

# Coverdell Education Savings Custodial Account

Coverdell Education  
Savings Custodial Account

Sponsored By:  
U.S. Global Investors, Inc.  
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U.S. Global Investors

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# Coverdell Education Savings Custodial Account

## Table of Contents

<u>Paragraph</u>		<u>Page</u>
<b>Article I Definitions</b>		
1.1	Code	1
1.2	Contributor	1
1.3	Coverdell Education Savings Account (ESA)	1
1.4	Custodian	1
1.5	Custodial Account	1
1.6	Designated Beneficiary	1
1.7	EGTRRA	1
1.8	Eligible Educational Institution	1
1.9	Individual	1
1.10	Member Of The Family	1
1.11	Modified Adjusted Gross Income	1
1.12	Nonqualifying Distribution	2
1.13	Plan	2
1.14	Qualified Distribution	2
1.15	Qualified Education Expenses	2
1.16	Qualified Elementary and Secondary Education Expenses	2
1.17	Qualified Higher Education Expenses	2
1.18	Qualified State Tuition Program	3
1.19	School	3
1.20	Special Needs Beneficiary	3
1.21	Taxable Year	3
<b>Article II Contributions</b>		
2.1	Regular	3
2.2	Contributions To Qualified Tuition Plans	4
2.3	Estate And Gift Taxes	4
2.4	Relationship To Other IRA Accounts	4
2.5	Rollover Or Transfer From One Coverdell Education Savings Account To Another	4
2.6	Excess Contribution	4
2.7	Timing Of Contributions	5
2.8	Sunset Provisions	5
<b>Article III Accounts and Investments</b>		
3.1	Individual Accounts	5
3.2	Investment Options	6
3.3	Delegation Of Investment Responsibility	6
3.4	Restrictions On Directing Investments	7
3.5	Brokerage Account	7
3.6	Changing Designated Beneficiary	7

<u>Paragraph</u>		<u>Page</u>
3.7	Beneficiary Designation Upon Death Of Designated Beneficiary	7
3.8	Assignment And Alienation	7
<b>Article IV Payment of Benefits</b>		
4.1	Distributions	7
4.2	Room and Board Expenses	8
4.3	Taxation Of Distributions	8
4.4	Payment Directions	9
4.5	Distribution Upon Death	9
4.6	Responsible Individual Due To Death Of Designated Beneficiary	9
4.7	Mandatory Distributions	9
4.8	Closing The Account	9
4.9	Liability	9
<b>Article V Administrative Duties</b>		
5.1	Duties Of Custodian	10
5.2	Duties Of Individual	10
5.3	Fees	10
<b>Article VI Powers and Responsibilities Of Custodian</b>		
6.1	In General	11
6.2	Written Instructions	11
6.3	Investment Instructions	11
6.4	Records	11
6.5	Proxies And Voting Of Shares	11
6.6	Right To Request Judicial Assistance	11
6.7	Indemnification	12
<b>Article VII Amendment and Termination</b>		
7.1	Custodian's Right to Amend	12
7.2	IRS Qualification	12
7.3	Account Restriction	12
7.4	Custodian's Right To Resign	12
7.5	Responsibility Of The Custodian	12
7.6	Responsibility Of Successor Custodian	12
<b>Article VIII Governing Law</b>		13
<b>Disclosure Statement</b>		14

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# Coverdell Education Savings Custodial Account

## Article I Definitions

- 1.1 **Code** The Internal Revenue Code of 1986, as amended.
- 1.2 **Contributor** Any person, including the Individual who establishes the Coverdell Education Savings Account, who makes a contribution to the account established under this agreement.
- 1.3 **Coverdell Education Savings Account (ESA)** An account which is established exclusively for the purpose of paying Qualified Education Expenses of the Designated Beneficiary.
- 1.4 **Custodian** The financial institution who makes this Coverdell Education Savings Custodial Account available to qualifying Individuals. The Custodian is a bank or savings and loan association, as defined in Code §408(n), or any person who has the approval of the Internal Revenue Service (IRS) to act as a Custodian.
- 1.5 **Custodial Account** The account established under the terms of this agreement between the Individual and the Custodian creating a Coverdell Education Savings Custodial Account.
- 1.6 **Designated Beneficiary** The person for whose benefit the account is established, for the exclusive purpose of paying Qualified Education Expenses.
- 1.7 **EGTRRA** The Economic Growth and Tax Relief Reconciliation Act of 2001.
- 1.8 **Eligible Educational Institution** Any college, university, vocational school, or other post-secondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes all accredited public, nonprofit, and proprietary post-secondary institutions.
- 1.9 **Individual** The person who establishes a Coverdell Education Savings Account named under the terms of this Plan, as amended from time to time. The Designated Beneficiary may also be the Individual establishing the Plan. The Individual who establishes this account may make contributions to the account.
- 1.10 **Member Of The Family** Members of the Designated Beneficiary's family include the Designated Beneficiary's spouse, child, grandchild, stepchild and their descendants, siblings and their children, parents and grandparents, stepparents and spouses of all the foregoing. A first cousin, but not his or her spouse, is also a member of the Family.
- 1.11 **Modified Adjusted Gross Income** A Contributor's Modified Adjusted Gross Income for the Taxable Year increased by amounts excluded from Gross Income under Code §911, 931 or 933 less deductions specified at Code §62(a).

Modified Adjusted Gross Income shall be determined in accordance with Code §530(c)(2) and the regulations thereunder.

