



# **Education Savings Account (ESA) Information Booklet**

WE URGE YOU TO CAREFULLY READ THIS DISCLOSURE STATEMENT AND  
CUSTODIAL AGREEMENT PRIOR TO ESTABLISHING AN ACCOUNT.

**Effective December 20, 2011**



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# First Investors Coverdell Education Savings Account Disclosure Statement

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## I. GENERAL

This Disclosure Statement is intended to provide a general explanation of the federal rules applicable to an ESA. This Disclosure Statement does not provide guidance on any state laws. State income tax law may differ from federal income tax law and may be more restrictive. The assets held in the ESA may also be subject to state unclaimed property laws. Certain provisions of the ESA are scheduled to sunset on December 31, 2012 unless extended or made permanent by subsequent law. Therefore, you should make sure you have the most current information before entering into any major transactions. For example, the provisions relating to the definition of Designated Beneficiary, the amount and timing of contributions and the permissible tax-free distributions may revert to former levels unless extended under the Code.

**WE URGE YOU TO READ THIS DISCLOSURE STATEMENT CAREFULLY PRIOR TO ESTABLISHING AN ESA.**

You should confer with your attorney or qualified tax advisor if you would like specific advice regarding an ESA. Additional information can be found in IRS Publication 970, "Tax Benefits for Higher Education," from any district office of the IRS, or from the IRS website at [www.irs.gov](http://www.irs.gov).

**First Investors reserves the right to amend the ESA governing instruments and this Disclosure Statement from time to time.**

## II. DEFINITIONS

The following are definitions of terms used throughout the First Investors Corporation Education Savings Account booklet:

**Code:** The Internal Revenue Code of 1986, as amended from time to time, and regulations, rules, etc. issued thereunder. All references to sections of the Code, regulations, rules, etc. are to such sections as they may from time to time be amended or renumbered.

**Custodian:** Bank of New York Mellon, or any successor thereto.

**Depositor:** The individual or entity establishing the ESA for the benefit of the Designated Beneficiary.

**Designated Beneficiary:** The individual for whom the ESA is established or any successor who is a Family Member and who (i) has not attained age 30 or (ii) is a Special Needs Individual. Except in the case of rollover contributions or trustee-to-trustee transfers, in order to receive contributions, the Designated Beneficiary must be either an individual who has not yet attained age 18 or a Special Needs Individual.

**Designated Death Beneficiary:** The person intended to receive the ESA upon the death of the Designated Beneficiary. If the Designated Death Beneficiary is a Family Member of the Designated Beneficiary who, upon the Designated Beneficiary's death is either an individual who has not yet attained the age of 30 or is a Special Needs Individual, then the Designated Death Beneficiary will become the Designated Beneficiary.

**ESA:** The Coverdell Education Savings Account.

**Family Member:** The spouse of the Designated Beneficiary and other family members of the Designated Beneficiary such as: a child, grandchild, stepchild, half brother, half sister, stepbrother, stepsister, sibling, parent, grandfather, grandmother, stepfather, stepmother, aunt, uncle, niece, nephew, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the Designated Beneficiary, the spouse of any such individual named above, and any first cousin of the Designated Beneficiary, but not the spouse of any first cousin.

**First Investors:** First Investors Corporation and its affiliates, as well as its and their officers, directors, representatives, employees and agents.

**Maximum Contribution:** The total aggregate annual amount that may be contributed to any combination of ESAs for the same Designated Beneficiary, i.e., \$2,000.

**Maximum Individual Contribution:** The maximum annual amount that may be contributed to any ESA by an individual.

**Qualified Education Expenses:** Qualified Higher Education Expenses and Qualified Elementary and Secondary Education Expenses.

Qualified Elementary and Secondary Education Expenses include:

- tuition, fees, academic tutoring, special needs services in case of a Special Needs Individual, books, supplies and other equipment incurred in connection with the enrollment or attendance of a Designated Beneficiary in a public, private or religious school that provides elementary or secondary education as determined by state law;
- expenses for the purchase of computer technology or equipment or Internet access and related services if it is to be used by the Designated Beneficiary and the Designated Beneficiary's family during any of the years the Designated Beneficiary is in elementary or secondary school but not software designated for sports, games or hobbies unless predominantly educational in nature; and
- certain expenses for room and board, uniforms, transportation and supplementary items and services such as extended day programs as required or provided by the school.

Qualified Higher Education Expenses generally include: tuition, fees, books, supplies and equipment required for enrollment or attendance of a Designated Beneficiary at a college, university, certain vocational schools or another eligible post-secondary educational institution as well as certain room and board expenses incurred by students who are enrolled at least half-time as defined by law. Expenses for special needs services needed by a Special Needs Individual must be incurred in connection with enrollment or attendance at an eligible post-secondary school.

Qualified Education Expenses are reduced for certain scholarships and the limits are coordinated with other tax favored education benefit programs.

**Responsible Individual:** The individual who is authorized to redirect the initial investments, direct the investment of additional contributions, and is generally responsible for the administration, management and distribution of the ESA.

**Special Needs Individual:** An individual with special needs as determined under regulations prescribed by the Secretary of Treasury.

## III. INTRODUCTION

An ESA is a trust created or organized in the United States for the purpose of providing Qualified Education Expenses for an individual who is the Designated Beneficiary. The written instrument creating the trust must satisfy certain requirements:

- contributions must (a) be in cash, (b) except in the case of rollover contributions and transfers, not exceed \$2,000 for all aggregated ESAs maintained on behalf of the same Designated Beneficiary for the taxable year, and (c) unless the Designated Beneficiary is a Special Needs Individual, not be made on or after the date on which the Designated Beneficiary of the ESA attains age 18;
- the trustee must be a bank or such other person as approved by the Secretary of the Treasury;
- no part of the trust may be invested in life insurance contracts;
- the assets of the trust may not be commingled with other property except in a common trust fund or common investment fund; and
- ESAs must be distributed in accordance with certain rules (explained below).

The First Investors ESA is a custodial account which is treated as a trust for these purposes under federal tax laws.

## IV. REVOCATION PROCEDURE

If the Depositor did not receive the First Investors ESA Disclosure Statement more than seven (7) days prior to the date on which the Depositor established the ESA for the original Designated Beneficiary, the Depositor may revoke the ESA, for any reason and without penalty, within seven (7) days after the date on which the ESA is established. If the Depositor chooses to revoke the ESA, the entire amount of the contribution will be refunded without penalty and without any adjustment for items such as sales commissions, administrative expenses or fluctuation in market value. If the ESA is established more than seven (7) days after the date the Depositor first received an ESA Disclosure Statement for the original Designated Beneficiary, it cannot be revoked.

In order to revoke the ESA, the Depositor must mail or deliver a written notice of revocation to:

**For Regular Mail Use:**  
First Investors Corporation  
c/o Administrative Data Management Corp.  
Attn: Dept R  
P.O. Box 7837  
Edison, New Jersey 08818-7837

**For Overnight Mail Use:**  
First Investors Corporation  
c/o Administrative Data Management Corp.  
Attn: Dept R  
Raritan Plaza 1, 8<sup>th</sup> Floor  
Edison, New Jersey 08837-3620

If mailed, the revocation notice shall be considered mailed on the date of postmark (or if sent by certified or registered mail, the date of certification or registration) if it is deposited in the mail in the United States in an envelope or other appropriate wrapper, first class postage prepaid, properly

addressed. While verbal revocations are not accepted, the Depositor may contact First Investors at 1-800-423-4026 if the Depositor has any questions with respect to this procedure.

#### V. ESTABLISHMENT OF ESA

Any individual other than a minor is eligible to establish an ESA.

At the time the ESA is established, the Depositor must name a Designated Beneficiary and a Responsible Individual.

#### VI. DESIGNATED BENEFICIARY

When establishing the ESA, the Depositor must name a Designated Beneficiary and may name a Designated Death Beneficiary.

The Depositor may elect to permit the Responsible Individual to change the Designated Beneficiary. If the Depositor does make such an election, the Responsible Individual is also permitted to change the Designated Death Beneficiary. If the Depositor does not make such an election, the Depositor retains the right to change the Designated Beneficiary.

