

**ADOPTED REGULATION OF  
THE STATE TREASURER**

**LCB File No. R041-03**

Effective October 29, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-12, NRS 353B.310.

**Section 1.** NAC 353B.575 is hereby amended to read as follows:

353B.575 “Participation agreement” means a ~~participation~~ *participant* agreement and an account application executed by an account owner ~~and the Program Manager~~ which:

1. Sets forth the terms and conditions governing an account; and
2. Is in the form approved by the State Treasurer.

**Sec. 2.** NAC 353B.585 is hereby amended to read as follows:

353B.585 “Program” means the Nevada College Savings Program, which is a qualified ~~state~~ tuition program pursuant to 26 U.S.C. § 529 that may be marketed as “America’s College Savings Plan” or under any other name.

**Sec. 3.** NAC 353B.600 is hereby amended to read as follows:

353B.600 1. There are no restrictions on the age of a designated beneficiary or any required relationship between an account owner and the designated beneficiary of the account.

2. There may be only one account owner and one designated beneficiary for an account at any time.

~~3. There is no limitation the number of accounts that may be opened for a designated beneficiary by one or more account owners.]~~

**Sec. 4.** NAC 353B.605 is hereby amended to read as follows:

353B.605 1. An account owner may designate a successor account owner who becomes the new account owner automatically upon the death of the designating account owner. An account owner, in the account application or at any other time, may make such a designation by submitting to the Program Manager a written designation of a successor account owner containing the information required by the Program Manager. A designation of a successor account owner is not effective until received by the Program Manager ~~and~~ *and recorded in the records of the Program Manager.*

2. If a change in the ownership of an account is required by a court order directing the change of ownership, or by an affidavit or declaration that is recognized under applicable law as requiring the transfer of ownership upon death without a court order, the change of ownership of the account, except as otherwise required by law, is not effective until the Program Manager receives the court order, affidavit or declaration requiring the change and the change of ownership is recorded in the records of the Program Manager.

**Sec. 5.** NAC 353B.615 is hereby amended to read as follows:

353B.615 1. To open an account, an applicant must submit to the Program Manager a completed application and:

(a) An initial contribution; or

(b) A ~~selection of one of the following methods of contribution:~~

~~(1) Electronic funds transfer;~~

~~(2) Automatic investment plan; or~~

~~(3) Payroll deduction.]~~ *designation of an alternative method of funding approved by the Program Manager.*

2. The acceptance by the Program Manager for processing of an application and an initial contribution or the ~~[selection of a method of contribution]~~ *designation of an alternate method of funding* does not constitute the agreement of the Program Manager to open an account.

3. An applicant must select an investment option in which all contributions to the account will be invested. After an account has been opened, the account owner may not change the investment option for the account, except as permitted by 26 U.S.C. § 529 and any regulations, rulings, announcements or other guidance issued pursuant thereto.

4. Under the age-based investment option, reassignment of accounts to different “Years-to-College” portfolios will, with regard to those accounts in which the age of the designated beneficiary makes such reassignment appropriate, occur ~~[on the first business day of August each year.]~~ *in accordance with the investment policies of the Program.*

**Sec. 6.** NAC 353B.625 is hereby amended to read as follows:

353B.625 An account owner must execute a participation agreement for each account by completing and signing an account application. ~~[The participation agreement sets forth the terms and conditions under which the account owner participates in the Program.]~~

**Sec. 7.** NAC 353B.650 is hereby amended to read as follows:

353B.650 1. Contributions may be made in cash only.

2. As used in this section, “cash” includes checks, ~~[money orders,]~~ electronic funds transfers, whether through payroll deduction, an automatic contribution plan or otherwise, and such other methods of payment as determined by the Program Manager and as permitted under applicable law. The term does not include securities, property, or charges on debit or credit cards.

**Sec. 8.** NAC 353B.655 is hereby amended to read as follows:

353B.655 1. A contribution to an account established for a designated beneficiary will not be accepted to the extent the contribution would cause the total account balance of all accounts for the designated beneficiary to exceed the amount necessary to provide for the qualified higher education expenses of the designated beneficiary.

2. The Board will establish the maximum aggregate balance for the accounts of a designated beneficiary and will, from time to time, revise the maximum aggregate balance as it determines necessary.

