

~~ALLOCATION AND PAYMENT OF~~  
~~PLAN EXPENSES~~POLICY  
GOVERNING THE USE OF  
ADMINISTRATIVE FEES

*The State of Delaware Deferred Compensation Plans  
Under IRC §§ 457(b), 403(b) and 401(a)*

*The State of Delaware College Investment Plan under  
IRC § 529*

*The State of Delaware ABLE Plan under IRC § 529A*

**Approved on September 5, 2018**

**Revised on September 13, 2022**

**By the Delaware Plans Management Board**

## I. The Plans Management Board

The Plans Management Board (the “Board”) oversees and administers the State’s deferred compensation program authorized under chapter 60A of title 29 of the Delaware Code (the “DC Program”). The DC Program encompasses three distinct deferred compensation plans authorized under the Internal Revenue Code (“IRC”): (a) the State’s deferred compensation plan under IRC § 457(b); (b) the State’s tax-sheltered annuity plan for certain education employees under IRC § 403(b); and (c) the State’s employer match plan under IRC § 401(a) (collectively, the “DC Plans”). The Board also oversees and administers the State’s education savings plan under IRC § 529, authorized by subchapter XII, chapter 34 of title 14 of the Delaware Code (the “Education Savings Plan”), and the State’s Achieving a Better Life Experience (“ABLE”) program (the “ABLE Plan”), authorized by IRC § 529A and chapter 96A of title 16 of the Delaware Code (collectively, the “Education/ABLE Plans”). The DC Plans and the Education/ABLE Plans are collectively referred to in this policy as the “Plans.”

## II. Office of the State Treasurer

The Office of State Treasurer (“OST”) provides administrative support for the Board and its committees in accordance with 29 Del. C. § 2722(g).

## III. Statement of Purpose and Scope

This policy governs the use of State administrative fees (“Fees”) collected from participants in the Plans. Fees shall not be disbursed except in accordance with this policy.

## IV. Allocation and Payment of Plan Expenses

Unless otherwise directed by the Board, OST shall have authority to disburse Fees to pay Plan expenses in accordance with the general approval requirements and attribution and allocation rules set forth in Sections A and B below. All OST decisions relating to the application or interpretation of this Section IV shall be ~~documented in writing, and such documents shall be retained, in accordance with the requirements of Section C below memorialized in writing in accordance with the Board’s policy governing the documentation of fiduciary decisions.~~

### A. General Approval Requirements

Prior to the disbursement of any Fees to pay or offset Plan expenses, OST staff shall ensure that the following general requirements are satisfied:

1. *Permissible under Applicable Laws and Regulations.* No Fees shall be used to pay Plan expenses if such disbursement would be prohibited by applicable laws or regulations.
2. *Permitted by Plan/Trust.* No Fees shall be used to pay Plan expenses unless (a) expressly authorized by ~~the~~ applicable Plan or trust document, or (b) the Plan document is silent regarding the payment of administrative expenses.

3. *Direct Expenses.* No Fees shall be used to pay Plan expenses unless such expenses are direct expenses of the Plan. For purposes of this requirement, an expense shall be a “direct” expense if it would not have been incurred “but for” the existence of the Plan(s). Reasonable audit-related fees payable to the Auditor of Accounts pursuant to 29 Del. C. § 2722(e)(7) shall be direct expenses under this policy. If necessary, OST should consult outside counsel and/or relevant guidance when interpreting this requirement.
4. *Reasonable Expenses.* No Fees shall be used to pay Plan expenses unless such expenses are reasonable. No Plan expense shall be deemed “reasonable” unless it is reasonable in amount after considering all relevant facts and circumstances. In addition, except as provided in the immediately following sentence, no Plan expense shall be deemed “reasonable” if it was incurred in the performance of settlor functions, expenses for which the State, as the Plan sponsor, should reasonably be expected to bear the cost in the normal course of its business operations. For purposes of this policy, expenses incurred in connection with the marketing of the State’s college investment Plan are “reasonable” if, in addition to satisfying the foregoing requirements, (a) in consultation with outside counsel if deemed necessary, it is determined that such activities do not constitute settlor functions, and (b) such expenses otherwise meet the requirements of this Subsection A.5. OST should consult outside counsel and/or relevant guidance pertaining to “settlor functions” when interpreting this requirement.
5. *Adherence to Budget.* Absent Board approval, OST shall not disburse Fees in excess of the line-item amounts set forth in the annual budget approved by the Board.