If the Designated Beneficiary is changed to an individual who is a Family Member of that Designated Beneficiary and who is either under the age of 30 or is a Special Needs Individual, there are no immediate tax consequences. However, if the proposed Designated Beneficiary is an individual who is not a Family Member or is not a Special Needs Individual but is over the age of 30, the change will be treated as a distribution.

#### VII. RESPONSIBLE INDIVIDUAL

The following determines the individual who will act as the Responsible Individual:

- when establishing the ESA, the Depositor must name a parent or guardian of the Designated Beneficiary as the Responsible Individual unless the Depositor elects otherwise when establishing the ESA, the Designated Beneficiary will, upon proper documentation submitted to the Custodian, become the Responsible Individual upon the Designated Beneficiary's attainment of the age of majority under state law
- if the Responsible Individual dies or becomes incapacitated while the Designated Beneficiary is a minor under state law, the successor Responsible Individual will be the person named, in a witnessed writing, by the preceding Responsible Individual to succeed in that capacity, or, if no successor is so named, the successor Responsible Individual shall be the Designated Beneficiary's other parent or guardian
- if the Responsible Individual dies or becomes incapacitated after the Designated Beneficiary reaches the age of majority under state law, the Designated Beneficiary will become the Responsible Individual
- if the Designated Death Beneficiary becomes the Designated Beneficiary, the successor Responsible Individual shall be the parent or guardian of such Designated Death Beneficiary.

The Responsible Individual generally has the following powers in connection with the ESA:

- the right to direct the Custodian to change investment options with respect to (a) the existing account, (b) all future contributions, transfers and rollovers and (c) earnings; and
- the right to direct the Custodian regarding the administration, management and distribution of the ESA.

If elected by the Depositor at the time the ESA is established, the Responsible Individual may change the Designated Beneficiary to another Family Member of the current Designated Beneficiary provided the Family Member is either under the age of 30 or is a Special Needs Individual.

#### VIII. CONTRIBUTIONS

**A. General.** Regardless of who establishes the ESA, any individual may, subject to the income limitations explained below, contribute to the ESA.

Entities such as a corporation or a tax-exempt organization may make contributions to the ESA regardless of the income of the entity during the year of the contribution.

Unless the Designated Beneficiary is a Special Needs Individual, no contribution may be made to any ESA on behalf of a Designated Beneficiary who has attained age 18.

Contributions to the ESA for a calendar year must be made by the due date (not including extensions) for filing federal tax returns for the year for which such contribution is made.

Contributions may be made to an ESA and a qualified state tuition program for the same year on behalf of the same Designated Beneficiary.

**B. Maximum Contributions.** The total aggregate amount that may be contributed to any combination of ESAs for which the same individual is the Designated Beneficiary is \$2,000 per year. Any number of individuals and entities may contribute to any number of ESAs established for the benefit of a Designated Beneficiary, provided the Maximum Contribution is not exceeded.

If the total aggregate amount made on behalf of any Designated Beneficiary exceeds the Maximum Contribution, the ESA has an "excess contribution." For more information see subsection H, Excess Contributions.

#### C. Adjustments to Contributions for Income Limitations.

(a) Entities such as a corporation or a tax-exempt organization may make contributions to the ESA regardless of the income of the entity during the year of the contribution.

(b) If the contributing individual's modified adjusted gross income (MAGI) (or, if married and filing jointly, the combined MAGI of the contributing individual and his or her spouse) exceeds certain levels, that individual may not make the Maximum Contribution to the ESAs of any Designated Beneficiary. The tax return of the contributing individual will show how to calculate his or her MAGI, which, for purposes of determining the maximum amount of that individual's ESA contributions for a specific Designated Beneficiary, is calculated without taking into account any foreign earned income, foreign housing exclusion, foreign housing deduction or any exclusion for income derived from sources within certain possessions of the United States or Puerto Rico.

If the contributing individual is at or below a certain MAGI level, called the Threshold Level, he or she can make the Maximum Contribution to the ESAs of any Designated Beneficiary. If the contributing individual files a separate tax return, his or her Threshold MAGI Level is \$95,000. The Threshold Level if the contributing individual is married and files a joint tax return is \$190,000.

If the contributing individual files a separate tax return (regardless of whether the individual is married) and his or her MAGI is more than \$110,000

or if the contributing individual files a joint tax return and the combined MAGI of the individual and his or her spouse is more than \$220,000, that individual can not make any contribution to any ESA.

If the contributing individual files a separate tax return and his or her MAGI is above the Threshold Level but is less than \$110,000 or if the contributing individual files a joint tax return and the combined MAGI of the individual and his or her spouse is above the Threshold Level but is less than \$220,000, the individual will still be able to make a contribution, but it will be limited in amount. The amount by which the individual's MAGI exceeds \$95,000 (if the individual files a separate tax return) or the amount by which the individual's and his or her spouse's combined MAGI exceeds \$190,000 (if the individual files a joint tax return) is called the individual's Excess MAGI. The Maximum Contribution is \$2,000. An individual can calculate his or her contribution limit as follows:

If the individual files separately:

$$\frac{\$15,000 - \text{Excess MAGI}}{\$15,000} \times \text{Maximum Contribution} = \text{Maximum Individual Contribution}$$

If the individual files jointly:

$$\frac{\$30,000 - \text{Excess MAGI}}{\$30,000} \times \text{Maximum Contribution} = \text{Maximum Individual Contribution}$$

The following examples illustrate the above rules:

Example 1: Mr. and Mrs. Smith, a married couple that files a joint tax return, have one son and one daughter, both of whom are under age 18. Mr. and Mrs. Smith have a combined MAGI of \$100,000. Since the Smiths' combined MAGI is less than \$190,000, Mr. Smith and Mrs. Smith are each eligible to contribute up to \$2,000 to an ESA established for the benefit of each of their children. However, Mr. Smith and Mrs. Smith cannot both contribute this amount to each of their children's ESAs since the total contributions that may be made to any child's ESA is limited to \$2,000 per year. Thus, if Mr. Smith contributes \$2,000 to his son's ESA and \$2,000 to his daughter's ESA, nobody else, including Mrs. Smith, may contribute to their ESAs for that year.

Example 2: Same facts as Example 1, except the Smiths' combined MAGI is \$208,000. Both Mr. and Mrs. Smith have the same Maximum Individual Contribution limit:

$$\begin{aligned} & \text{MAGI is } \$208,000 \\ & \text{Excess MAGI is } (\$208,000 - \$190,000) = \\ & \$18,000 \\ & \text{Maximum Contribution is } \$2,000 \end{aligned}$$

So, the Maximum Individual Contribution limit is:

$$\frac{\$30,000 - \$18,000}{\$30,000} \times \$2,000 = \$800$$

As a result, if Mr. Smith contributes his Maximum Individual Contribution amount of \$800 to his son's ESA and his daughter's ESA, Mrs. Smith can also contribute her Maximum Individual Contribution amount of \$800 to her son's ESA and her daughter's ESA. At that point, the son's and the daughter's ESAs would have received aggregate contributions of \$1,600. Since the maximum aggregate contributions that may be made to each of the Smiths' children's ESAs is \$2,000 per year, other individuals, such as Mr. and Mrs. Smith's parents, to the extent otherwise eligible, may make contributions not exceeding in the aggregate \$400 to ESAs for each of the Smith children.

Example 3: Same facts as Example 1, except the Smiths' combined MAGI is \$235,000. Neither Mr. Smith nor Mrs. Smith may contribute to their son's or daughter's ESA since the combined MAGI of Mr. and Mrs. Smith exceeds \$220,000.

