

## **Title 6. Education**

### **Chapter XXIV. Section 529 Plan Review Committee**

#### **Subchapter A. Generally**

#### **Part 560. Arkansas Brighter Future Fund Plan**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"These Amended and Restated Rules are adopted as of November 16, 2021."

#### **Subpart 1. Generally**

##### **6 CAR § 560-101. General.**

(a) The Arkansas Brighter Future Fund Plan program (the "program") is established pursuant to the Arkansas Brighter Future Fund Plan Act, Chapter 84 of Title 6 of the Arkansas Code, as amended, codified as Arkansas Code § 6-84-101 et seq. (the "act").

(b) The program is designed to satisfy the requirements of Section 529 of the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq., as amended, and any regulations, rulings, announcements, and other guidance issued thereunder (collectively referred to as "Section 529").

(c) In accordance with the Arkansas Brighter Future Fund Plan Act, the Section 529 Plan Review Committee (the "committee") has established the following rules governing the operation of the plan.

(d) To the extent this part is interpreted to be inconsistent with provisions of Section 529, the provisions of Section 529 shall prevail.

(e) The program may be affected by subsequent changes in federal and state legislation.

(f) The committee shall have the right to modify this part from time to time to comply with then current federal law and regulations applicable to the program and for other purposes.

(g) Capitalized terms not defined herein shall have the meaning ascribed to them in the Arkansas Brighter Future Fund Plan Act.

**Authority.** Arkansas Code § 6-84-105.

**6 CAR § 560-102. Definitions.**

As used in this part:

(1) "Account Application Form" means an application substantially in the form approved by the Section 529 Plan Review Committee from time to time;

(2) "Age-based option" means a portfolio the assets of which are invested in a combination of underlying investments, currently based on the ages of designated beneficiaries specified for such portfolio;

(3) "Approved allocation" means the allocation of assets for a portfolio as approved by the Section 529 Plan Review Committee as may be set forth in the program management agreement;

(4) "Approved allocation effective date" means the annual date (July 1) by which the approved allocation for a portfolio is approved, as may be set forth in the program management agreement;

(5) "Arkansas administration fee" means any fee paid out of the Arkansas Brighter Future Fund Plan's assets to the Section 529 Plan Review Committee pursuant to a program management agreement;

(6) "Business day" means each day on which the New York Stock Exchange is open for trading;

(7) "Cash" means:

(A) United States dollars;

(B) Checks;

(C) Electronic funds transfers; or

(D) Any other method deemed appropriate by the Section 529 Plan Review Committee;

(8) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq., as amended;

(9) "Contribution maximum" means the maximum amount that an account owner can contribute to all program accounts for the same designated beneficiary, as determined from time to time by the Section 529 Plan Review Committee based upon a methodology that calculates such maximum amount on an annual basis using the cost of up to seven (7) years of tuition, fees, books, supplies and equipment, and room and board at a higher educational institution;

(10) "Custom portfolio option", "iShares asset allocation portfolios", or "custom iShares portfolio" means a portfolio the assets of which are invested in one (1) or a combination of underlying investments, in accordance with a fixed asset allocation that does not change based on the age or years-to-enrollment of a designated beneficiary;

(11) "Designated Beneficiary Change Form" means a change of a designated beneficiary substantially in the form approved by the Section 529 Plan Review Committee, from time to time;

(12) "Eligible participant" means an individual, other person, or legal entity eligible under the Arkansas Brighter Future Fund Plan Act, Arkansas Code § 6-84-101 et seq., under applicable federal tax law and regulations to participate in the program;

(13) "Eligible scholarship" means a scholarship or other payment qualifying for an exemption from the withdrawal penalty required by Internal Revenue Code § 529, or any successor provision thereto, of the Internal Revenue Code;

(14) "Investment fund" means the portion of a plan's assets invested in underlying investments (i.e., that portion of a plan's assets not held in the operating fund);

(15) "Investment manager" means the entity contracted by the program manager to manage the assets of the portfolios, as approved by the Section 529 Plan Review Committee;

