

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Financial Aid
(Amendment)

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.310(14), 164A.325(9)

CERTIFICATION STATEMENT: This is to certify that this administration regulation complies with the requirements of 2025 RS HB 6, Section 8.

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 at an appropriate level, 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;]~~

(d) ~~[(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);

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

(f) ~~[(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;
- (g) ~~[(h)]~~ Commercial paper rated in the highest classification as established by a nationally recognized rating service (A-1 or Prime-1);
- (h) ~~[(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
- (i) ~~[(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).

GREG ROUSH, Chair

APPROVED BY AGENCY: June 12, 2025

FILED WITH LRC: July 11, 2025 at 8:25 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 24, 2025, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Lawhorn

(1) Provide a brief summary of:

(a) What this administrative regulation does:

The administrative regulation establishes the requirements for investments and fund transfers for the Kentucky Educational Savings Plan Trust.

(b) The necessity of this administrative regulation:

The administrative regulation is necessary to set forth the provisions pertaining to investments and fund transfers for the Trust as required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The administrative regulation conforms to the content of the authorizing statutes by establishing the requirements for investments and fund transfers pertaining to the Trust as required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the Kentucky Educational Savings Plan Trust by providing requirements for investments and fund transfers from the Trust as required by the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment will change the existing administrative regulation by updating the language utilized pertaining to deposits with commercial banks. Further, amendment will eliminate certificates of deposits as an authorized investment vehicle consistent with current Board-approved investment offerings.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to update the provisions pertaining to investments and fund transfers from the KESPT Trust.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to the content of the authorizing statutes by accurately setting forth the current provisions pertaining to investments and fund transfers from the KESPT Trust.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the Kentucky Educational Savings Plan Trust updating the provisions pertaining to investments and fund transfer under the Trust to more accurately reflect current Board-approved investment offerings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

As of January 31, 2025, there were 24,895 participants in the Kentucky Educational Savings Plan Trust.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the

change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Program participants are not required to take any action in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no cost to program participants in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Program participants will receive full program benefits without taking any action to comply with this amendment. (5) Provide an estimate of how much it will cost to the administrative body to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no costs associated with the amendment to this administrative regulation.

(b) On a continuing basis:

See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The funds held in the Trust are private funds contributed by the participant. In accordance with KRS 164A.335, funds may be transferred from the Program Fund to an Administrative Fund for the purpose of paying operating costs associated with administering the trust.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied?

NO. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:

KRS 164A.310, 164A.325, 26 U.S.C. 529.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

KRS 164A.310 and 164A.325.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year:No additional expenditures will be required as a result of this amendment to the administrative regulation.

For subsequent years:Same as above.

2. Revenues:

For the first year:No additional revenues will be generated through this amendment to the administrative regulation.

For subsequent years:Same as above.

3. Cost Savings:

For the first year:No costs are associated with this administrative regulation.

For subsequent years:Same as above.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

There are no affected local entities.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year:No expenditures will be required as a result of this amendment to the regulation.

For subsequent years:Same as above.

2. Revenues:

For the first year:No revenues will be generated through this amendment to the administrative regulation.

For subsequent years:Same as above.

3. Cost Savings:

For the first year:No costs are associated with this amendment to the administrative regulation.

For subsequent years:Same as above.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

The entities affected by the amendment to this administrative regulation are those who elect to participate in the KESPT program.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year:No expenditures will be required as a result of this amendment to the regulation.

For subsequent years:Same as above.

2. Revenues:

For the first year:No revenues will be generated through this amendment to the administrative regulation.

For subsequent years:Same as above.

3. Cost Savings:

For the first year:No costs are associated with this amendment to the administrative regulation.

For subsequent years:Same as above.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

Since this administrative regulation merely defines applicable terms for the KESPT program and the forms to be utilized in accessing benefits, there is no fiscal impact.

(b) Methodology and resources used to reach this conclusion:

As noted, there is no fiscal impact on any of the affected entities as this regulation simply defines terms and prescribes the forms to be used for the KESPT program.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(13):

This administrative regulation will not have a "major economic impact".

(b) The methodology and resources used to reach this conclusion:

As discussed above, there is no fiscal impact from this administrative regulation.