1.12 ***Nonqualifying Distribution*** A distribution that is in excess of the Qualified Education Expenses of the Designated Beneficiary during a Taxable Year.

1.13 ***Plan*** The Coverdell Education Savings Account established under the terms of this agreement between the Individual and the Custodian creating such account.

1.14 ***Qualified Distribution*** A distribution of contributions as well as the investment earnings thereon not in excess of the Qualified Education Expenses of a Designated Beneficiary for a Taxable Year.

1.15 ***Qualified Education Expenses*** Qualified Higher Education Expenses [as defined in Code §529(e)(3) and paragraph 1.17], and Qualified Elementary and Secondary Education Expenses [as defined in Code §530(b)(4) and paragraph 1.16].

1.16 ***Qualified Elementary And Secondary Education Expenses*** Qualified Elementary and Secondary Education Expenses as defined in Code §530(b)(4)(A) including:

(a) expenses for tuition, fees, academic tutoring, special needs services in the case of a special need beneficiary, books and supplies, and other equipment which are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school students at a public, private or religious school;

(b) expenses for room and board, uniforms, transportation, and supplementary items for services (including extended day programs) which are required or provided by a public, private, or religious school in connection with such enrollment or attendance; and

(c) the purchase of computer technology or equipment or internet access or related services.

The definition of computer technology in (c) above is determined by reference to the charitable contribution rules and Code §170(e)(6)(F)(1). The term computer technology and equipment includes computer software, as defined by Code §168(I)(2)(B) and fiber optic cable related to computer use. The computer technology equipment or services must be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is in school. Expenses will not be qualified if they are for computer software designed for sports, games or hobbies, unless predominately educational in nature.

1.17 ***Qualified Higher Education Expenses*** Qualified Higher Education Expenses as defined in Code §529(e)(3) including tuition, fees, books, supplies, and equipment required for enrollment or attendance at an Eligible Educational Institution relating to the Designated Beneficiary, and Qualified Educational Expenses also include amounts contributed to a Qualified State Tuition Program.

For students attending an Eligible Educational Institution, distributions may be used to pay room and board charges at the school's posted room and board charges for students living off-campus and not at home as determined by reference to Code §529(e)(3) and §472 of the Higher Education Act of 1965 (20 U.S.C. §108711).

1.18 **Qualified State Tuition Program** A program established and maintained by a state under which Contributors may:

- (a) purchase tuition credits or certificates for a Designated Beneficiary that entitles the Designated Beneficiary to a waiver of Qualified Higher Education Expenses; or
- (b) make contributions to an account that is established for the purpose of paying Qualified Higher Education Expenses.

1.19 **School** The term "school" means any school which provides elementary education or secondary education [kindergarten through grade twelve (12)], as determined under applicable State law.

1.20 **Special Needs Beneficiary** An individual who, due to a physical, mental or emotional condition (including a learning disability), who requires additional time to complete his or her education, or such other definition as provided for in the regulations.

1.21 **Taxable Year** The Contributor's tax year for Federal income tax purposes.

## Article II Contributions

2.1 **Regular** A nondeductible cash contribution not to exceed \$2,000 [or any other amount as specified in Code §530(b)(1)(A)] for a Taxable Year, may be made by any Contributor on behalf of a Designated Beneficiary until after the Designated Beneficiary attains his or her eighteenth (18th) birthday.

The age limitation above shall not apply to any Designated Beneficiary with special needs (as defined at paragraph 1.20).

For single Contributors or married Contributors filing separately, the maximum contribution allowable to the ESA will be proportionately reduced if such Contributor's Modified Adjusted Gross Income is between \$95,000 and \$110,000. No contribution will be allowed if the Contributor's Modified Adjusted Gross Income is in excess of \$110,000 for the Taxable Year.

For married Contributors filing jointly, the income phaseout limits are between \$190,000 and \$220,000. No contribution is allowed if such married Contributor's Modified Adjusted Gross Income is in excess of \$220,000 for their Taxable Year.

The reduction in permitted contributions based on the modified AGI applies only to individual contributors. Thus, contributions made by entities, such as corporations or tax-exempt entities are not subject to the phaseout rules.

No contribution may be made by any person to a Designated Beneficiary's ESA during a year in which any person contributes to a Qualified State Tuition Program

on behalf of the Designated Beneficiary for whom this account is established, regardless of the amount of such contributions. Any such contributions to an ESA will be deemed excess contributions under paragraph 2.5 hereof.

**2.2 Contributions to Qualified Tuition Plans** Contributions to a Qualified Tuition Program under Code §529(b) are Qualified Education Expenses that can be paid from the ESA. Where the contributions are made with tax-free earnings from an ESA, the amounts are not included in the investment in the contract under Code §72. When applying the annuity rules under Code §72 to Qualified Tuition Programs, contributions made to the plan with tax-free earnings from an ESA are not taken into account.

**2.3 Estate And Gift Taxes** Contributions to an ESA are treated as completed gifts subject to the gift tax rules and are applied toward the \$11,000 annual gift tax exclusion. There are no gift tax consequences in connection with the change of a Designated Beneficiary under this ESA to another Member Of The Family as long as the beneficiary is not from a generation below the generation of the old beneficiary.

**2.4 Relationship To Other IRA Accounts** The ESA does not relate to or interact with deductible, nondeductible or Roth IRA programs. Since an ESA is not a retirement account, contributions do not reduce the \$2,000 any annual IRA contribution limit otherwise available to the Contributor.

