

141.512 Minimal allocation of contributions required to education opportunity accounts by account-granting organization -- Standard application process for establishment of student eligibility for an account -- Transfer of funds from one account-granting organization to another -- Donations. (See LRC Note below)

- (1) An AGO shall ensure that at least ninety percent (90%) of the total annual contributions received are allocated to EOAs no later than the last day of the AGO's immediately succeeding calendar year or fiscal year, as applicable, unless the current year's total annual contributions received by the AGO exceed an amount equal to the average of the total annual contributions received in the immediately preceding three (3) years by more than fifteen percent (15%), in which case the excess amount may be carried forward and expended for EOAs in three (3) equal installments over the immediately succeeding three (3) years.
- (2) An AGO shall maintain separate accounts for EOA funds and operating funds.
- (3) Any interest that accrues from contributions that are eligible for the tax credit permitted by KRS 141.522 shall be allocated by the AGO to fund EOAs.
- (4) An AGO shall create a standard application process for parents to establish their student's eligibility for an EOA. An AGO shall ensure that the application is readily available to interested families and may be submitted through various sources, including the Internet.
- (5) An AGO shall provide parents with a written explanation of the allowable uses of EOA funds, the responsibilities of parents, and the duties of the AGO and the role of any private financial management firms or other organizations that the AGO may contract with to process EOA transactions or maintain records for other aspects of the EOA program.
- (6)
 - (a) An AGO may transfer funds to another AGO if additional funds are required to meet EOA demands at the receiving AGO or if the transferring AGO determines it cannot continue to operate due to any reason.
 - (b) If funds are transferred for the purpose of meeting EOA demands, no more than a combined aggregate of ten percent (10%) of the AGOs' total annual contributions received may be retained by the AGOs for administrative expenses.
 - (c) All transferred funds shall be allocated by the receiving AGO to its account for EOAs.
 - (d) All transferred amounts received by an AGO shall be separately disclosed in the receiving AGO's annual report for certification renewal pursuant to KRS 141.510.
 - (e) An AGO that receives a transfer of funds from an AGO that has determined it will not continue to operate shall agree to fund the EOAs established by the transferring AGO to the extent funds are available. The receiving AGO shall also prioritize the funding of transferred EOAs before funding new EOA applicants.
- (7) An AGO may accept donations that are not eligible for the tax credit permitted by KRS 141.522, gifts, and grants to cover administrative costs, to inform the public

about the EOA program, to fund additional EOAs or to offer assistance outside of the EOA program. Donations that are not eligible for the tax credit permitted by KRS 141.522 shall not be subject to KRS 141.500 to 141.528.

Effective: June 29, 2021

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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 'sum[s]' for 'education other than in common schools'." *Commonwealth ex rel. Cameron v. Johnson, et al.*, 2021-SC-0518-TG.