

141.510 Certification and renewal of certification of an account-granting organization -- Application -- Required information -- Department certification. (See LRC Note below)

- (1) An organization that seeks to become an AGO shall apply for initial certification or renewal of certification from the department.
- (2) An application for initial certification as an AGO shall include:
 - (a) A copy of the AGO's incorporation documents;
 - (b) A copy of the AGO's Internal Revenue Service determination letter as a Section 501(c)(3) not-for-profit organization;
 - (c) A description of the methodology the AGO will use to evaluate whether a student is eligible to establish an EOA;
 - (d) A description of the application process the AGO will use for parents and eligible students;
 - (e) A description of the methodology the AGO will use to establish, fund, and manage EOAs;
 - (f) A description of the process the AGO will use to approve education service providers;
 - (g) A description of how the AGO will inform parents of approved education service providers; and
 - (h) A description of the AGO's procedures for crediting refunds from an education service provider back to a student's EOA.
- (3) An application for renewal of certification as an AGO shall include:
 - (a) The AGO's completed Internal Revenue Service Form 990, submitted no later than November 30 of the year before the academic year that the AGO intends to fund EOAs;
 - (b) A copy of any audit that may be required by the department; and
 - (c) 1. An annual report that includes:
 - a. The number of applications the AGO received during the previous academic year, by county and by grade level;
 - b. The name and address of all students that received EOA funds from the AGO during the previous academic year;
 - c. When the AGO is an intermediary organization, the name and address of all AGOs that received funds from the intermediary organization during the last fiscal year;
 - d. The total number of EOAs the AGO maintains;
 - e. The amount of funds the AGO:
 - i. Received to fund EOAs during the last fiscal year;
 - ii. Distributed into EOAs during the last fiscal year;
 - iii. Has remaining after the distribution into EOAs and any obligations to fund EOAs in the future;
 - iv. Spent on administrative expenses and an accounting thereof

- during the last fiscal year; and
 - v. Spent on fees to private financial management firms or other organizations to maintain records and process transactions of the EOAs;
 - f. When the AGO is an intermediary organization, the amount of funds the intermediary organization:
 - i. Received to distribute to AGOs during the last fiscal year;
 - ii. Distributed to each AGO during the last fiscal year;
 - iii. Has remaining after the distribution into AGOs and any obligations to distribute to AGOs in the future;
 - iv. Spent on administrative expenses and an accounting thereof during the last fiscal year; and
 - v. Spent on fees to private financial management firms or other organizations to maintain records and process transactions;
 - g. A list of the AGO's approved education service providers; and
 - h. A description of how the AGO has complied with the operational requirements and responsibilities of KRS 141.500 to 141.528.
2. The annual report shall also:
- a. Comply with uniform financial accounting standards;
 - b. Be attested to by an independent certified public accountant in accordance with procedures promulgated by the department; and
 - c. Be free of material misstatements or exceptions.
- (4) The department shall only certify an AGO or renew an AGO's certification if the organization meets the requirements established by KRS 141.500 to 141.528. The department shall issue initial certifications within sixty (60) days of receiving the application and renew certifications within thirty (30) days of receiving the application.
- (5) Upon application for renewal, an AGO shall demonstrate that:
- (a) It is an intermediary organization that collects contributions exclusively for the use by AGOs; or
 - (b) It includes two (2) or more education service providers in its EOA program and has awarded at least fifty (50) EOAs aggregating a minimum of two hundred thousand dollars (\$200,000) in the previous year and is expected to award at least fifty (50) EOAs aggregating a minimum of two hundred thousand dollars (\$200,000) in the succeeding year.

Effective: June 29, 2021

History: Created 2021 Ky. Acts ch. 167, sec. 10, effective June 29, 2021.

Legislative Research Commission Note (12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sums[s]' for 'education other than in common schools.'" *Commonwealth ex rel. Cameron v. Johnson, et al.*, 2021-SC-0518-TG.