Example 4: Mr. Young is not married and has a MAGI of \$102,500. He wishes to contribute to an ESA for which his son is the Designated Beneficiary and an ESA for which his friend's daughter is the Designated Beneficiary. No other individual has contributed to Mr. Young's son's ESA. His friend has already contributed \$1,350 to his daughter's ESA. Mr. Young calculates his Maximum Individual Contribution limit as follows:

MAGI is \$102,500  
Excess MAGI is  
(\$102,500 - \$95,000) = \$7,500  
Maximum Contribution is \$2,000

So, the Maximum Individual Contribution limit is:

$\frac{\$15,000 - \$7,500}{\$15,000} \times \$2,000 = \$1,000$

Mr. Young may therefore contribute \$1,000 to his son's ESA. However, because his friend has already contributed \$1,350 to his daughter's ESA, Mr. Young may only contribute \$650 to his friend's daughter's ESA.

**D. Rollovers and Transfers.** A rollover is a tax-free transfer of cash from one ESA to another ESA. Rollovers are allowed only once per year.

A trustee-to-trustee transfer is a tax-free direct transfer of assets from one custodian or trustee to another custodian or trustee.

For more information on rollovers and transfers see Article IX and consult with your attorney or qualified tax advisor.

**E. Military Death Gratuity or SGLI Rollovers.** An individual who receives a military death gratuity and/or a payment under the Service Member's Group Life Insurance (SGLI) program due to a death that occurs after June 18, 2008, may contribute an amount no greater than the sum of the gratuity and SGLI payments to one or more ESAs, notwithstanding the \$2,000 Maximum Contribution limit and the income phase-out limit that might otherwise apply. The limit of one rollover per ESA during a one-year period does not apply to a military death gratuity or SGLI payment. The maximum amount that may be contributed to one or more ESAs is reduced by the amount of the gratuity and/or SGLI payments made to Roth IRAs. If the military death gratuity and/or SGLI payment is made to the ESA within one year after the date on which the gratuity or payment is received by the individual, the contribution is treated as a rollover to the ESA and is nontaxable when distributed.

**F. Investment of Contributions, Transfers and Rollovers.** Generally, contributions, transfers and rollovers are invested in fund shares on the date of receipt. However, First Investors reserves the right not to invest transfers and/or rollovers in excess of \$100,000 until the seventh (7th) day after the original ESA application for the Designated Beneficiary is signed.

Earnings on contributions, transfers and rollovers will be automatically reinvested in the ESA.

**G. Tax Effects of Contributions.** All contributions to an ESA are made on an after-tax basis and are not tax deductible.

**H. Excess Contributions.** If a contribution is made to an ESA in excess of the contribution limits,

or if an individual makes a contribution to the ESA in excess of the permissible Maximum Individual Contribution described in Article VIII, Section C or if contributions are made on behalf of a Designated Beneficiary who is not eligible to receive contributions, such amount is an "excess contribution."

The excess contribution and any earnings attributable to the excess contribution must be withdrawn from the ESA before the first day of the 6th month of the taxable year following the taxable year for which the contribution was made.

If the excess contribution and earnings thereon are timely withdrawn, only the earnings that are distributed are subject to federal income tax for the year in which the excess contribution was made.

If the excess contribution is not timely withdrawn, the Designated Beneficiary is subject to a non-deductible 6% excise tax upon such excess contribution for the year in which it is made and also for each following year until it is eliminated.

As an alternative to the distribution of such excess contribution, the excess contribution may be eliminated to the extent that future annual contributions are below the Maximum Contribution. However, the 6% excise tax will continue to apply until the excess contribution is completely eliminated.

Earnings that are not timely withdrawn may also be subject to the Nonqualified Distribution Tax. For more information on the Nonqualified Distribution Tax see Article X, subsection B.

For information on how to remove excess contributions, consult with your attorney or qualified tax advisor.

**I. Gift Tax.** The Depositor's designation of a beneficiary for the ESA will not, in itself, subject the Depositor to federal gift taxes. However, contributions to an ESA are treated as a gift to the Designated Beneficiary and may be subject to federal gift tax.

For more information on whether ESA contributions are subject to a federal gift tax, consult with your attorney or qualified tax advisor.

**J. Estate Tax.** Unless a Designated Death Beneficiary has been named, any amounts remaining in the ESA after the death of the Designated Beneficiary will be included in the estate of the Designated Beneficiary and may be subject to federal estate tax.

## IX. DISTRIBUTIONS, ROLLOVERS AND TRANSFERS

**A. General.** Distributions, rollovers and transfers will be made from the ESA at such time and in such manner as directed by the Responsible Individual.

The Responsible Individual has sole responsibility for ensuring that all distributions required to be made from the ESA are made in a timely manner.

For general information on whether a distribution is tax free for federal income tax purposes, see Article X. For specific advice as to whether all or a portion of the distribution will be tax-free, consult with your attorney or qualified tax advisor.

**B. Required Distributions.** Unless the Designated Beneficiary is a Special Needs Individual, all amounts in the ESA must be distributed by the time the Designated Beneficiary attains age 30. If all amounts are not distributed by that time, all amounts remaining in the ESA must be distributed to the Designated Beneficiary within 30

days following the Designated Beneficiary's attainment of age 30.

Upon the death of a Designated Beneficiary who is a Special Needs Individual or a Designated Beneficiary who has not attained age 30 and is not a Special Needs Individual, the Designated Death Beneficiary will become the Designated Beneficiary. If there is no Designated Death Beneficiary, the ESA must be distributed to the Designated Beneficiary's estate within 30 days of such Designated Beneficiary's death.

**C. Rollovers.** A rollover is a tax-free transfer of cash from one ESA to another ESA. There is no limit on the dollar amount that can be rolled over. Any amount distributed from an ESA is not taxable if it is rolled over to another ESA for the benefit of the same Designated Beneficiary or to an ESA for the benefit of a Designated Beneficiary who is a Family Member and who is either under the age of 30 or is a Special Needs Individual. In order to qualify as a tax-free rollover the amount must be rolled over to the ESA within 60 days after the date the distribution is received.

In order to qualify for tax-free rollover treatment, it is not necessary to roll over the entire amount of an ESA distribution. It is permissible to rollover a portion of an ESA distribution.

Taxable amounts not rolled over within the 60-day period do not qualify for tax-free rollover treatment and must be treated as a taxable distribution to the Designated Beneficiary. Taxable amounts not rolled over may also be subject to the Nonqualified Distribution Tax.

Rollovers between ESAs are allowed only once per year. The one-year period begins on the date that the Designated Beneficiary receives the ESA distribution and not on the date it is rolled over into another ESA.

To properly roll over all or part of an ESA, a timely written rollover election must be made and such election must indicate that such amount is to be treated as a rollover contribution. For specific advice as to whether or not all or a portion of a contribution qualifies as a rollover, consult with your attorney or qualified tax advisor.

**D. Trustee-to-Trustee Transfers.** A trustee-to-trustee transfer is a direct transfer of cash or other assets from one custodian or trustee to another custodian or trustee. There is no limit on the dollar amount of trustee-to-trustee transfers. Unlike a rollover, there is no distribution and there is no limitation on the number of trustee-to-trustee transfers that may be made within a one-year period.

Generally, trustee-to-trustee transfers are neither includable in federal income tax nor deductible. For specific advice as to whether or not all or a portion of a contribution qualifies as a transfer, consult with your attorney or qualified tax advisor.

**E. Transfers Upon Divorce.** The transfer of assets from an ESA to an ESA of a spouse or former spouse under a divorce or separation agreement is a non-taxable transfer. For specific advice regarding transfers upon divorce, consult with your attorney or qualified tax advisor.

**F. Disclaimer.** Neither the Custodian nor First Investors takes any responsibility or assumes any liability for any distribution, rollover or transfer which does not qualify as a tax-free distribution, rollover or transfer under the Code. Since penalty taxes may be imposed (in addition to other possible negative tax consequences) when nonqualified distributions and invalid

rollovers or transfers are made from an ESA, an attorney or qualified tax advisor should be consulted to ensure that any distribution, rollover or transfer is made in the appropriate manner.

## X. TAX TREATMENT OF DISTRIBUTIONS

**A. Federal Income Tax.** Distributions from an ESA for a year that are, in the aggregate, less than or equal to the amount of Adjusted Qualified Education Expenses incurred by the Designated Beneficiary for that year are not subject to federal income tax.