**2.5 Rollover Or Transfer From One Coverdell Education Savings Account To Another** All or any part of this ESA may be transferred to another ESA for the benefit of the same Designated Beneficiary or another Member Of The Family of such Designated Beneficiary if such Family Member is under age thirty (30) at the time of the rollover or transfer to another ESA. In addition, all or any part of this ESA may be rolled over to another ESA for such Designated Beneficiary or another Member Of The Family provided that:

- (a) the amount to be rolled over is contributed no later than the sixtieth (60th) day after receipt,
- (b) if property other than money is distributed, the same property must be transferred to the successor ESA,
- (c) the recipient confirms to the successor custodian/trustee, that the rollover consists solely of amounts transferred from this ESA, and
- (d) no similar rollover has taken place within the one-year period ending on the date the distribution is received. This ESA will also accept rollovers or transfers from another custodian/trustee provided that the funds to be rolled over or transferred to this Plan represent assets of an ESA and that the conditions specified in this paragraph are satisfied with respect to such rollover or transfer.

**2.6 Excess Contribution** If the amount contributed by an Individual exceeds the maximum contribution allowed with respect to a Taxable Year, the Individual must

direct the Custodian to distribute to the Designated Beneficiary the excess contribution, together with any investment earnings on that amount. The Individual must notify the Custodian in writing prior to the date on which the Individual files, or is required to file (including extensions), their Federal income tax return for the Taxable Year for which the excess contribution was made.

There is no tax imposed if the excess amount is taken out prior to the tax filing due date plus extensions. Any earnings attributable to excess contributions are includible in income and are subject to an additional ten percent (10%) penalty tax.

If excess contributions (and earnings attributable to them) are not withdrawn from the Designated Beneficiary's account (or accounts) before the tax return for the year is due, the excess contributions are subject to a six percent (6%) excise tax for each year the excess amount remains in the account.

In the event an excess contribution is identified and there are multiple Contributors to the ESA, the Custodian shall deem the excess contribution to have been made by the Designated Beneficiary and may, unless otherwise instructed by the Individual, pay such excess contributions and any associated earnings to the Designated Beneficiary.

**2.7 *Timing Of Contributions*** An Individual shall be deemed to have made a contribution to an Education Savings Account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return of such taxable year (not including extensions thereto).

**2.8 *Sunset Provisions*** Amendments made to the Plan to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), including, without limitation, amendments made to the contribution limits and rollover rules, are subject to the sunset provisions of EGTRRA §901. Under the sunset provision, the provisions of EGTRRA shall not apply to taxable or plan years beginning after December 31, 2010. With respect to taxable years beginning after December 31, 2010, the Code shall be applied and administered as if EGTRRA had never been enacted. In such cases, the terms and conditions of the Plan shall revert to those terms and conditions that would have been in effect had the Plan not been amended as January 1, 2002.

## **Article III Accounts and Investments**

**3.1 *Individual Accounts*** The Custodian will establish and maintain an ESA in the Designated Beneficiary's name. The account will be administered separately from any other ESA. The assets of such ESA will not be commingled with the assets of any other ESA except in a common trust fund or common investment fund.

**3.2 *Investment Options*** The contributions made to the ESA will be invested in accordance with the following rules:

(a) Permissible investment alternatives may include stocks, bonds, money market instruments, savings accounts, certificates of deposit, mutual funds, (including funds for which we, as Custodian, or any of our affiliates serve as investment advisor), obligations issued by or guaranteed by the United States, or in any other investment available for acquisition through the Custodian in its regular course of business and approved by the Custodian for investment under the Plan. The investment alternatives are specifically intended to include savings accounts or certificates issued by the Custodian and/or any of its affiliates. Notwithstanding the above, the Custodian reserves the right to limit the investment vehicles available to an Individual who establishes an ESA under this agreement.

(b) The Code prohibits investing any part of this ESA in life insurance contracts or in tangible personal property characterized by the Internal Revenue Service as a collectible investment. Investments in either U.S. government issued gold and silver coins after December 11, 1986 or certain state issued coins after November 11, 1988 are not considered collectibles. However, gold and silver coins used as jewelry will be considered collectibles and therefore, are prohibited as an investment.

(c) The Custodian will exercise all ownership rights with respect to the investments in the ESA. These activities include but are not limited to holding the investments, and collecting investment income.

(d) The Custodian may hold all or part of the investments in nominee or bearer form to expedite purchases and sales.

**3.3 *Delegation Of Investment Responsibility*** The Individual or the Individual's duly authorized representative may delegate the investment management of all or a portion of an account to an agent or attorney-in-fact, including but not limited to a division or affiliate of the Custodian by notifying the Custodian in writing on a form acceptable to the Custodian of such delegation, including the name of the person or persons to whom such responsibility is delegated and the assets with respect to which such agent or attorney-in-fact shall direct investments. The Custodian shall follow the directions of such agent or attorney-in-fact and shall be under no duty to review or question any direction, action or failure to direct or act of such agent or attorney-in-fact. The Individual may revoke the authority of any agent or attorney-in-fact at any time by notifying the Custodian in writing of such revocation and the Custodian shall not be liable in any way for transactions initiated prior to receipt of such notice. The Custodian is not responsible for the propriety of any investment directed and the Custodian will not be required to consult with or advise the Individual or Designated Beneficiary as the case may be regarding the investment quality of any directed investment.

