits from the program fund.

Section 1. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant shall elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in an academic period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) If a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

Section 2. Beneficiary Residing Off Campus. If a beneficiary resides off campus, upon written request of the participant, the program administrator shall pay to the beneficiary, for room and board for an academic period, that portion of higher education costs not paid to the institution that shall not exceed the amount of the beneficiary's higher education costs permitted for room and board pursuant to 26 USC 529.

Section 3. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for an academic period, that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in an academic period not exceeding the higher education

costs may be paid for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance remains in the beneficiary's account, the program administrator shall pay, upon the written request of the participant, the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant pursuant to KRS 164A.350. (17 Ky.R. 3576; eff. 8-2-91; Am. 19 Ky.R. 440; eff. 10-1-92; 2482; eff. 7-1-93; 21 Ky.R. 2724; 22 Ky.R. 31; eff. 7-6-95; 25 Ky.R. 397; 812; eff. 10-1-98; 26 Ky.R. 89; 558; eff. 9-1-99; 2288; eff. 8-14-2000.)

11 KAR 12:090. Transfer of ownership of Kentucky Educational Savings Plan Trust Program fund.

RELATES TO: KRS 164A.350(6), Chapter 385

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.350 states that the participant retains ownership of the principal amount of payments to the program fund, and that the trust retains ownership of the investment income until distributions are made. KRS 164A.300 through 164A.380 provide to the participant reversionary rights in the investment income in the event of termination, and confer upon the participant various powers to terminate the participation agreement, substitute beneficiaries, and delay distribution of benefits. Nothing in the foregoing statutes prohibits a participant from transferring these rights and ownership and reversionary interests to another eligible participant or to a minor beneficiary under the Uniform Transfers to Minors Act. Furthermore, nothing in the foregoing statutes precludes a beneficiary from also being a participant. This administrative regulation permits such a transfer and sets forth the procedures to facilitate a transfer under the Uniform Transfers to Minors Act.

Section 1. General Rule. A participant may assign ownership interest in payments to another eligible participant at any time. An assignment of ownership shall only be effective to transfer ownership interest in the trust if the assignment:

(1) Is to another individual who qualifies as eligible pursuant to 11 KAR 12:030;

(2) Is irrevocable;

(3) Transfers all ownership, reversionary rights, and powers of appointment (i.e., power to substitute beneficiaries) and to direct the distribution of benefits; and

(4) Is in writing and submitted to the program administrator.

Section 2. Subject to Section 1 of this administrative regulation and in accordance with KRS Chapter 385, a participant, eighteen (18) years old or older, may make a gift of the ownership interest in the program fund to a minor beneficiary by designating in the assignment that the transfer is to a qualified custodian for the beneficiary.

Section 3. Upon receipt of a valid assignment of ownership, the assignee shall be considered the participant for all purposes of KRS 164A.300 through 164A.380, regardless of the source of subsequent payments. (17 Ky.R. 3580; eff. 8-2-91; Am. 19 Ky.R. 442; eff. 10-1-92.)

Attachment D
Vendor Business Practice Statement

THE UNDERSIGNED _____ (“VENDOR”) understands that Kentucky Higher Education Assistance Authority (“KHEAA”) will not do business with any vendor that violates KRS 45A.343 (2) and (3) or 45A.455 and does not comply with this Vendor Business Practice Statement (the “Statement”).

COMPLIANCE WITH KRS 45A.343 (2) AND (3):

KRS 45A.343 (2) and (3) provide as follows:

- (2) After July 15, 1994, any contract entered into by a local public agency, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor to:
 - (a) Reveal any final determination of a violation by the contractor within the previous (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor; and
 - (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 341, and 342 that apply to the contractor for the duration of the contract.

- (3) A contractor’s failure to reveal a final determination of a violation of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency’s:
 - (a) Cancellation of the contract; and
 - (b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency for a period of two (2) years.

Other statutes referenced in those sections are as follows:

KRS Chapters

136 REVENUE AND TAXATION - CORPORATION AND UTILITY TAXES

139 REVENUE AND TAXATION - SALES AND USE TAXES

141 REVENUE AND TAXATION - INCOME TAXES

337 LABOR AND HUMAN RIGHTS - WAGES AND HOURS

338 LABOR AND HUMAN RIGHTS - OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES

341 LABOR AND HUMAN RIGHTS - UNEMPLOYMENT COMPENSATION

342 LABOR AND HUMAN RIGHTS – WORKERS’ COMPENSATION

VENDOR REPRESENTS AND COVENANTS that (check one): There has been no final determination of violation; or The attached list reflects all final determinations of violations of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 which have been rendered against the Vendor within the five (5) years preceding this certification.