If the aggregate amount of distributions for a year is greater than the aggregate amount of Adjusted Qualified Education Expenses incurred by the Designated Beneficiary for that year, the amount of such excess distribution is a Nonqualified Distribution. For federal income tax purposes, Nonqualified Distributions are treated as distributions of a pro-rata share of contributions and accumulated earnings and the amount that is attributable to earnings on the excess is subject to federal income tax of the Designated Beneficiary at his or her income tax rate and may be subject to the Nonqualified Distribution Tax.

For purposes of determining Adjusted Qualified Education Expenses, the total Qualified Education Expenses for the year must be reduced by any tax-free educational assistance. Tax-free educational assistance includes:

- The tax-free part of scholarships and fellowships,
- Veterans' educational assistance,
- Pell grants,
- Employer-provided educational assistance, and
- Any other nontaxable (tax-free) payments (other than gifts or inheritances) received as educational assistance.

If, for the year of distribution from the ESA, the Designated Beneficiary elects to use the American Opportunity Credit or Lifetime Learning Credit, the amount distributed from the ESA is not subject to federal income tax, provided that the distribution from the ESA is not used for the same education expenses incurred by the Designated Beneficiary for which a credit was claimed, and further provided that the ESA and credit do not exceed the Qualified Education Expenses. If the Qualified Education Expenses are less than the tax credit and ESA distribution, then the Qualified Education Expenses are reduced by tax credit and the remainder is deemed to be the distribution from the ESA. To determine the taxable portion of the distribution from the ESA, consult with your attorney or qualified tax advisor.

If the Designated Beneficiary receives in the same year a distribution from the ESA and a distribution from a Qualified Tuition Program as defined in Section 529 of the Code and the distributions together exceed the Qualified Education Expenses, the excess distributions are allocated between the ESA and Qualified Tuition Program before determining the taxable amount of each distribution.

**B. Nonqualified Distribution Tax.** Taxable distributions from an ESA may, in addition to being subject to federal income tax, be subject to a 10% additional tax. However, the 10% additional tax will not apply to a taxable distribution from an ESA if the distribution is:

1. made to a Designated Death Beneficiary (or the estate of the Designated Beneficiary) on or after the death of the Designated Beneficiary,
2. made to the Designated Beneficiary if the Designated Beneficiary is disabled within the meaning of Section 72 (m)(7) of the Code,
3. made on account of certain scholarships, allowances, or payments received by the Designated Beneficiary to the extent the amount

- of the distribution does not exceed the amount of such scholarship, allowance or payment, made on account of the attendance of the Designated Beneficiary at a United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy to the extent that the amount of the payment or distribution does not exceed the costs of advanced education attributable to such attendance, or
5. an amount that is includible in gross income solely because the expenses were reduced by the amount claimed under the American Opportunity Credit or Lifetime Learning Credit.

For purposes of 2, above, disability means the inability of the Designated Beneficiary to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.

Excess contributions that are timely distributed (together with any income attributable to such excess contributions) are not subject to the Nonqualified Distribution Tax.

The Nonqualified Distribution Tax does not apply to any distribution which is timely rolled over or transferred to another ESA.

## XI. USE OF ESA TO SECURE A LOAN

Any portion of your ESA used as security for a loan is treated as a distribution and any taxable portion must be included in gross income for that taxable year and may be subject to the Early Withdrawal Tax.

## XII. REPORTING REQUIREMENTS

If a transaction has occurred upon which a special penalty tax is imposed, such as an excess contribution, a nonqualified distribution or a failure to make a timely distribution, the Designated Beneficiary is required to file Form 5329 with his or her annual income tax return for such year.

## XIII. PROHIBITED TRANSACTIONS

The Depositor, Responsible Individual and the Designated Beneficiary may not participate in any transaction with the ESA which is prohibited by law.

If the Depositor, Responsible Individual and/or Designated Beneficiary engages in a "prohibited transaction" as defined in Section 4975 of the Code, the ESA will lose its tax exempt status. This means that a tax will be imposed on the earnings of the ESA even if a distribution is not actually made. The earnings of the ESA may also be subject to the Nonqualified Distribution Tax. Such "prohibited transactions" include but are not limited to the following activities with a "disqualified person":

- the sale, exchange, or lending of any property between the ESA and "disqualified person";
- lending of money or other extension of credit between the ESA and "disqualified person";
- furnishing of goods, services, or facilities between the ESA and "disqualified person."

Examples of "disqualified persons" include but are not limited to fiduciaries, family members and persons providing services to the ESA.

For more information on "prohibited transactions," consult with your attorney or qualified tax advisor.

## XIV. IRS APPROVAL

This ESA is a model ESA which follows the approved document considered by the IRS to meet

the applicable requirements of the Code. Therefore, the IRS will not issue a formal determination as to the qualified status of your ESA. The IRS's approval is a determination only as to the form of the ESA and does not represent a determination as to the merits of the ESA. Further information may be obtained from any IRS office or from the IRS website at [www.irs.gov](http://www.irs.gov).

## XV. ESA BALANCE

Each of the mutual fund shares held in the ESA has an equal interest in the assets, net investment income and capital gains of the mutual fund selected. The value of the shares is dependent upon the market value of the securities in the mutual fund investment portfolio, which are subject to fluctuations; therefore, growth in the value of the ESA cannot be projected or guaranteed. Dividends from net investment income and capital gains distributions paid by the mutual funds selected will be reinvested in fund shares at the applicable reinvestment price as of the respective reinvestment dates and such additional shares will be credited to the ESA.

## XVI. FEES, CHARGES & COMMISSIONS

If you fund your First Investors ESA by the direct purchase of Class A mutual fund shares, you generally will be assessed a sales commission equal to a percentage of the offering price. If you fund your First Investors ESA by the direct purchase of Class B shares or certain Class A shares, those purchases will be transacted at the fund's net asset value and a contingent deferred sales charge may be imposed upon redemption of such shares.

In addition to applicable sales commissions, there are fund operating expenses, i.e., 12b-1 fees and management fees, associated with each fund account in which your contributions are invested. Each fund account is authorized to assess a low balance account fee if, for any reason other than market fluctuation, your investment in such fund account falls below the required minimum investment amount. Each fund account is authorized to assess a reasonable administrative service fee. An example of administrative services for which a fee may be imposed would be as follows: if mail which was sent to you has been returned as undeliverable, the fund account is unable to obtain a current address and the fund account employs a search company to locate you. For an explanation of operating expenses and fees see the Prospectus and Statement of Additional Information for each fund account which you select for investment of your contributions.

Refer to the Custodial Agreement for a discussion of fees, if any, charged by the Custodian.

# Coverdell Education Savings Account Custodial Agreement

## Form 5305-EA (Under Section 530 of the Internal Revenue Code)

The Depositor established a Coverdell Education Savings Account under Section 530 for the benefit of the Designated Beneficiary whose name appears on the Application exclusively to pay for the qualified elementary, secondary and higher education expenses, within the meaning of Section 530(b)(2), of such Designated Beneficiary.

The Depositor or, if funds are being rolled over from another financial institution, the Responsible Individual, has contributed the sum indicated on the Application to the custodial account for the benefit of the Designated Beneficiary.

The Depositor, Responsible Individual and Custodian make the following agreement:

### ARTICLE I

The Custodian may accept additional cash contributions provided the Designated Beneficiary has not attained the age of 18 as of the date such contributions are made. Contributions by an individual contributor may be made for the tax year of the Designated Beneficiary by the due date of the beneficiary's tax return for that year (excluding extensions). Total contributions that are not rollover contributions described in section 530(d)(5) are limited to \$2,000 for the tax year. In the case of an individual contributor, the \$2,000 limitation for any year is phased out between modified adjusted gross income (AGI) of \$95,000 and \$110,000. For married individuals filing jointly, the phase-out occurs between modified AGI of \$190,000 and \$220,000. Modified AGI is defined in section 530(c)(2).

### ARTICLE II

No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or a common investment fund (within the meaning of section 530(b)(1)(D)).

