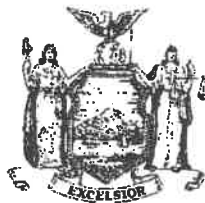


THOMAS P. DiNAPOLI  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

OSC No. 13R-1

MEMORANDUM  
RE  
AN ACT

to amend the state finance law, in relation to the investment standard for investments of the New York state college choice tuition savings program and the New York achieving a better life experience savings account program

PURPOSE: The purpose of this legislation is to bring the New York State college choice tuition savings program (NY 529) and the New York achieving a better life experience savings account program (NY ABLE) in line with investment standards of other states' programs throughout the country.

SUMMARY OF PROVISIONS: Section 1 of this proposal amends section 78 of the state finance law.

Section 2 of this proposal amends section 99-x of the state finance law.

Section 3 of this proposal provides for an immediate effective date.

PRIOR LEGISLATIVE HISTORY: New bill.

JUSTIFICATION: This proposal seeks to eliminate the restrictive and costly investment limitations imposed on both New York's 529 College Choice Tuition Savings Program (NY 529) and 529-A Achieving A Better Life Experience Savings Program (NY ABLE) pursuant to State Finance Law sections 78 and 99-x, respectively and replace such limitations with a prudent investor standard.

State Finance Law sections 78 and 99-x direct the Comptroller, as Trustee of both NY 529 and NY ABLE, to invest the assets of each program in investments authorized by Article 4-A of the Retirement and Social Security Law (Article 4-A), with certain exceptions. Article 4-A governs the investment of retirement and public pension fund assets in New York State. This statute sets forth a legal list of permitted investments (the legal list), with a corresponding maximum percentage of total fund assets which may be ascribed to each investment type.

However, neither NY 529 nor NY ABLE are defined benefit retirement or public pension plans; rather, shares of each program are characterized as municipal fund securities, intended to be used for higher education and disability-related expenses, respectively. While the State makes investment decisions on behalf of members and beneficiaries of public pension funds, NY 529 and NY ABLE account owners make their own investment decisions, choosing from among a menu of options offered by each Trust, which are designed to track increasing costs of higher education or disability-related expenses. Unlike public pension funds, in which assets of all members and beneficiaries are pooled, each account in NY 529 and NY ABLE is segregated from all other accounts, and customized reports based on an account owner's chosen investment options are provided for each account, indicating an account owner's contributions, distributions and ending value. And, while public pension funds are defined benefit plans, neither NY 529 nor NY ABLE are guaranteed by the State. Similar to retail investment products, investments in each program may lose value. Given the very different operational model of NY 529 and NY ABLE, along with different investment goals and time horizons as compared to public pension funds, Article 4-A is not an appropriate investment framework to impose on these programs.

For example, Article 4-A restrictions on the amount of exposure to international investments, currently 10%, now conflict with prudent investment policy supported by economic indicators and investor demand. Various categories of investments offered by NY 529 currently exceed the maximum percentages allowed by the legal list, forcing these assets into the basket. As a result, NY 529 has been unable to implement allocation recommendations for both international equity and international fixed income made by its Direct Plan Investment Manager, The Vanguard Group, Inc. (Vanguard), because there is currently insufficient room left in the basket. New York administers the largest Direct-sold 529 plan in the United States, but due to Article 4-A restrictions, is the only 529 plan which was unable to apply Vanguard's recommended increases in international equity and fixed income.

This Article 4-A investment restriction was also cited as the reason the NY 529 Direct Plan was downgraded in 2017 by Morningstar (an investment rating organization charged with reviews, rates and reports on 529 plans nationally) from a silver rating to a bronze rating. In fact, Nevada's Vanguard Plan, which has higher fees and fewer assets under management compared to NY 529, has received a gold Morningstar rating, a rating two levels above that of the NY 529. The only significant difference between the two programs' investment offerings is the higher international equity and fixed income allocation in Nevada, which the NY 529 Direct Plan is unable to implement due to the Article 4-A investment restrictions. More importantly, the Article 4-A investment restrictions prevent NY 529 from offering the best investment array to over one million program participants for whom the Program has a fiduciary responsibility.

The elimination of misaligned investment constraints imposed by Article 4-A and replacement with a prudent investor standard will allow New York State to offer a best in class menu of investment options to account owners in both NY 529 and NY ABLE.

FISCAL IMPLICATIONS FOR STATE: This change would be revenue-neutral to the State of New York.

EFFECTIVE DATE: This act shall take effect immediately.