COMPLIANCE WITH KRS 45A.450 AND 45A.455:

VENDOR REPRESENTS AND COVENANTS that will not directly or indirectly offer or give any personal benefit, including but not limited to commissions, kickbacks, payments, loans, gratuities (including travel and entertainment), bribes, gifts, samples, services, promises of future employment or personal considerations, (hereinafter collectively referred to as “benefits”), in connection with any KHEAA contract or work, to any KHEAA director, officer or employee or their families, to any entity in which VENDOR knows a KHEAA director, officer, or employee or member of KHEAA’s director, officer or employee’s family own a direct or indirect interest, or to any person affiliated with any subcontractor or consultant for KHEAA. VENDOR further understands that KHEAA’s directors, officers, or employees are not permitted to accept any benefit and are required to comply with KRS 45A.450 and 45A.455 (See: <http://www.lrc.ky.gov/KRS/045A00/CHAPTER.HTM>).

VENDOR REPRESENTS that (check one): no list is attached; or it has attached and returned herewith a list of any “benefits” provided, directly or indirectly, in the past year to a Director, Officer or employee or a Director, Officer or employee’s family member including any employment or consulting relationship (excluding any meals of a nominal value).

VENDOR REPRESENTS that except as set forth on a list attached and returned herewith no one has solicited or requested benefits of any vendor’s directors, officers, employees, subcontractors, agents or representatives in connection with any contract with, purchase from, sale to or other work with KHEAA (hereinafter collectively referred to as “contractor”), and VENDOR covenants it will henceforth PROMPTLY report any future such solicitation or request to KHEAA.

COMPLIANCE WITH KRS 45A.395 (2) AND 45A.400:

KRS 45A.395 (2) AND 45A.400 provides:

A written determination of a responsibility of a bidder or offeror shall not be made and no supplier shall be prequalified as a responsible prospective contractor until the bidder or offeror provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provisions of the campaign finance laws of the Commonwealth and that the award of a contract to the bidder of the offeror will not violate any provisions of the campaign finance laws of the Commonwealth. “Knowingly” means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of nature or that the circumstance exists.

VENDOR CERTIFIES that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056 (2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this certification. The undersigned further swears under the penalty of perjury, that neither he/she nor the Company which he/she represents, has knowingly violated any provisions of the

campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the Company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

COMPLIANCE WITH KRS 11A.040 (6) AND (8) – FORMER STATE EMPLOYEES SEEKING TO DO BUSINESS WITH THE STATE OR CONTEMPLATING REPRESENTATION OF ANOTHER BEFORE A STATE AGENCY:

KRS 11A.404 (6) AND (8) provide:

(6) No present or former officer or public servant listed in KRS 11A.010 (9) (a) to (h) shall, within six (6) months following termination of his/her office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during the last thirty-six (36) months of his/her tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he/she was involved prior to taking office or beginning his/her term of employment, provided that, for a period of six (6) months, he/she personally refrains from working on any matter in which he/she was directly involved during that last thirty-six (36) months of his/her tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

(8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year the latter of: (a) The date of leaving office or termination of employment; or (b) The date the term of office expires to which the public servant was elected.

The law's applicability may be different if you hold elected office or are contemplating representation of another before a state agency. Also, if you are affiliated with a firm which does business with the state and which employs former state executive branch employees, you should be aware that the law might apply to them. In case of doubt, the law permits you to request an advisory opinion from the Executive Branch Ethics Commission, Room 136, Capitol Building, 700 Capitol Avenue, Frankfort, Kentucky 40601; (502) 564-2611.

VENDOR REPRESENTS AND COVENANTS that Vendor has no employees that are in violation of KRS 11A.040 (6) and (8).

COMPLIANCE WITH KRS 11A.201 TO 11A.246 - Executive Agency Lobbying

VENDOR REPRESENTS AND COVENANTS that it is in compliance with KRS 11A.201 to 11A.246 (See: <http://www.lrc.ky.gov/KRS/011A00/CHAPTER.HTM>).

VENDOR REPRESENTS that it will cooperate in responding to reasonable requests by KHEAA or its representatives to provide information and documentation regarding transactions with KHEAA.

If the foregoing representations and covenants are violated by VENDOR, its directors, officers, employees, subcontractor, agents, or representatives, it will constitute grounds for termination of any contracts between KHEAA and VENDOR, at KHEAA's sole discretion.

VENDOR will inform its directors, officers, employees, agents and subcontractors of the requirements of this Statement.

WHEREBY, VENDOR has executed this Statement by its duly authorized representative on this ____ day of _____, 2009.

VENDOR NAME: _____

By: _____
(Signature)

Name: _____
(Printed Name)

Title: _____

Telephone: _____

Subscribed and sworn to before me by _____, _____,
(Affiant) (Title)

of _____ this _____ day of _____ 2009.
(Company Name)

(Notary Public) My commission expires: _____

[*seal of notary*]