### ARTICLE III

1. Any balance to the credit of the Designated Beneficiary on the date on which he or she attains age 30 shall be distributed to him or her within 30 days of such date.

2. Any balance to the credit of the Designated Beneficiary shall be distributed within 30 days of his or her death unless the designated death beneficiary is a Family Member of the Designated Beneficiary and is under the age of 30 on the date of death. In such case, that Family Member shall become the Designated Beneficiary as of the date of death.

### ARTICLE IV

The Depositor shall have the power to direct the Custodian regarding the investment of the above-listed amount assigned to the custodial account (including earnings thereon) in the investment choices offered by the Custodian. The Responsible Individual, however, shall have the power to redirect the Custodian regarding the investment of such amounts, as well as the power to direct the Custodian regarding the investment of all additional contributions (including earnings thereon) to the custodial account. In the event that the Responsible Individual does not direct the Custodian regarding the investment of additional contributions (including earnings thereon), the initial investment direction of the Depositor also will govern all additional contributions made to the custodial account until such time as the Responsible Individual otherwise directs the Custodian. Unless otherwise provided in this agreement, the Responsible Individual also

shall have the power to direct the Custodian regarding the administration, management, and distribution of the account.

### ARTICLE V

The "Responsible Individual" named by the Depositor shall be a parent or a guardian of the Designated Beneficiary. The custodial account shall have only one Responsible Individual at any time. If the Responsible Individual becomes incapacitated or dies while the Designated Beneficiary is a minor under state law, the successor Responsible Individual shall be the person named to succeed in that capacity by the preceding Responsible Individual in a witnessed writing or, if no successor is so named, the successor Responsible Individual shall be the Designated Beneficiary's other parent or successor guardian. Unless otherwise directed by checking the option on the Education Savings Account Application, at the time that the Designated Beneficiary attains the age of majority under state law, the Designated Beneficiary becomes the Responsible Individual. If a Family Member under the age of majority under state law becomes the Designated Beneficiary by reason of being a named death beneficiary, the Responsible Individual shall be such Designated Beneficiary's parent or guardian. If the option is checked on the Education Savings Account Application, the Responsible Individual will continue to act as such. However, if the Responsible Individual becomes incapacitated or dies after the Designated Beneficiary reaches the age of majority under state law, the Designated Beneficiary shall become the Responsible Individual.

### ARTICLE VI

Unless the option is checked on the ESA Application, the Responsible Individual may change the beneficiary designated under this agreement to another member of the Designated Beneficiary's family described in section 529(e)(2) in accordance with the Custodian's procedures.

### ARTICLE VII

1. The Depositor agrees to provide the Custodian with all information necessary to prepare any reports required by section 530(h).

2. The Custodian agrees to submit to the Internal Revenue Service (IRS) and Responsible Individual the reports prescribed by the IRS.

### ARTICLE VIII

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III will be controlling. Any additional articles inconsistent with section 530 and related regulations will be invalid.

### ARTICLE IX

This agreement will be amended as necessary to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of the Depositor and the Custodian.

### ARTICLE X

Note: Unless otherwise stated, for the definitions of terms used throughout Article X, refer to the First Investors Education Savings Account Disclosure Statement.

1. (a) By execution of the First Investors Education Savings Account Application (Application), the individual named thereon (Depositor) applied for a First Investors Education Savings Custodial Account (Custodial Account) described in Section 530 of the Internal Revenue

Code of 1986, as amended (Code) in order to provide for the education of a Designated Beneficiary and has adopted the First Investors Custodial Agreement and the accompanying Disclosure Statement.

(b) If a Coverdell Education Savings Account was established with another financial institution and those funds are being rolled over to a First Investors Education Savings Account, the Responsible Individual shall apply for a First Investors Education Savings Custodial Account (Custodial Account) described in Section 530 of the Internal Revenue Code of 1986, as amended (Code) in order to provide for the education of a Designated Beneficiary. By executing the Application, the Responsible Individual has adopted the First Investors Custodial Agreement and the accompanying Disclosure Statement.

(c) First Investors is committed to complying with the USA PATRIOT Act and the regulations issued thereunder. Therefore, First Investors reserves the right to: (i) verify the identity of the Responsible Individual, the Depositor and any successor Responsible Individual; and (ii) redeem the account at the then current market value if said identity is not verified to its satisfaction.

(d) The Custodian has accepted its appointment as Custodian. However, the Custodian's acceptance of the Custodial Account on behalf of a Designated Beneficiary is expressly conditioned upon the Responsible Individual's acceptance of the rights and responsibilities accorded hereunder and in the Disclosure Statement.

The Custodian will establish and maintain a Custodial Account for the benefit of the Designated Beneficiary upon receipt of a properly completed and executed Application and other documentation required by the Custodian and First Investors. The Custodian shall hold in the Custodial Account all contributions, transfers and rollovers which are received by it in good order, subject to the terms and conditions of this Agreement and for the purposes set forth herein. The Custodian shall be responsible only for such assets as shall be actually received by it.

Unless otherwise indicated on the Application, upon attainment of the age of majority under the laws of the Designated Beneficiary's state of residence at such time, the Designated Beneficiary must advise the Custodian in writing (accompanied by such documentation as the Custodian may require) that he or she is assuming sole responsibility to exercise all rights, powers, responsibilities, authorities and requirements associated with the Custodial Account. Upon such notice to the Custodian, the Designated Beneficiary will become the Responsible Individual, the Custodian and First Investors will deal solely with the Designated Beneficiary as the person controlling the administration and management of the Custodial Account, and the former Responsible Individual will no longer have any responsibilities, rights, powers or authorities with respect to the Custodial Account. Absent such written notice by the Designated Beneficiary, neither the Custodian nor First Investors shall be under any obligation to acknowledge the Designated Beneficiary's right to exercise such responsibilities, rights, powers and authorities.

(e) Where applicable, any reference to the Responsible Individual or Designated Beneficiary shall include any successor Responsible Individual or Designated Beneficiary who has been designated

as such in accordance with Section 530 of the Code and any regulations, rulings and other administrative pronouncements issued thereunder.

(f) The Custodial Account is created for the exclusive benefit of the Designated Beneficiary. Neither the Depositor, Responsible Individual nor Designated Beneficiary shall use the Custodial Account or any portion thereof as security for a loan, nor shall such individual engage in any transaction prohibited by Section 4975 of the Code.

(g) Assets held in a Custodial Account shall not be commingled with the property of others. For purposes of the preceding sentence, investment in a Designated Investment Company shall not be considered commingling.

(h) The Depositor, Responsible Individual, Custodian and First Investors agree that the Custodial Account shall be governed by the provisions of the Custodial Agreement and the Disclosure Statement as well as the Application which are made a part thereof.

(i) After the Depositor has established the Custodial Account, made a contribution to the Custodial Account for the benefit of the Designated Beneficiary, and specified the initial investment elections, the Depositor shall then have no further responsibilities, rights, powers or authorities other than to revoke the Custodial Account within the specified time frames as described in the accompanying Disclosure Statement or as may be required by law with respect to amendments to this Custodial Account (unless the Depositor and Designated Beneficiary are the same person or unless the Depositor and the Responsible Individual are the same person). The Responsible Individual must execute all forms, applications, certifications and other documents on behalf of the Designated Beneficiary. Any right, power, responsibility, authority or requirement given to the Designated Beneficiary under this Agreement or any related document shall be exercised or carried out by such Responsible Individual on behalf of any Designated Beneficiary.

2. (a) Contributions, transfers and rollovers must be made to the Custodial Account by check drawn on a U.S. bank payable to First Investors Corporation, by electronic funds transfer, or by federal fund wire.

(b) (i) Contributions which qualify as "rollover contributions" described in Section 530 of the Code may be made to the Custodial Account.

(ii) Rollover contributions and transfers shall be designated as such in writing and the Custodian and First Investors are authorized to rely on such identification. Neither the Custodian nor First Investors shall be liable in any manner for relying on such identification or certifications which it believes to be genuine.