## **B. Attribution and Allocation Rules**

In addition to the foregoing approval requirements, prior to the disbursement of any Fees pursuant to this Section IV, OST staff shall ensure that Plan expenses are attributed and/or allocated to the appropriate Plan. In making such determinations, OST staff shall adhere to the following rules:

1. *Attribution.* Plan expenses should be attributed to the Plan that incurs the expenses. No Plan should pay for administrative expenses directly incurred by or otherwise attributable to another Plan.
2. *Allocation, Generally.* Where Plan expenses are attributable to more than one Plan, the expenses should be allocated across appropriate Plans using the methodologies listed below, if applicable, or another reasonable allocation method approved by outside counsel.

3. *Sub-Allocation of 403(b) Expenses.* Expenses properly attributed to the 403(b) Plan should not be paid with Fees collected from participants in a group contract by the current Plan provider, Voya Institutional Trust Company, or its affiliates, from and after September 2016 if such expenses were incurred in connection with services that were not for the general benefit of 403(b) participants, but rather exclusively benefitted either (a) participants with individual contracts issued by a vendor authorized under the 403(b) Plan between January 2009 and September 2016 (often referred to as the “legacy” accounts), or (b) individuals with individual contracts issued by a vendor prior to January 2009 (often referred to as the “orphan” accounts).
4. *Allocation of OST Staff Expenses.* Expenses for salaries and benefits for OST staff who support the Plans (other than the ABLE plan) full time may be allocated pro rata across such Plans based on asset values and consistent with the recommendations of outside counsel. OST shall on an annual basis, or ~~earlier if whenever~~ circumstances indicate that a reasonableness assessment would be appropriate (e.g., a change in job responsibilities), test the reasonableness of the asset-based allocation method and determine whether a different methodology (e.g., allocation based on employee time) should be utilized.
5. *Rules for Attorneys’ Fees and Expenses.* Outside counsel who support the Plans must bill each Plan separately. Where attorney time is spent or expenses are incurred across multiple Plans, outside counsel should allocate time and expenses equally among such Plans to the fullest extent possible unless doing so would be unreasonable.

## **V. Documentation and Retention Scholarship, Match, or Promotional Programs**

The Board is authorized to use Fees collected from the Education/ABLE Plans to fund scholarship, match, or promotional programs as the Board, in its discretion, may establish (each an “Education Program” or “ABLE Program”). See 82 Del. Laws, c. 174, § 1, codified at 29 Del. C. § 2722(f)(2). This Section V exclusively governs the use of Fees collected from participants in the Education/ABLE Plans to support scholarship, match or promotional programs pursuant to 29 Del. C. § 2722(f)(2).<sup>1</sup>

### **A. Board Approval**

The Board, by majority vote, must approve an Education or ABLE Program prior to the use of any Fees to establish or support the program. A committee of the Board shall consider and make

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<sup>1</sup> This Section V does not govern normal and customary marketing expenses related to the Education/ABLE Plans, which expenses are governed by Section IV, above.

recommendations concerning any such programs prior to the Board's consideration. Any such recommendation or approval shall be memorialized in writing in accordance with the Board's policy governing the documentation of fiduciary decisions. The Board should consult its assigned Deputy Attorney General and/or outside counsel in connection with the approval of an Education or ABLE Program.

The Board shall not approve an Education or ABLE Program that is proscribed by applicable laws or regulations, or which would be impermissible under any governing Plan or trust document. The Board shall approve funding for the program as part of the annual budget process. An Education Program shall not be funded with Fees collected from participants in any Plan other than the Education Savings Plan. An ABLE Program shall not be funded with Fees collected from participants in any Plan other than the ABLE Plan.

When considering a proposed Education or ABLE Program, the Board, in its discretion, may consider any factors that the Board deems relevant; provided, however, that the Board shall not approve the use of Fees to support any such program unless (a) the Education or ABLE Program will be expected to reasonably help grow the number of participants or assets in the applicable Education/ABLE Plan, or (b) the Education or ABLE Program will be expected to reasonably help advance the principal goals of IRC § 529 or 529A, as appropriate.

#### **B. Use of Fees to Establish or Support an Education/ABLE Program**

Unless otherwise directed by the Board, OST shall have authority to use Fees to establish or support an Education or ABLE Program in accordance with this Section V. Absent Board approval, OST shall not disburse Fees in support of an Education or ABLE Program in excess of the amounts set forth in the annual budget. All OST decisions relating to the application or interpretation of this Section V shall be memorialized in writing in accordance with the Board's policy governing the documentation of fiduciary decisions.

#### **A. Documentation and Retention**

In addition to the foregoing approval requirements, prior to the disbursement of any Fees, OST staff shall ensure that all decisions relating to Fees required under this policy, including outside counsel advice, are documented in writing. All such documents shall be maintained by OST in accordance with a retention schedule approved by the Board.