If the Individual appoints a representative, as provided for above, references to the "Individual" in this Article III (other than the last sentence in this section) and

paragraphs 6.2 and 6.5 (insofar as pertinent to securities with respect to which the representative has investment authority) are also applicable to that representative.

**3.4 *Restrictions On Directing Investments*** Directions will be accepted with respect to investments, however, the Individual or Designated Beneficiary as the case may be may not:

- (a) borrow from the ESA or pledge any of the assets of the ESA as security for a loan,
- (b) buy property or assets from or sell property or assets to the ESA,
- (c) charge any fee for services rendered to the account, or
- (d) receive any services from the ESA on a preferential basis.

**3.5 *Brokerage Account*** An Individual may enter into a separate brokerage agreement with the Custodian. Under the terms of that agreement, the Individual shall have the right to invest in mutual funds, including funds for which the Custodian serves as investment advisor, or in any other security as permitted under the separate agreement except life insurance contracts or in tangible personal property characterized by the Internal Revenue Service as a collectible investment.

**3.6 *Changing Designated Beneficiary*** The Individual maintaining the account may change the Designated Beneficiary to a new beneficiary who is a Member Of The Family of the original beneficiary and is under age thirty (30). There are no gift tax consequences to this transfer if the two beneficiaries are of the same generation.

**3.7 *Beneficiary Designation Upon Death Of Designated Beneficiary*** The Individual establishing this ESA shall have the right to name a beneficiary who will receive any remaining benefits in the ESA. Such beneficiary must be a Member Of The Family of the deceased originally named Designated Beneficiary and must be under the age of thirty (30) on the date of death of the Designated Beneficiary. Multiple beneficiaries to receive benefits under this ESA may be named, and the Custodial Account may be divided into two or more ESA in accordance with the beneficiary designation.

**3.8 *Assignment And Alienation*** The Individual or Designated Beneficiary may not pledge any part of this ESA as security for a loan nor can it be assigned, transferred, appropriated, encumbered, commuted, or anticipated. The account is protected from legal process to levy upon, garnish, or attach for payment of any claim against the Individual, Contributor or Designated Beneficiary except as may be provided by law or under the terms of a domestic relations order.

## **Article IV Payment of Benefits**

**4.1 *Distributions*** Payments shall be made from the Plan to or for the benefit of a Designated Beneficiary in connection with the payment of Qualified Education Expenses incurred by or on behalf of such Designated Beneficiary.

In the event a distribution is taken that is not in connection with or qualifies as the payment of Qualified Education Expenses, such a distribution is subject to the tax treatment as described in paragraph 4.3 of this Agreement.

**4.2 Room and Board Expenses** The amount of room and board costs that can be claimed as qualified higher education expenses is determined by reference to Code §529(e)(3) and §472 of the Higher Education Act of 1965 (20 U.S.C. §108711), as in effect on the date of the enactment of EGTRRA. This is the same definition of room and board costs used to calculate a student's cost of attendance for Federal financial aid programs, which defines room and board costs as:

- (a) for students living at home with parents in an amount determined by the institution;
- (b) for students residing in housing owned or operated by the school, as a standard allowance based on the amount most of the school's residents are normally charged for room and board; or
- (c) for all other students, as the amount of expenses reasonable incurred by the student for room and board.

For Designated Beneficiaries residing in housing owned and operated by an Eligible Educational Institution, if the actual room and board expenses charged by an Eligible Educational Institution exceed the amount allowed under 20 U.S.C. 108711, the allowance is the actual amount charged to the Designated Beneficiary by the institution for room and board.

**4.3 Taxation Of Distributions** Distributions used to pay Qualified Education Expenses are not includible in gross income. Such expenses are defined in Code §529(e)(3) and §530(b)(4)(A) and include tuition, fees, books, supplies, and equipment required for enrollment and attendance at a college, university and certain vocational schools. For students attending college more than half time, distributions may also be used to pay room and board.

Distributions are treated as made from both contributions and from earnings in a manner prescribed by Code §72(b). Each distribution from an ESA is treated as attributable to contributions and earnings in the same ratio as aggregate contributions in the account bear to the total balance in the account. Where distributions are not used to pay Qualified Higher Education Expenses, the portion of the distribution which represents earnings may be includible in gross income and subject to an additional ten percent (10%) penalty tax.

The ten percent (10%) additional tax does not apply to distributions:

- (a) made after the death of the beneficiary; or
- (b) attributable to the beneficiary's disability; or

(c) made on a distribution that can be included in income solely because an election is made to waive the income exclusion (Such as to take the HOPE or Lifetime credit as opposed to the tax-free treatment of the Education Savings Account).

Effective January 1, 2002, in Taxable Years in which the Hope or Lifetime Learning tax credit programs are used, distributions will be includible in income to the extent of earnings, if they are used to pay the same expenses for which the Hope or Lifetime credit is claimed.

**4.4 *Payment Directions*** All payment directions, including transfer to another ESA, shall be made exclusively by the Individual, or his or her designee. If the Individual becomes incapacitated or dies while the Designated Beneficiary is a minor; all payment or transfer directions shall be made by a parent or legal guardian of the Designated Beneficiary.

If the Individual has retained control over the ESA after the Designated Beneficiary has attained age twenty-one (21) or reached the age of majority under state law and the Individual becomes incapacitated or dies, all directions and instructions regarding the account shall be given by the Designated Beneficiary.