(iii) Neither the Custodian nor First Investors shall be liable in any manner for a transfer or rollover that does not qualify as a transfer or rollover.

(c) (i) The Custodian must receive specific instructions for specific purchases, sales, exchanges, and other transactions in a form acceptable to the Custodian.

(ii) If the Custodian is not provided with a properly completed Application or proper investment instructions or if the Custodian receives instructions which are, in the opinion of the Custodian, incomplete, not clear or otherwise not acceptable, the Custodian may request such information as it deems

necessary. Pending receipt of such Application, documentation and/or clear instructions, any amount received by the Custodian may: (I) remain uninvested, (II) be invested in money market shares, (III) be returned to the contributor (or following the death of the contributor, to the contributor's estate), or (IV) be returned to the remitting custodian or trustee.

(iii) Contributions, transfers and rollovers to the Custodial Account and investments currently held in the Custodial Account may be divided between or among more than one Designated Investment Company. Unless waived, each payment into the Custodial Account must meet the minimum amount required by the Designated Investment Company. The term "Designated Investment Company" shall mean a registered investment company of the open-end management type, the securities of which are sponsored, distributed and/or underwritten by First Investors Corporation.

(iv) The selection of the Designated Investment Company with respect to the investments held in the Custodial Account, current contributions, transfers and rollovers and those made in the future may be changed at any time and from time to time upon receipt by the Custodian of instructions acceptable to the Custodian.

(v) The Custodian shall have no duty to inquire into the investment practices of a Designated Investment Company and each Designated Investment Company shall have the exclusive right to control its investments.

(d) The Custodian shall invest all contributions, transfers and rollovers in the securities of the Designated Investment Company specified by the Depositor and/or the Responsible Individual and the Custodian or its nominee shall be the holder of record.

(e) The Custodian shall be responsible for executing such investment instructions promptly; provided, however, that if a transfer or rollover in excess of \$100,000 is made to the Custodial Account, neither the Custodian nor First Investors shall be obligated to invest any portion of the transfer or rollover to the Custodial Account until seven (7) calendar days have elapsed from the execution date of the Application. Investments may be delayed due to a force majeure (cause or event outside the reasonable control of the parties or that could not be avoided by the exercise of due care, such as an act of God or any mechanical, electronic or communications failure), government restrictions or changes, exchange or market rulings, strikes, interruptions of communications or data processing services, or disruptions in orderly trading on any exchange or market.

(f) Generally, all dividends and capital gains received upon assets in the Custodial Account shall be reinvested in the securities of the Designated Investment Company selected by the Depositor or Responsible Individual and credited to the Custodial Account.

(g) Neither the Custodian nor First Investors shall be responsible in any way for the collection of contributions provided for under this Agreement, the selection of the investments for the Custodial Account, the purpose or propriety of any contribution, transfer or rollover or any action taken at the direction of the Depositor or Responsible Individual or such other person or entity which the Custodian or First Investors believes to be

authorized to act on behalf of the Designated Beneficiary.

(h) Neither the Custodian nor First Investors shall be liable to the Depositor, Designated Beneficiary, Responsible Individual or any other person for any depreciation or similar loss of assets or for the failure of the Custodial Account to produce any or larger net earnings.

(i) Unless required by law, neither the Custodian nor First Investors shall have any obligation to: verify the Depositor's or any other contributor's eligibility to make contributions; compel the Depositor or any other contributor to make any contribution; determine whether contributions made to the Custodial Account fall within the applicable limits; give advice on the deductibility of any contributions, or notify the Responsible Individual or any other person of the existence or amount of an "excess contribution", if any, as that term is defined in Section 4973(b) of the Code. The Custodian and First Investors may rely solely on the representations and instructions of the Depositor and Responsible Individual.

3. (a) The Custodian shall maintain a record of the Custodial Account established for the Designated Beneficiary reflecting account activity.

(b) The Custodian shall furnish statements to the Responsible Individual setting forth receipts, investments, disbursements, and other transactions. Upon the expiration of thirty (30) days after furnishing such statement, the Custodian and First Investors shall be forever released and discharged from all liability and accountability to anyone with respect to their acts, transactions, duties, obligations, or responsibilities as shown in or reflected by such statement, except with respect to any such acts or transactions as to which the Custodian or First Investors shall have received written objections within such thirty (30) day period.

(c) By giving investment instructions to the Custodian, the Depositor and Responsible Individual will be deemed to have acknowledged receipt of the prospectus for any shares of the Designated Investment Company in which assets in the Custodial Account are invested.

(d) The Custodian shall deliver, or cause to be delivered, to the Responsible Individual all notices, shareholder reports, prospectuses, financial statements, proxies, voting instruction cards, and proxy soliciting material relating to Designating Investment Companies held in the Custodial Account. The Custodian, in its capacity as Custodian shall vote all shares of the Designated Investment Company held hereunder in accordance with the instructions of the Responsible Individual. However, the Custodian shall, unless otherwise prohibited by applicable law, without direction from the Responsible Individual, vote shares held in the Custodial Account for which no voting instructions are timely received in the same proportion as shares for which voting instructions from such other shareholders are timely received.

4. (a) Generally, no distributions will be made from the Custodial Account until a properly completed and executed request form has been submitted in good order to the Custodian.

(b) (i) The Responsible Individual or such other person or entity which the Custodian believes to be authorized to act on behalf of the Designated Beneficiary, may request a distribution. Such request must be in a form and manner acceptable to the Custodian. Such request must be in writing and must set forth the amount and method of distribution. In the event such request is, in the opinion of the

Custodian, incomplete, not clear or otherwise not acceptable, the Custodian may request information it deems necessary be provided in a form and manner acceptable to the Custodian.

Upon receipt of such request, and, if applicable, additional information requested by the Custodian, the Custodian is authorized to liquidate and distribute assets held in the Custodial Account to make distributions, transfers or rollovers. Such distribution, transfer or rollover will discharge the Custodian from any and all claims as to the portion of the Custodial Account so distributed, transferred or rolled over.

(ii) The Custodian may refuse to honor any request for the distribution, transfer or rollover of any assets or payment of any amount from the Custodial Account if such request does not conform to the then current administrative policies of the Custodian or First Investors or the then applicable requirements for the distribution, transfer or rollover of shares of the Designated Investment Company in which the assets of the Custodial Account are invested and to which such request relates.

(iii) The Custodian and First Investors may rely solely on the representations and instructions of the Responsible Individual or such other person or entity which the Custodian or First Investors believes to be authorized to act on behalf of the Designated Beneficiary.

(iv) Neither the Custodian nor First Investors shall: (i) be responsible for the timing, purpose or propriety of any distribution, transfer or rollover from the Custodial Account made pursuant to instructions from the Responsible Individual or such other person or entity which the Custodian believes to be authorized to act on behalf of the Designated Beneficiary, or (ii) incur any liability or responsibility for any tax imposed as a result of any such distribution, transfer or rollover.

(v) Unless otherwise required by law, neither the Custodian nor First Investors shall have any obligation to give advice as to whether taxes or penalties are due on distributions, transfers or rollovers made hereunder or the amount due.

(c) (i) A distribution that qualifies as an Eligible Rollover Distribution under the Code may be transferred as a direct rollover by the Responsible Individual to another Education Savings Account which accepts such transfer. The Custodian shall pay such distribution in the form of a direct rollover in accordance with regulations, rulings and other administrative pronouncements issued by the Internal Revenue Service.

(ii) The Custodian may require that before a direct rollover or trustee-to-trustee transfer is made to an unaffiliated company, the successor trustee or custodian must agree in writing to accept the transferred assets.

(d) Notwithstanding anything to the contrary in this Agreement, to the extent permitted by applicable federal law, the Custodian, upon receipt of an Internal Revenue Service levy against the Custodial Account (Levy), may liquidate assets held in the Custodial Account, with or without notice to the Depositor, Responsible Individual or Designated Beneficiary, and forward the proceeds to satisfy such Levy. Except as otherwise provided by applicable law, neither the Custodian nor First

Investors shall be liable for any action taken in good faith and in exercise of due care. In the event of any action undertaken by the Custodian or First Investors resulting from any order described herein, all court costs, legal expenses, reasonable compensation for the time expended by the Custodian or First Investors and any other expenses and costs, including reasonable attorney's fees, shall be collected by the Custodian or First Investors from the Custodial Account in accordance with this Agreement.