(16) "Management fee" means any fee paid out of a plan's assets to the program manager pursuant to a written agreement approved by the Section 529 Plan Review Committee;

(17) "MSRB" means Municipal Securities Rulemaking Board and any duly established entity that succeeds to the functions thereof;

(18) "Net asset value" or "NAV" means the net asset value per share of the underlying investments as of the NYSE on that business day, such NAV to reflect:

(A) Adjustments, if any, to the net asset value per share of any underlying investments made after the market close;

(B) Net purchase orders and net redemption orders received by the investment manager from the program manager each business day;

(C) The deduction and payment of fees and expenses from the portfolios by the program manager or by the investment manager; and

(D) The investment manager's reinvestment, into any underlying investment or its affiliate offers and manages, of any income, dividends and/or capital gain distributions paid by underlying investments;

(19) "NYSE" means the New York Stock Exchange;

(20) "Operating account" means the account established for the purpose of holding the Arkansas administration fee;

(21) "Operating fund" means that portion of the plan's assets not held in the investment fund;

(22) "Participation agreement" means an agreement between an account owner and the Arkansas Brighter Future Fund Plan Trust substantially in the form approved by the Section 529 Plan Review Committee from time to time that establishes the account and the obligations of the Arkansas Brighter Future Fund Plan Trust and the account owner;

(23) "Plan" means either:

(A) The direct-sold plan established within the program;

(B) The advisor-sold plan established within the program; or

(C) Any other college savings plan established pursuant to the Arkansas Brighter Future Fund Plan Act and administered by the Section 529 Plan Review Committee, collectively, under the Arkansas Brighter Future Fund Plan Trust;

(24) "Portfolio" means one (1) of the plan portfolios established within the investment fund:

- (A) To which contributions may be allocated; and
- (B) That are invested in underlying investments;

(25) "Program description" means the complete disclosure document or set of documents describing a plan, including any supplement or supplements thereto, each as amended from time to time, constituting an "official statement" within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934, 15 U.S.C. § 78a, as amended, and the rules of the Municipal Securities Rulemaking Board and any successor to the applicable functions thereof;

(26) "Program distributor" means the program distributor employed by the Section 529 Plan Review Committee pursuant to Arkansas Code § 6-84-105, or any successor provision thereto, and designated as such in the then current program description;

(27) "Program management agreement" means a written agreement among the:

- (A) Arkansas Brighter Future Fund Plan Trust;
- (B) Section 529 Plan Review Committee; and
- (C) Program manager;

(28) "Program manager" means both the program manager and the recordkeeping and servicing agent employed by the Section 529 Plan Review Committee pursuant to Arkansas Code § 6-84-105, or any successor provision thereto, and designated as such in a program management agreement;

(29) "Rollover contribution" means a contribution to an account that is transferred to or deposited in the account from another program operating as a "qualified tuition program" within the meaning of Internal Revenue Code § 529, or any successor provision thereto, of the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq.;

(30) "Rollover distribution" means a distribution or transfer from an account that is transferred to or deposited in another program operating as a "qualified tuition

program" within the meaning of Section 529, or any successor provision thereto, of the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq.;

(31) "Section 529 Plan Review Committee" or "committee" means the committee created pursuant to Arkansas Code § 6-84-105, or any successor provision thereto;

(32) "Series" means a class of units of a portfolio;

(33) "State" means the State of Arkansas, acting through its executive, administrative, legislative, and judicial branches;

(34) "Trust" means the Arkansas Brighter Future Fund Plan Trust created under Arkansas Code § 6-84-104;

(35) "Underlying investments" means exchange traded funds, securities, separate accounts, registered mutual funds, or other investments in which assets of a portfolio are invested;

(36) "Withdrawal" means a qualified withdrawal or a nonqualified withdrawal;

(37) "Withdrawal request" means a request by an account owner to effect a withdrawal substantially in the form or other process approved by the Section 529 Plan Review Committee, from time to time; and

(38) "Year-of-enrollment portfolio" means a portfolio the assets of which are invested in a combination of underlying investments based upon the designated beneficiary's anticipated year of enrollment as determined by the account owner.