**4.5 *Distribution Upon Death*** Any benefits remaining in the ESA upon the death of the Designated Beneficiary shall be paid pursuant to the latest beneficiary designation on file with the Custodian. For purposes of paragraphs 4.6 and 4.8, the Custodian shall presume that the Designated Beneficiary is still living until the Individual in a form and manner acceptable to the Custodian, notifies the Custodian of the Designated Beneficiary's death and instructs the Custodian to terminate the ESA and distribute its assets in accordance with this section. If no such designation is on file with the Custodian, the benefits under the ESA shall be paid to the estate of the Designated Beneficiary within thirty (30) days of his or her death.

**4.6 *Responsible Individual Due To Death Of Designated Beneficiary*** If a family member under the age of majority under applicable state law becomes the Designated Beneficiary by reason of being a beneficiary to receive any benefits under this ESA due to the death of the Designated Beneficiary, the responsible Individual shall be the parent or legal guardian of such new Designated Beneficiary.

**4.7 *Mandatory Distributions*** All assets must be fully distributed or rolled over to the ESA of a Member Of The Family no later than the date on which the Designated Beneficiary attains age thirty (30). Unless rolled over to a Member Of The Family of the Designated Beneficiary or used to pay Qualified Higher Education Expenses, such distributions will be treated as Nonqualifying Distributions.

**4.8 *Closing The Account*** The ESA created hereunder may be closed at any time by requesting a distribution as provided at paragraph 4.5 or by directing a rollover or transfer of the account to another ESA maintained with another institution.

**4.9 *Liability*** The Custodian shall not be responsible for the propriety of any distribution. The Custodian is only authorized to make distributions in accordance

with written instructions from the Individual or the Designated Beneficiary as provided at paragraph 4.5 hereof.

## **Article V Administrative Duties**

5.1 ***Duties Of Custodian*** The administrative functions performed will include:

- (a) Setting up and maintaining an ESA in the Designated Beneficiary's name.
- (b) Accepting contributions for deposit to the Individual's ESA. The Custodian does not require the Individual to make annual contributions since they are voluntary on the Individual's part. However, the Custodian is not permitted to accept contributions in excess of \$2,000 [or the maximum amount as specified in Code §530(b)(1)(A)] for any Taxable Year.
- (c) Investing the contributions in accordance with Article III of this agreement.
- (d) Making payments or distributions from the ESA in accordance with paragraph 4.5 hereof.
- (e) Preparing and issuing an annual report of the ESA for each Taxable Year. The report will show the contributions received, the payments and distributions made, the investment earnings or losses, the market value of assets held in the account including gains and/or losses (if applicable) and the balance held in the account at the end of the Taxable Year.
- (f) Preparing any reports that may be required by the Internal Revenue Service or by any governmental unit or agency having authority to request reports.

5.2 ***Duties Of Individual*** The administrative functions the Individual, Contributor or, if applicable, the Designated Beneficiary must perform include:

- (a) Determining the amount of the annual contribution, if any.
- (b) Forwarding his or her contribution within the time limits set by the Internal Revenue Service.
- (c) Authorizing any payment or distribution from the ESA as provided at paragraph 4.5 hereof.
- (d) Filing Form 5329, Return for Additional Taxes Attributable to an Excise Tax, if required.
- (e) Furnishing the Custodian with a written explanation of the intended use of any distribution.
- (f) Furnishing the Custodian with any information the Custodian may need to complete any governmental report required at paragraph 5.1(f) above.

5.3 ***Fees*** The Custodian reserves the right to charge a fee for the administrative and investment services provided for in the account created hereunder. The Custodian also reserves the right to impose a separate termination fee for any account

closed or transferred. Any fees with respect to the Individual's account will be fully described in a separate agreement.

## **Article VI Powers and Responsibilities of Custodian**

6.1 ***In General*** The Custodian acts only as a passive Custodian and shall have only such powers and responsibilities with respect to the Custodial Account as are set forth in this agreement.

6.2 ***Written Instructions*** Any written instructions required in this agreement must be in a form acceptable to the Custodian. The Custodian shall be fully protected in acting upon any written instruction from the Individual or any other notice, request, consent, certificate or other instrument or paper believed by it to be genuine or properly executed, or to take or omit any action, so long as the Custodian acts in good faith.

6.3 ***Investment Instructions*** Investment instructions of the Individual shall be accepted by the Custodian in accordance with established banking and/or brokerage customs and procedures. The Custodian shall not be liable for holding all or part of the Custodial Account uninvested in cash in the absence of any investment instructions from the Individual or the Individual's legal representatives. In general, all transactions directed by the Individual shall be subject to the rules, regulations, customs and usage's of the exchanges, market or clearinghouse where made, applicable Federal and state laws, and the policies and procedures of the Custodian.

6.4 ***Records*** The Custodian shall keep accurate records of all receipts, investments, distributions, disbursements and other transactions with respect to the account.

6.5 ***Proxies And Voting Of Shares*** The Custodian shall deliver or cause to be delivered to the Individual all notices, prospectuses, financial statements, proxies and proxy solicitations relating to securities held in the account in accordance with the written instructions of the Individual. Unless otherwise provided by a directive, pursuant to paragraph 3.3 or 6.3, we will pass through shareholder rights. If no directive is provided, the Custodian shall exercise any shareholder rights (including voting rights) with respect to any securities held.