(e) If a Designated Beneficiary who is not a Special Needs Individual attains age 30, all amounts remaining in the ESA must be distributed to the Designated Beneficiary within 30 days following his or her attainment of age 30. Notwithstanding the foregoing, no payments will be made to such Designated Beneficiary until such time as the Custodian receives a properly completed payment request form.

(f) Neither the Custodian nor First Investors shall have any obligation to pay interest on outstanding checks or distributions.

(g) Neither the Custodian nor First Investors shall have any obligation to return any amounts withheld from any distribution for federal income tax purposes where the amount withheld is a result of the Responsible Individual's, Designated Beneficiary's, legal representative's or authorized entity's failure to provide a proper withholding election prior to such distribution.

5. (a) This Agreement shall terminate upon the complete distribution of the assets of the Custodial Account.

(b) Upon one hundred eighty (180) days written notice or such shorter notice as may be acceptable to the Custodian, First Investors Corporation (Sponsor) may remove the Custodian and name a Successor Custodian.

(c) Upon one hundred eighty (180) days written notice or such shorter notice as may be acceptable to the Sponsor, the Custodian may resign. Upon notice of such resignation, the Sponsor will name a Successor Custodian. If, within ninety (90) days of the mailing of the notice of resignation of the Custodian, no successor custodian is appointed by the Sponsor or if the successor custodian appointed by the Sponsor has not notified the Custodian of its acceptance, the Custodian may appoint a successor custodian.

(d) Upon receipt by the Custodian of written notice of acceptance by the Successor Custodian, the Custodian shall transfer and pay over to such Successor Custodian the assets of the Custodial Account. Any outstanding fees, expenses and costs of the Custodian shall be payable in accordance with an agreement between the Custodian and the Sponsor. Upon the transfer of the assets of the Custodial Account, the Successor Custodian will succeed to all the rights and responsibilities of the Custodian hereunder and the Custodian shall be relieved from any future liability with respect to all amounts so transferred.

(e) The appointment and acceptance of the Successor Custodian shall be deemed an amendment to the definition of the Custodian in this Agreement and shall not terminate this Agreement. Neither the Responsible Individual nor the Designated Beneficiary shall be required to sign any agreement accepting the Successor Custodian and shall be deemed to have accepted the Successor Custodian if the Responsible Individual or, if applicable, the Designated Beneficiary does not terminate the Custodial Account.

(f) Successor Custodian means a bank or such other person who has agreed to and is qualified to act under this Agreement.

(g) If after the Custodian's resignation or removal no qualified successor has notified the Custodian of its acceptance to act. The Custodian shall, upon forty-five (45) days advanced notice to the Responsible Individual, terminate the Custodial Account. Termination of the Custodial Account shall be effected by distributing the assets of the Custodial Account by a single sum payment in cash or in kind as the Custodian may elect, less any assets which may be reserved by the Custodian to pay its fees, expenses and costs, to the extent not otherwise paid. The Custodian shall distribute the Custodial Account to the Responsible Individual for the benefit of the Designated Beneficiary.

(h) Upon the resignation or removal of the Custodian, the Responsible Individual or, if applicable, the Designated Beneficiary may request that the assets held in his or her Custodial Account be transferred to another custodian or trustee designated as eligible to receive such transfer. Such request must be in a form and manner acceptable to the Custodian. Upon completion of such transfer, this Agreement shall terminate and the Custodian and First Investors shall be relieved from all future liability with respect to all amounts so transferred.

(i) The Custodian shall not be liable for the acts or omissions of any Successor Custodian. Unless otherwise agreed to in writing by the Custodian or First Investors, upon the complete distribution or transfer of the assets of the Custodial Account, the Custodian and First Investors shall be relieved of all further liability with respect to this Agreement, the Custodial Account and the assets so distributed or transferred.

6. (a) Sales and other charges attributable to the acquisition of securities, as stated in the Designated Investment Company's then current prospectus, will be charged to the Custodial Account for which such securities are acquired.

(b) Any taxes levied or assessed upon or in respect of the Custodial Account and any other expenses or fees incurred by or on behalf of the Custodial Account shall be paid from the assets of the Custodial Account. The Custodian shall liquidate such securities held in the Custodial Account as are necessary to pay any such taxes, fees and expenses in full.

(c) There is an annual custodial fee for each Custodial Account, regardless of the number of Designated Investment Companies selected for investment. The annual custodial fee is currently paid by the respective Designated Investment Companies. However, the Designated Investment Companies reserve the right to discontinue paying this fee at any time. If the Designated Investment Companies exercise this right, the fee will be charged to the Custodial Account.

(d) First Investors reserves the right to charge an annual maintenance fee which shall be deducted from the Custodial Account on an annual basis and reserves the right to modify the annual maintenance fee from time to time.

(e) Except as otherwise provided herein, all previously disclosed fees and expenses incurred in connection with the establishment, maintenance and administration of the Custodial Account, including but not limited to the payment of low balance fees, will be paid from the Custodial Account. The Custodial Account may also be charged fees for an Account history statement, copies of canceled checks, duplicate tax forms and use of express mail service pursuant to the Depositor's, Responsible

Individual's or Designated Beneficiary's request. See the Designated Investment Company's prospectus and Statement of Additional Information for an explanation of such fees.

(f) The Depositor, Responsible Individual and Designated Beneficiary agree that fees shall be paid when due. Such fees may be waived by the Custodian or, if applicable, First Investors at any time and may be revised by the Custodian upon forty-five (45) days written notice to the Responsible Individual.

The Custodian and First Investors may impose new fees or increase, decrease or otherwise modify its fees for services hereunder by written notice to the Responsible Individual, forty-five (45) days in advance of the effective date of such imposition or change in fees. The Responsible Individual and Designated Beneficiary shall be deemed to have consented to any new or revised fees if the Custodial Account is not terminated before the effective date of such imposition or revision. Custodial and administrative fees which have been added or revised in accordance with this Section will become legally binding.

7. (a) The Responsible Individual agrees to notify the Custodian of any changes to his or her name and social security number and to his or her mailing address within a reasonable time. If the Responsible Individual fails to do so, mail is returned as undeliverable, and the Custodian has been unable to obtain a current address, the Custodian may employ a company to locate the Responsible Individual in accordance with rules established by the Securities and Exchange Commission. Returned dividend checks and other distributions will be outstanding and will not be reinvested into the Designated Investment Company from which it was removed. No interest will be paid on outstanding checks. All future dividends and other distributions will be reinvested in additional shares until new instructions are provided. See the Designated Investment Company's prospectus and Statement of Additional Information for a detailed explanation of these provisions.

(b) If the Custodian is unable to locate a person entitled to assets held in the Custodial Account, or if there has been no claim made for such assets, the Custodian shall continue to hold the assets due such person, subject to the unclaimed property laws of the applicable state to the extent not superseded by federal statutes.

8. The Custodian delegates to First Investors Corporation the right to amend this Agreement, including any retroactive or prospective amendments necessary to ensure that the Agreement will satisfy or continue to satisfy the applicable requirements of the Code. This Agreement may be amended from time to time by submitting a copy of any such amendment to the Responsible Individual, the Custodian and to any other person as required by law, at least forty-five (45) days in advance of the effective date of any such amendment. Notwithstanding the foregoing, no such advance submission shall be required in the case of any amendment that may be required by the Internal Revenue Service in order that the Custodial Account shall remain an Education Savings Custodial Account under Section 530 of the Code or that is not required to ensure compliance with the Code but that the Custodian or First Investors deems desirable to (i) clarify existing provisions or (ii) reflect provisions of laws, regulations, notices or other Internal Revenue Service or regulating administrative pronouncements that could benefit the Designated Beneficiary or Responsible Individual, provided, however, that such amendment does not significantly affect fees, expenses, charges and costs. The Depositor, Responsible Individual,

Designated Beneficiary and any other person or entity shall be deemed to have consented to any amendment if the Custodial Account is not terminated.