**Authority.** Arkansas Code § 6-84-105.

### **6 CAR § 560-103. Program structure.**

#### **(a) The Arkansas Brighter Future Fund Plan Trust.**

(1) The trust is comprised of an investment fund and an operating fund.

#### **(2) Investment fund.**

(A) The investment fund initially receives all contributions to accounts made by account owners pursuant to participation agreements.

(B) The investment fund is invested in underlying investments.

(3) **Operating fund.** The operating fund is comprised of the operating account and such subaccounts as may be established by the Section 529 Plan Review Committee from time to time.

(b) **Portfolios.**

(1) **General.**

(A)(i) The investment fund may be divided into one (1) or more portfolios and/or series of portfolios.

(ii) Each portfolio will represent a separate, segregated portfolio of underlying investments held in the investment fund.

(B)(i) Contributions made to an account on behalf of a designated beneficiary are invested in units of one (1) or more series of one (1) or more portfolios based on an election on the Account Application Form (or other appropriate form) made by an account owner.

(ii) The terms, expenses and sales charges, if any, as well as the availability of different portfolios (or series thereof) shall be as described in the then current program description.

(C) The assets of each portfolio will be rebalanced periodically on an as-needed basis to conform each portfolio to the approved allocation.

(2) **Change of designated beneficiary.**

(A) If an account owner changes the designated beneficiary for an account that has been assigned to an age-based option, the account may be reassigned to a new age-based option based on the age of the new designated beneficiary.

(B) The Section 529 Plan Review Committee or the program manager has the right but not the obligation to reject any (or limit the frequency of) changes of a designated beneficiary that an account owner may make if it believes that the account owner has submitted a change request primarily to avoid the limitation on the number of changes in portfolio selection permitted in a calendar year under federal tax law.

(3) **Portfolios and series.** The committee shall have the authority to increase or decrease the number of age-based options or custom portfolio options and/or the number of series of each such portfolio and to create or terminate any additional

portfolios or series the terms of which shall be as set forth in the then current program description, provided, however, that with respect to the direct-sold plan, in the event that the total number of portfolios exceeds six (6), the program manager may increase the management fee.

(c) **Net asset value.** The program manager, or its delegate, will calculate a net asset value for each portfolio (or series thereof) of the investment fund as described in the then current program description.

**Authority.** Arkansas Code § 6-84-105.

#### **6 CAR § 560-104. Program distribution and participation.**

(a) **Program distribution.** The Arkansas Brighter Future Fund Plan Trust may offer through the program distributor, which may be the program manager, and through any other subcontractor of the program manager on such terms and conditions as may be approved by the Section 529 Plan Review Committee from time to time, participation in the Arkansas Brighter Future Fund Plan program through one (1) or more portfolios (or series thereof), as determined by the committee, to any eligible participant as described in the then current program description.

(b) **Program participation.**

(1) **Opening an account.**

(A) An eligible participant must complete an Account Application Form and any other documents required by the committee, the program manager, this part, or applicable federal and state law, rule, or regulation and submit such documents to the program manager along with the initial minimum account contribution as set forth in the then current program description.

(B) The acceptance by the program manager for processing an Account Application Form and an initial contribution does not constitute the agreement of the program manager to open an account.

(C) The program manager has the right, but not the obligation, to reject an Account Application Form that does not contain all information requested on the Account Application Form.

(D) There shall be no restrictions on the age of the designated beneficiary (except as may be deemed necessary to comply with applicable law) or any required relationship between the account owner and designated beneficiary.

(2) **Entering into a participation agreement.** Subsequent to or concurrently with opening an account, an eligible participant must provide the information required by and agree by virtue of opening an account to be bound by a participation agreement for each designated beneficiary on whose behalf the account owner intends to make contributions.