Pursuant to the Individual's direction, the Custodian shall have the power and authority to participate in distributions, reorganizations, consolidations, mergers, sales, leases, mortgages, transfers or other changes affecting securities held by it.

6.6 ***Right To Request Judicial Assistance*** The Custodian shall have the right at any time to apply to a court of competent jurisdiction for judicial settlement of its accounts or for determination of any questions or constructions which may arise or for instructions. The only necessary party defendant to any such action shall be the Individual establishing the ESA but the Custodian may join any other person or persons as a party defendant. The costs, including attorney's fees, of any such

proceeding shall be charged to the account as an administrative expense under Article V.

**6.7 Indemnification** Any provision of this agreement to the contrary notwithstanding, the Individual shall duly indemnify and hold harmless the Custodian, its successors and assigns from any and all liability which may arise with respect to the account, except liability arising from the gross negligence or willful misconduct of the Custodian.

## **Article VII Amendment and Termination**

**7.1 Custodian's Right To Amend** The Custodian reserves the right to amend any or all provisions of this ESA at any time without obtaining the Individual's or Designated Beneficiary's approval or consent. However, no amendment may be adopted which would result in the diversion of any part of the Individual's ESA to purposes other than for the exclusive benefit of the Designated Beneficiary.

**7.2 IRS Qualification** The Custodian intends that this Plan and the accounts established hereunder will meet the requirements of Code §530. Should the Commissioner of Internal Revenue or any delegate of the Commissioner at any time determine that the Plan fails to meet the requirements of Code §530, the Custodian will amend the Plan to maintain its qualified status.

**7.3 Account Restriction** The Custodian reserves the right to limit the number of contributors and minimum acceptable contribution to any ESA established under this agreement.

**7.4 Custodian's Right To Resign** The Custodian has the right to resign as Custodian of any ESA established hereunder. The resignation is effective sixty (60) days after the date on which the Custodian mails written notice of resignation. In the event of resignation, each Individual, or Designated Beneficiary, if applicable, must appoint a new custodian or trustee or arrange for a successor custodian or trustee. No further contributions will be accepted once the resignation becomes effective. The Custodian will transfer the balance held in the Individual's ESA directly to the successor custodian or trustee on the effective date of the resignation or as soon thereafter as practical. If no new custodian or trustee is appointed by the end of the sixty (60) day notification period, the account will be deemed to have been closed under paragraph 4.7 hereof and the Custodian shall be deemed to have been instructed to make distribution of the account for purposes of a rollover to another ESA.

**7.5 Responsibility Of The Custodian** After the Custodian has transferred the account (including any reserve balance) to the successor custodian/trustee, pursuant to paragraph 7.4, the Custodian shall be relieved of all further liability with respect to this agreement.

**7.6 Responsibility Of Successor Custodian** No successor custodian/trustee appointed pursuant to paragraph 7.4 shall be liable or responsible for any act or

default of any predecessor custodian, nor shall any successor custodian or trustee be required to inquire into or take any notice of the prior administration of the ESA.

### **Article VIII Governing Law**

The Coverdell Education Savings Account will be administered in accordance with this Plan and the accompanying Account Agreement. The general rules and regulations governing ESA are administered by the Internal Revenue Service. Where there are no applicable Federal rules, the laws of the state in which the principal office of the Custodian is located shall govern.

# Coverdell Education Savings Custodial Account Disclosure Statement

## 1. What is a Coverdell Education Savings Account?

A Coverdell Education Savings Account (ESA) is established exclusively for the purpose of paying Qualifying Education Expenses of the Designated Beneficiary. Contributions are made on a nondeductible basis and earnings are distributed from the Plan tax-free when certain criteria are met. It was developed in order to provide Individuals with the opportunity to pay the Designated Beneficiary's "Qualified Education Expenses". The account must be designated as an ESA when it is created in order to be treated as an ESA.

## 2. For whom may a Coverdell ESA be established?

An ESA may be established for the benefit of any child under age eighteen (18). Contributions to the ESA will not be accepted after the Designated Beneficiary reaches his/her eighteenth (18th) birthday.

The age limitation above shall not apply to any Designated Beneficiary with special needs (as determined under regulations prescribed by the Secretary).

## 3. Where may an Individual open a Coverdell ESA?

An Individual may open an ESA with any bank, or other entity that has been approved to serve as a nonbank trustee or custodian of an individual retirement account (IRA), and the bank or entity is offering ESAs. Other entities that wish to offer ESAs but are not approved to serve as IRS trustees or custodians may seek approval by following the same IRS procedures used for approval of other IRA nonbank trustees.

## 4. When may a taxpayer start contributing to a Coverdell ESA for a child?

A taxpayer may start making contributions on January 1, 1998, or at any time thereafter.

## 5. How much can be contributed to a child's Coverdell ESA?

You may contribute any amount up to \$2,000 per Designated Beneficiary to an ESA. The contributions may be placed in a single ESA or in multiple ESAs.

## 6. What happens if more than \$2,000 is contributed to an ESA on behalf of a child in a calendar year?

Aggregate contributions for the benefit of a particular child in excess of \$2,000 for a calendar year are treated as excess contributions. If the excess contributions (and any earnings attributable to them) are not withdrawn from the child's account (or accounts) before the tax return for that year is due, the excess contributions are subject to a six percent (6%) excise tax for each year the excess amount remains in the account.