9. (a) Written instructions and notices required to be given to the Custodian by this Agreement shall be signed and remitted to the Custodian. Any such notice or instruction shall not become effective until actual receipt of said notice or instruction in good order by the Custodian.

(b) Any notice from the Custodian provided for in this Custodial Agreement will be effective if sent by regular mail to the Responsible Individual at the address as shown on the records of the Custodian or, if the Responsible Individual requested to receive notices electronically, if delivered to the e-mail address provided for such purpose. In the event that the Custodian is notified that electronic delivery failed for any reason, the notice will then be sent by regular mail to the address of record. A Responsible Individual will be deemed to have received such notice seven (7) days after mailing by the Custodian. Notwithstanding the foregoing, the Custodian will be deemed to have mailed such notices to the Responsible Individual if mail that had been previously sent to that person was returned as undeliverable and the Custodian has not been provided with a current address in accordance with its procedures.

10. (a) Neither the Custodian nor First Investors shall be responsible for any liability arising out of this Agreement except such liability as is occasioned by the gross negligence or willful misconduct of the Custodian or First Investors.

(b) Neither the Custodian nor First Investors shall be

- liable for any losses or depreciation in the value of shares of any Designated Investment Company or
- obligated to pay interest or appreciation in the value of shares of any Designated Investments Company

that might result from: (i) the delay in acting upon any instructions, directions or requests that are submitted to the Custodian without the appropriate authorization(s), form(s) or signature(s) as required by the Custodian, or (ii) acting upon any instructions, directions or requests that are believed to be complete and in good order. Neither the Custodian nor First Investors shall have any duty other than the exercise of good faith nor shall they incur any liability by reason of any action taken in reliance upon inaccurate or fraudulent information reported by any source believed to be reliable, or by reason of incomplete information in its possession at the time of such distribution that the Custodian or First Investors believe to be complete.

(c) Neither the Custodian nor First Investors shall be responsible for any action or inaction taken at the request of the Depositor, Responsible Individual or Designated Beneficiary or such other person or entity the Custodian or First Investors reasonably believes to be authorized to act on behalf of the Designated Beneficiary. The Custodian and First Investors may rely upon and shall be protected in acting upon any written, verbal, or electronic instructions or any other notice, request, consent, certificate or other instrument reasonably believed by the Custodian or First Investors to be genuine and to have been properly executed which was from the Depositor, Responsible Individual, Designated Beneficiary or such other person or entity that the Custodian or First Investors reasonably believes to be authorized to act on behalf of the Designated Beneficiary.

(d) Unless otherwise required by law, neither the Custodian nor First Investors shall be obligated to take any action whatsoever with respect to the

Custodial Account except upon receipt of directions in a form and manner acceptable to the Custodian from the Depositor, Responsible Individual or any other person or entity which the Custodian or First Investors believes to be authorized to act on behalf of the Designated Beneficiary. Neither the Custodian nor First Investors shall be under any obligation to determine the accuracy or propriety of any such direction and shall be fully protected in acting in accordance therewith.

(e) Neither the Custodian nor First Investors shall be obligated to defend or engage in any suit with respect to the Custodial Account without first agreeing to do so in writing and after having been fully indemnified to the satisfaction of the Custodian and First Investors. The Depositor, Responsible Individual and Designated Beneficiary shall at all times indemnify and hold harmless the Custodian and First Investors from any liability arising from any action taken by the Custodian or First Investors upon the written, verbal or electronic instructions of the Depositor, Responsible Individual or Designated Beneficiary or such other person or entity the Custodian or First Investors reasonably believes to be authorized to act on behalf of the Designated Beneficiary.

11. The Custodian and First Investors agree to submit reports to the IRS, Department of Labor and the Responsible Individual at such times, in such manner and containing such information as prescribed as the responsibility of the Custodian by the applicable federal statutes and the regulations thereunder.

12. The Custodian hereby appoints Administrative Data Management Corp. (ADM), an affiliate of First Investors Corporation and the transfer agent for each of the Designated Investment Companies hereunder, as its agent and has delegated to ADM administrative and discretionary duties with respect to the Custodial Account including, but not limited to:

- the establishment and maintenance of Custodial Accounts,
- the acceptance and investment of contributions, transfers and rollovers into such Custodial Accounts,
- the distribution of assets from such Custodial Accounts,
- correspondence relating to such Custodial Accounts, including the sending of required notices and other documents, and
- the delivery of quarterly and other statements.

13. State income tax law may differ from federal income tax law and may be more restrictive.

14. First Investors funds are not FDIC insured, are not guaranteed by the Custodian or First Investors, and are subject to investment risks including possible loss of principal.

15. No provision of this Agreement shall be construed to conflict with any provision of a U.S. Labor Department, Treasury Department or IRS regulation, ruling, notice, release or other order which affects, or could affect, the terms of this Agreement or its qualification under Section 530 of the Code.

This Agreement shall be construed, administered and enforced according to the laws of New York to the extent not pre-empted by federal law.



Custodian's Signature

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## GENERAL INSTRUCTIONS

Section references are to the Internal Revenue Code unless otherwise noted.

### WHAT'S NEW

**Military death gratuity.** Families of soldiers who receive military death benefits may contribute, subject to certain limitations, up to 100 percent of such benefits into an educational savings account. Publication 970, Tax Benefits for Education, explains the rules for rolling over the military death gratuity and lists eligible family members.

### PURPOSE OF THE FORM

Form 5305-EA is a model custodial account agreement that meets the requirements of section 530(b)(1) and has been pre-approved by the IRS. A Coverdell Education Savings Account (ESA) is established after the form is fully executed by both the Depositor and the Custodian. This account must be created in the United States for the exclusive purpose of paying the qualified elementary, secondary and higher education expenses of an individual who is the Designated Beneficiary.

If the model account is a trust account, see Form 5305-E, Coverdell Education Savings Trust Account.

Do not file Form 5305-EA with the IRS. Instead, the Depositor must keep the completed form in its records.

### DEFINITIONS

**Custodian** - The Custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as Custodian. Any person who may serve as a custodian of a Traditional IRA may serve as the Custodian of a Coverdell ESA.

**Depositor** - The Depositor is the person who establishes the custodial account.

**Designated Beneficiary** - The Designated Beneficiary is the individual on whose behalf the custodial account has been established.

**Family Member** - Family members of the Designated Beneficiary include his or her spouse, child, grandchild, sibling, parent, niece or nephew, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law and the spouse of any such individual. A first cousin, but not his or her spouse, is also a "family member."

**Responsible Individual** - The Responsible Individual, generally, is a parent or guardian of the Designated Beneficiary. However, under certain circumstances, the Responsible Individual may be the Designated Beneficiary.

### IDENTIFICATION NUMBERS

The Depositor's, Responsible Individual's and Designated Beneficiary's social security numbers will serve as their identification numbers. The Designated Beneficiary's social security number is the identification number of his or her Coverdell ESA. If the Designated Beneficiary is a nonresident alien, the Designated Beneficiary's individual taxpayer identification number is the identification number of his or her Coverdell ESA. An employer identification number (EIN) is required only for a Coverdell ESA for which a return is filed to report unrelated business income. An EIN is required for a common fund created for Coverdell ESAs.

### SPECIFIC INSTRUCTIONS

Note: The age limitation restricting contributions, distributions, rollover contributions, and change of

beneficiary are waived for a designated beneficiary with special needs.

Article X - Article X and any that follow may incorporate additional provisions that are agreed to by the Depositor, Responsible Individual and Custodian to complete the agreement. They may include, for example, provisions relating to: definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, treatment of excess contributions, and prohibited transactions with the Depositor, Designated Beneficiary or Responsible Individual, etc. Attach additional pages as necessary.

Optional Provisions in Article V and Article VI - Form 5305-EA may be reproduced in a manner that provides only those optional provisions offered by the Custodian.