(3) **Assigning accounts to portfolios and series.**

(A) The program manager will assign each account to a portfolio or portfolios based upon information submitted by the account owner.

(B) The selection of an age-based option for each individual designated beneficiary may be based on the designated beneficiary's age, and the selection of a custom portfolio option, an iShares year-of-enrollment portfolio, an iShares asset allocation portfolio, or a custom iShares portfolio for an individual designated beneficiary will be based on the investment option selection made by the account owner on the Account Application Form.

(4) **Contributions to an account.**

(A) **Form of contribution.**

(i) Contributions must be made in cash only.

(ii) As used in this section, "cash" includes checks or electronic funds transfers.

(iii) Contributions may be made by:

(a) Lump sum payment;

(b) Electronic funds transfer from an existing account of the account owner pursuant to an automated investment plan;

(c) Employer payroll deduction; or

(d) Such other method as set forth in the then current program description.

(iv) The term does not include:

(a) Money orders;

(b) Travelers checks;

(c) Foreign checks not in United States dollars;

(d) Checks dated over the number of days specified in the then current program description;

(e) Post-dated checks;

(f) Checks with unclear instructions;

(g) Securities;

(h) Noncash assets;

(i) Charges on debit or credit cards; or

(j) Any other payment method prohibited by the then current program description.

(v) In order for an account owner to make contributions by employer payroll deduction, the account owner's employer must be able to meet the program manager's operational and administrative requirements for qualified tuition program payroll contributions.

**(B) Amount of contribution.**

(i) The minimum initial and minimum subsequent contribution amount by cash is as set forth in the then current program description, and may, from time to time, be revised subject to the approval of the committee.

(ii) The minimum initial and minimum subsequent contribution amount by automatic investment plan are as set forth in the then current program description.

(iii) The contribution maximum for all accounts for a designated beneficiary is as set forth in the then current program description.

**(C) Crediting of contributions.**

(i) The program manager generally shall credit contributions to an account as of the same business day as received in good order as determined by the program manager, provided such contributions are delivered to and accepted by the program manager by 4:00 p.m. eastern time on such business day, or upon such other business day as may be set forth in the then current program description.

(ii) The program manager generally shall credit contributions made by electronic fund transfer to an account generally the next business day after the transfer is received in good order as determined by the program manager, provided such contributions are delivered to and accepted by the program manager by 10:00 p.m. eastern time on such business day, or upon such other business day as may be set forth in the then current program description.

**(D) Accounting of contributions.**

(i) On the business day of the investment of a contribution by the program manager, units (or additional units) of the applicable portfolio or portfolios will generally be reflected in the records of the program for the applicable account.

(ii) Contributions made by check, which are received in good order, will generally be considered received by the program in a given year if postmarked on or before December 31 of the same year, provided the checks are subsequently paid.

(iii) Contributions made pursuant to an electronic funds transfer will generally be considered received by the program in a given year if initiated by the account owner on or before 10:00 p.m. eastern time on December 31 of such year, provided the funds are subsequently withdrawn from an account owner's checking or savings account at another financial institution.

(iv) Contributions made pursuant to an automatic investment plan will generally be considered received by the program in the year the automatic investment debit has been deducted from an account owner's checking or savings account at another financial institution.

**(E) Investment of contributions.** A contribution to an account is generally invested in units of the portfolio or portfolios designated by the account owner or assigned by the program manager and/or the committee on the same

business day as the crediting of the contribution to an account, or upon such other business day as may be set forth in the then current program description.

**(F) Overfunding an account.**

(i) Any contribution made by an account owner will generally be rejected or returned to the account owner in the event the contribution exceeds the contribution maximum for the designated beneficiary.

(ii) All accounts within the program for the same designated beneficiary will be aggregated for purposes of determining whether the contribution maximum has been exceeded.

(iii) At the program manager's discretion, a penalty may be imposed on contributions that exceed the contribution maximum.

(iv) The program manager may refuse contributions that it determines, in its sole discretion, appear to constitute an abuse of the program.