## 7. May contributions in other than cash be made to a child's ESA?

No. Coverdell ESAs are permitted to accept contributions made in cash only.

**8. May Contributors take a deduction for contributions made to an ESA?**

No.

**9. Can people at all income levels contribute to an ESA?**

Any single taxpayer or married Contributors filing separately may contribute up to \$2,000 to a Designated Beneficiary's ESA if the Individual's Modified Adjusted Gross Income for the Taxable Year is no more than \$95,000 (\$190,000 for married taxpayers filing jointly). The \$2,000 maximum contribution per child is gradually reduced for single taxpayers with Modified Adjusted Gross Income between \$95,000 and \$110,000 (between \$190,000 and \$220,000 for married taxpayers filing jointly). Single taxpayers with Modified Adjusted Gross Income above \$110,000 (\$220,000 for married taxpayers filing jointly) cannot make contributions to anyone's Coverdell ESA.

**10. When can contributions be made?**

You will have been deemed to make a contribution on the last day of the preceding taxable year, if the contribution is made on account of such Taxable Year and is made not later than the time prescribed by law for filing the return of such tax year, not including any extension thereto.

**11. May a child contribute to his/her own Coverdell ESA?**

Yes.

**12. Does a taxpayer have to be related to the Designated Beneficiary in order to contribute to the Designated Beneficiary's ESA?**

No.

**13. How many Coverdell ESAs may a child have?**

There is no limit on the number of Coverdell ESAs that may be established designating a particular child as a beneficiary. However, in any given taxable year the total aggregate contributions to all accounts designating a particular child as a beneficiary may not exceed \$2,000.

**14. May a Designated Beneficiary take a tax-free withdrawal from an ESA to pay Qualified Higher Education Expenses if the Designated Beneficiary is enrolled less than full-time at an Eligible Educational Institution?**

Yes. Whether the Designated Beneficiary is enrolled full-time, half time, or less than half time, he/she may take a tax-free withdrawal to pay Qualified Education Expenses.

**15. What are "Qualified Higher Education Expenses"?**

"Qualified Higher Education Expenses" means expenses for tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the Designated Beneficiary at an Eligible Educational Institution. Qualified Higher Education Expenses also include amounts contributed to a Qualified State Tuition Program.

Qualified Higher Education Expenses also include room and board [generally, the school's posted room and board charge, or other amount determined by reference to Code §529(e)(3) and §472 of the Higher Education Act of 1965 (20 U.S.C. §108711), for students living off-campus and not at home] if the Designated Beneficiary is at least a half-time student at an Eligible Educational Institution. The standards used for determining whether a student is enrolled at least half time are the same as those used for the Hope Scholarship Credit.

**16. What are “Qualified Education Expenses”?**

“Qualified Education Expenses” means expenses for tuition, fees, academic tutoring, special needs services in the case of a special need beneficiary, books and supplies, and other equipment which are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school students at a public private or religious school, expenses for room and board, uniforms, transportation, and supplementary items for services (including extended day programs) which are required or provided by a public, private, or religious school in connection with such enrollment or attendance, and the purchase of computer technology or equipment or Internet access or related services.

The definition of computer technology above is determined by reference to the charitable contribution rules and Code §170(e)(6)(F)(1). Thus, for these purposes, the term computer technology and equipment includes computer software, as defined by Code §168(I)(2)(B) and fiber optic cable related to computer use. The computer technology equipment or services must be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is in school. Expenses will not be qualified if they are for computer software designed for sports, games or hobbies, unless predominately educational in nature.

**17. What is an Eligible Educational Institution?**

An Eligible Educational Institution is any college, university, vocational school, or other post-secondary institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary post-secondary institutions.

**18. What happens if a Designated Beneficiary withdraws an amount from an ESA but does not have any Qualified Education Expenses to pay in the Taxable Year he/she makes the withdrawal?**

Generally, if a Designated Beneficiary withdraws an amount from an ESA and does not have any Qualified Education Expenses to pay in the Taxable Year, a portion of the distribution is taxable. The taxable portion is the portion that represents earnings that have accumulated tax-free in the account. The taxable portion of the distribution is also subject to a ten percent (10%) additional tax unless an exception applies.

**19. Is a distribution from an ESA taxable if the distribution is contributed to another ESA?**

Any amount distributed from an ESA and rolled over to another ESA for the benefit of the same Designated Beneficiary or certain members of the Designated Beneficiary's family is not taxable. An amount is rolled over if it is paid to another ESA on a date within sixty (60) days after the date of the distribution. Members of the Designated Beneficiary's family, for these purposes, include the Designated Beneficiary's children and their descendants, stepchildren and their descendants, siblings and their children, parents and grandparents, stepparents, and spouses of all the foregoing who have not yet reached age thirty (30). The \$2,000 annual contribution limit to ESAs does not apply to these rollover contributions. For example, an older brother who has \$2,000 left in his ESA after he graduates from college can roll over the full \$2,000 balance to an ESA for his younger sister who is still in high school without paying any tax on the transfer.

**20. What happens to the assets remaining in an ESA after the Designated Beneficiary finishes his/her post-secondary education?**

There are two options. The amount remaining in the account may be withdrawn for the Designated Beneficiary. The Designated Beneficiary will be subject to both income tax and the additional ten percent (10%) on the portion of the amount withdrawn that represents earnings if the Designated Beneficiary does not have any Qualified Higher Education Expenses in the same taxable year he/she makes the withdrawal. Alternatively, if the amount in the Designated Beneficiary's ESA is withdrawn and rolled over to another ESA for the benefit of a member of the Designated Beneficiary's family, the amount rolled over will not be taxable. In either case, the distributions must occur no later than thirty (30) days after the original Designated Beneficiary reaches age thirty (30).

