

COLLEGE SAVINGS PLANS NETWORK

GUIDANCE FOR GOVERNANCE AND MAINTENANCE OF SECTION 529 PLANS

Adopted May 18, 2010

BACKGROUND: Section 529 of the Internal Revenue Code requires qualified tuition programs (either a Prepaid Plan, a Savings Plan or both) to be established and maintained by a State or agency or instrumentality of the State or by one or more eligible educational institutions. States have enacted enabling legislation creating Section 529 Plans with varying administrative and governance structures. Acknowledging these differing governing structures created by State law, CSPN offers general guidance on matters that State Administrators of Section 529 Plans should consider in the operation and maintenance of Section 529 Plans.

PURPOSE and INTENT: The general guidance set forth below is intended to provide a framework for State Administrators to develop operating standards that will (1) complement each Section 529 Plan's enabling legislation, (2) provide transparency of performance, and (3) facilitate oversight and monitoring of Section 529 Plans.

The general guidance is not intended to address the practices of broker-dealers or investment managers who work with State Administrators solely to distribute interests in Section 529 Plans or to provide investment management services. It is also not intended to suggest a "best practices" standard for all Section 529 Plans or that this general guidance alone is sufficient for the diligent oversight of Section 529 Plans. Finally, the general guidance provided here is not intended to conflict with the statutory or regulatory parameters pursuant to which each State Section 529 Plan is authorized and created. In the event a conflict arises between the guidance provided herein and any State laws or regulations, the State laws or regulations shall control.

- 1. GOVERNANCE STRUCTURE:** Governance structures should be consistent with and carry out the authority granted by the statutory framework pursuant to which each Section 529 Plan has been authorized.

2. GOVERNANCE PROCEDURES: Appropriate to the size and composition of the State Administrator overseeing the Section 529 Plan, Plans should consider procedures to:

- a. Assure adequate oversight of the operations of the Section 529 Plan, including monitoring and review of account administration, customer service, and performance of the program manager.
- b. Assure compliance with legal, ethical and regulatory requirements, as applicable.
- c. Oversee the Section 529 Plan's accounting and financial reporting processes, internal control systems, audits of financial statements, and the qualifications of the public accounting firm engaged to audit financial statements.
- d. Provide investment oversight, which may include:
 - i. Developing and monitoring implementation of an investment policy;
 - ii. Engaging independent investment expertise either from other governmental bodies in the State, the private sector or both;
 - iii. Offering a variety of investment options that take into account the differing risk tolerance levels of existing and prospective account owners;
 - iv. Periodic review of the existing roster of investment options to ensure that it continues to be appropriate for the Plan, and whether to add new options or modify or eliminate existing options.
 - v. Establishing performance and other criteria, including benchmarks, for investment options and underlying investments.

3. OPERATING PROCEDURES: Section 529 Plans should consider operating practices for account level transactions (for example, rollovers, investment direction and distributions) to facilitate monitoring of and compliance with the rules and regulations governing Section 529 Plans and, to the extent practicable, which are consistent with industry practices.

4. PREPAID PLAN CONSIDERATIONS: For Prepaid Plans, investment strategies that take into account asset-liability

matching analysis, reasonable assumptions about the performance of various asset classes over time, and such other actuarial considerations as may be appropriate in light of the design of the particular Prepaid Plan are advisable.

5. DEFINITIONS:

- a. **Broker-Dealer** means an entity that distributes or offers interests in Section 529 Plans to the public, and is subject to the rules of the Municipal Securities Rulemaking Board as enforced by the Financial Industry Regulatory Authority.
- b. **Code** means the Internal Revenue Code of 1986, as amended.
- c. **Prepaid Plan** means a qualified tuition program prepayment plan pursuant to Section 529(b)(1)(A)(i) of the Code.
- d. **Program Manager** means an entity engaged by or on behalf of a State Administrator to manage a Section 529 Plan on behalf of that State Administrator.
- e. **Savings Plan** means a qualified tuition program savings plan pursuant to Section 529(b)(1)(A)(ii) of the Code.
- f. **Section 529** means Section 529 of the Code, which authorizes States or State entities to establish and maintain qualified tuition programs.
- g. **Section 529 Plans** means qualified tuition programs as set forth in Section 529(b)(1)(A) of the Code.
- h. **State Administrator** means that entity that maintains a qualified tuition program pursuant to Section 529 of the Code.