**(G) Rollover contributions.**

(i) Rollover contributions to an account must be accompanied by an incoming rollover form (or such other form as approved by the committee) executed by the account owner and submitted in good order as determined by the program manager.

(ii) An incoming rollover form (or other approved form) must include all information the program manager and/or committee may require in order to process the rollover contribution in accordance with all requirements of the program, including those specified in:

*(a)* This part;

*(b)* The program description; and

*(c)* Applicable federal and state law, rule, or regulation.

(iii) The program manager has the right, but not the obligation, to reject an applicable form that does not contain all information requested.

(iv) The program manager may record the entire amount of the contribution as earnings unless the incoming rollover form (or other approved form) is accompanied by a statement from the administrator or manager of the Section 529

qualified tuition program from which the rollover contribution is made detailing the amount of the rollover contribution that constitutes principal and the amount of the rollover contribution that constitutes earnings, together with such other information as the committee and/or program manager may require.

(v) Rollover contributions to an account may be subject to federal income tax and/or penalties as required by then current federal law or regulation.

(vi) Reporting and payment of any such federal or state taxes or penalties shall be the obligation of the account owner.

**(5) Changes to an account.**

**(A) Change in designated beneficiary.**

(i) To change the designated beneficiary of an account, the account owner must complete a Designated Beneficiary Change Form or such other form as the committee shall approve (and any additional required documentation) and submit it in good order as determined by the program manager in accordance with all requirements of the program, including those specified in this part, the program description, and applicable federal or state law, rule, or regulation.

(ii) The program manager has the right, but not the obligation, to reject an applicable form that does not contain all information requested.

(iii) If the account owner's request is in good order (as determined by the program manager), the designated beneficiary on the account will be changed to the new designated beneficiary on the records of the program.

**(B) Partial transfer of account assets to new designated beneficiary.**

(i) To transfer some, but not all, assets from one (1) account to another account, the account owner must provide such information as is necessary for the program manager to process such transaction in accordance with all requirements of the program, including those specified in:

*(a)* This part;

*(b)* The program description; and

*(c)* Applicable federal law or regulation.

(ii) If the account owner's request is in good order as determined by the program manager the amount specified by the account owner for transfer from the account will be transferred on the records of the program to an account for the benefit of the new designated beneficiary.

**(C) Successor account owner.**

(i) An account owner may name a successor account owner if permitted by the applicable form, and to the extent permissible in accordance with the program description and applicable law.

(ii) Upon notification to the program manager of the death of the account owner, accompanied by a death certificate or other proof of death recognized under applicable law and such other information as the program manager requires, including receipt in good order of an Account Application Form executed by the successor account owner, the program manager will change the account owner for the account on the records of the program.

(iii) In the event a successor account owner is not named on the program records or the named successor account owner does not accept the account, and the account owner has not disposed of the account otherwise in a will, trust, or other testamentary disposition, the surviving spouse of the account owner will become the account owner for the account.

(iv) In the event there is no surviving spouse and the designated beneficiary is not a minor, the designated beneficiary will become the account owner for the account.

(v) If the designated beneficiary is a minor, the designated beneficiary's custodial parent will become the account owner for the account.

(vi) If the designated beneficiary has more than one (1) custodial parent the custodial parent whose birthday is earlier in the calendar year will become the account owner for the account.

(vii) If a court of competent jurisdiction declares an account owner legally incompetent and appoints a successor account owner, the program manager will change the account owner for the account on the records of the program.

**(D) Change in account owner.**

(i) The account owner may transfer ownership of an account to another eligible participant, if the transfer is irrevocable and transfers all rights, title, interest, and power over the account and is made without consideration.

(ii) The account owner will be responsible for any adverse federal and state tax consequences arising from such a change.

(iii) A change of account owner must be accompanied by an account information change form or such other form as approved by the committee and submitted in good order as determined by the program manager.

**(E) Account owner direction of the investment of contributions.**

(i) Account owners cannot direct the investment of contributions (or the earnings on contributions) once they have been used to purchase units of the designated portfolio or portfolios.