**21. What happens if the Designated Beneficiary dies before reaching age thirty (30)?**

A beneficiary may be named who will receive the proceeds of the ESA at the death of the Designated Beneficiary. This beneficiary must be a family member of the original Designated Beneficiary and must be under the age of thirty (30) at the date of death. In that case, the beneficiary named to receive the proceeds of the ESA automatically becomes the new Designated Beneficiary of the ESA as of the date of death. Multiple primary beneficiaries may be named, who may receive a portion of the assets in the ESA.

**22. Rather than rolling over money from one ESA to another, may the Designated Beneficiary of the account be changed from one child to another without triggering a tax?**

Yes, provided: (1) the terms of the particular trust or custodial account permit a change in Designated Beneficiaries (each trustee or custodian will control whether

options like this one are available in the accounts they offer), and (2) the new Designated Beneficiary is a member of the previous Designated Beneficiary's family.

**23. May a student or the student's parents claim the Hope Scholarship Credit or Lifetime Learning Credit for the student's expenses in a Taxable Year in which the student receives money from an ESA on a tax-free basis?**

Yes. Coordination rules allow a Designated Beneficiary to take advantage of the ESA as well as the education credits under the HOPE and Lifetime Learning Credits during the same tax year. In order to avoid application of the Education Credits, the Designated Beneficiary must elect not to claim the Education credits for qualified tuition and related expenses paid during the tax year.

**24. How do the coordination rules work?**

Under the coordination rules, qualified expenses are first reduced for scholarships or fellowship grants excludable from gross income under Code §25A(g). Expenses are then reduced for amounts taken into account in determining the education credits under Code §25A. When a designated Beneficiary receives distributions from both the ESA and a qualified tuition program under Code §529 that together exceed these remaining expenses, the expenses must be allocated between the distributions.

Although there is no method prescribed for allocating excess expenses between distribution from an ESA and a qualified tuition program under Code §529, a reasonable method would be to allocate the expenses according to the ratio the distributions from each account to total distributions. For example, assume that total distributions for the tax year are \$12,000 (\$10,000 from a qualified tuition plan and \$2,000 from an ESA), and exceed the reduced qualified education expenses of \$10,000 [ $\$10,000 \times (\$10,000 \text{ divided by } \$12,000)$ ] and \$3,666.66 in expenses would be allocated to the ESA [ $\$10,000 \times (2,000 \text{ divided by } \$12,000)$ ].

**25. May contributions be made to both a Qualified State Tuition Program and an ESA on behalf of the same Designated Beneficiary in the same tax year?**

Yes. The six percent (6%) excise tax has been eliminated for Contributions made during the same tax year to both a Designated Beneficiary ESA and qualified tuition plan.

**26. What are the investment options?**

The investment alternatives offered may include stocks, bonds, money market instruments, savings accounts, certificates of deposit, mutual funds (including funds for which the Custodian, or any of the Custodian's affiliates serve as investment advisor), obligations issued or guaranteed by the United States, or in any other investment alternatives available for acquisition through the Custodian in its regular course of business and approved by the Custodian for investment in the Account.

No part of the ESA may be invested in life insurance contracts or collectibles such as works of art, rugs, antiques, precious metals, stamps, coins and any other property

considered a collectible by the IRS. Exceptions apply for certain types of bullion and coins.

**27. When are Federal income taxes paid on the account?**

Federal income taxes must be paid either when there is a Nonqualified Distribution or a prohibited transaction with respect to the account.

**28. How are Nonqualified Distributions from an ESA taxed?**

Because contributions to an ESA are made using income which has already been taxed, the portion of the nonqualified ESA distribution consisting of contributions will not be taxed again when received. Each such distribution from your ESA will consist of a nontaxable portion (return of contributions) and a taxable portion (return of account earnings).

**29. What information will I receive about my account?**

We will send you a copy of any Plan amendment and an explanation of how it affects you within thirty (30) days of any such change. Each year you will also receive a statement which shows your contributions, earnings, distributions and total value of your ESA.

**30. Do you have to file any forms with the Internal Revenue Service?**

Only if you owe taxes on an excess contribution or certain Nonqualified Distributions. You must file Form 5329 (Return for Individual Retirement Savings Arrangement) and Form 8606 Nondeductible IRAs (Contributions, Distributions and Basis) with the Internal Revenue Service.

**31. Can you terminate your Coverdell ESA or transfer it to another custodian or trustee?**

You have the right to terminate the ESA at any time. You may also transfer your ESA to another custodian or trustee. You may revoke the ESA without penalty, administrative expense or market fluctuation, if you do so within seven (7) days of acceptance by the Custodian of your ESA.

**32. Are you required to obtain approval of your ESA from the Internal Revenue Service?**

No.

**33. Where can you have questions answered?**

If you have any questions or special problems, call the Internal Revenue Service or us.

**34. Is there a charge or fee for the ESA?**

We have the right to charge a fee for any services provided under the Plan or for the termination or transfer of any ESA to another trustee or custodian. Such fees, if any, will be outlined in a separate fee agreement.



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