(ii) Account owners may change how investments are allocated among the available portfolio options in accordance with:

*(a)* The then current program description; and

*(b)* Applicable law or regulation.

**(F) General.** The ability of account owners to effect changes in and the consequences to account owners may be affected by subsequent changes in federal and state legislation.

**(6) Penalties for misrepresentations.** In the event an account owner makes any material misrepresentation in any oral or written communication with the committee or the program manager, including, without limitation, on any plan forms, the program manager may:

(A) Terminate an account owner's account;

(B) Charge a penalty of up to fifteen percent (15%) on the investment earnings of the account; and

(C) Seek to recover any losses incurred by the program, the committee, or the program manager as a result of such misrepresentation.

**Authority.** Arkansas Code § 6-84-105.

**6 CAR § 560-105. Withdrawal procedures.**

(a) **Withdrawal requests.** To receive a withdrawal, the account owner may either submit a withdrawal request form in good order (as determined by the program manager) to the program manager or any other method approved by the Section 529 Plan Review Committee, which, if the committee and/or program manager deem it necessary, may require:

(1) A certification from the account owner as to whether such withdrawal is a qualified withdrawal or a nonqualified withdrawal;

(2) Such additional information as the program manager may require.

(b) **Nonqualified withdrawals.**

(1) An account owner may make a nonqualified withdrawal in accordance with the terms of the then current program description subject to any applicable federal and/or state income tax and any penalty or additional tax imposed by federal tax law or state law, as set forth in the then current program description.

(2) Except as otherwise specifically provided herein, only the account owner may close an account.

(c) **Withdrawal taxes and penalties.** An account owner making a withdrawal shall have the sole obligation to:

(1) Determine whether the withdrawal is a qualified withdrawal or a nonqualified withdrawal;

(2) Make any required report to the Internal Revenue Service and any applicable state tax authority regarding the withdrawal and the amounts of any earnings included therein; and

(3) Pay any applicable federal or state income taxes or penalty taxes that may apply.

(d) **Unclaimed account balances.**

(1) The committee may establish a maximum duration for accounts.

(2) In the event the committee or program manager notifies an account owner of account inactivity and the account owner does not respond within the time period as set forth in such notice, the committee may return all amounts in the account to the account owner.

(3) The account owner shall be responsible for any applicable federal or state taxes and penalties.

**(e) Withdrawal payments.**

(1) The net asset value for a portfolio applicable to a withdrawal will be the net asset value next calculated for such portfolio on the business day on which the withdrawal request form is received in good order (as determined by the program manager), or upon such other business day as may be set forth in the then current program description.

(2) Withdrawals will be made by:

(A) Check;

(B) ACH; or

(C) At the request of the account owner and upon payment of a fee to be debited from the account, by wire transfer.

**(f) Requests for withdrawals.** Requests for withdrawals will be satisfied as soon as practicable, but in no event later than thirty (30) days following acceptance of a withdrawal request form in good order as determined by the program manager.

**Authority.** Arkansas Code § 6-84-105.

**Codification Notes.** "ACH" means automated clearing house.

**6 CAR § 560-106. Arbitration.**

(a) The account owner and the Arkansas Brighter Future Fund Plan Trust agree that by entering into a Participation Agreement the parties agree:

(1) To resolve any controversy or claim arising out of or relating to the program or the Participation Agreement, or the breach, termination, or validity thereof,

by arbitration administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures and its Policy on Consumer Arbitrations (except that if the program manager or investment manager is a party to the arbitration, it may elect that arbitration will instead be subject to the Code of Arbitration Procedure of the Financial Industry Regulatory Authority); and

(2) Judgment on the award rendered in the arbitration may be entered in any court of competent jurisdiction.

(b) The arbitration provisions of the Participation Agreement shall comply with Municipal Securities Rulemaking Board rules governing predispute arbitration clauses with account owners.

**Authority.** Arkansas Code § 6-84-105.