3. ~~[All contributions that]~~ *If any contribution* would cause the total account balance of all accounts for a designated beneficiary to exceed the maximum aggregate balance *for the accounts of a designated beneficiary* established by the Board, *the excess money* will be rejected and returned to the contributors in order of receipt. The balance in all accounts for that designated beneficiary under the Nevada Higher Education Prepaid Tuition Program will be included in calculating whether the maximum aggregate balance has been exceeded.

**Sec. 9.** NAC 353B.660 is hereby amended to read as follows:

353B.660 1. Except as otherwise provided in subsection 2, if a qualified ~~[state]~~ tuition program of another state allows rollover distributions, an account owner may deposit all or part of the money from an account in such a program to ~~[a new]~~ *an* account in the Nevada College Savings Program for the same designated beneficiary or for a different designated beneficiary who is a member of the family of the designated beneficiary of the account from which the money is transferred.

2. A rollover distribution pursuant to subsection 1 for the same designated beneficiary will be permitted only once in any 12-month period or as otherwise permitted by 26 U.S.C. § 529 and any regulations, rulings, announcements or other guidance issued pursuant thereto.

3. ~~[To set up a new account in which]~~ *An account owner who wishes* to deposit a rollover distribution pursuant to this section ~~[, an applicant must, in addition to complying with the requirements of NAC 353B.550 to 353B.725, inclusive:]~~ *must:*

(a) Submit to the Program Manager either:

(1) A rollover distribution form executed by the account owner that authorizes the distribution of money from an account in the qualified ~~[state]~~ tuition program of another state; or

(2) If the rollover distribution will not be deposited directly into the ~~[new]~~ account *in the Program* from an account in the qualified ~~[state]~~ tuition program of another state, documentation satisfactory to the Program Manager that the rollover distribution will be deposited in the ~~[new]~~ account *in the Program* within 60 days after distribution from an account in the qualified ~~[state]~~ tuition program of another state.

(b) State ~~[for the new account]~~ the amount of the rollover distribution that constitutes contributions and the amount of the rollover distribution that constitutes earnings.

4. The entire amount of a rollover distribution from an account in the qualified ~~[state]~~ tuition program of another state will be counted for purposes of calculating the total account balance of all accounts *in the Program* for a designated beneficiary. If the rollover distribution that is deposited in ~~[the new]~~ *an account in the Program* causes the total account balance of all accounts for a designated beneficiary to exceed the maximum aggregate balance for the accounts of a designated beneficiary established by the Board pursuant to NAC 353B.655, the excess money will be rejected and returned.

**Sec. 10.** NAC 353B.670 is hereby amended to read as follows:

353B.670 ~~[A]~~ *When the Program Manager makes a distribution of money from an account pursuant to NAC 353B.665 to 353B.695, inclusive, the Program Manager shall notify the account owner:*

- 1. Of the portion of the distribution that is attributable to investment gains in the account;*
- 2. That a distribution from an account for any reason other than a qualified withdrawal, a qualified withdrawal because of the death or disability of, or a scholarship awarded to, a beneficiary, or a rollover distribution ~~[is]~~ *may be* subject to federal tax on the portion of the distribution attributable to investment gains in the account ~~[- All applicable withholding requirements for federal taxes will be followed.]~~; *and**
- 3. That it is the responsibility of the account owner to determine his liability for federal tax, if any, on the distribution.*

**Sec. 11.** NAC 353B.690 is hereby amended to read as follows:

353B.690 1. Except as otherwise provided in subsection 2, if a qualified ~~[state]~~ tuition program of another state allows rollover contributions, an account owner may authorize a direct rollover distribution from an account in the Program to an account in the qualified ~~[state]~~ tuition program of the other state for the same designated beneficiary or for a different designated beneficiary who is a member of the family of the designated beneficiary of the account in the Program out of which the rollover distribution is being made.

2. A rollover distribution pursuant to subsection 1 for the same designated beneficiary will be permitted only once in any 12-month period or as otherwise permitted by 26 U.S.C. § 529 and any regulations, rulings, announcements or other guidance issued pursuant thereto.

3. An account owner may authorize a direct rollover distribution from an account in the Program to another account in the Program so long as the designated beneficiary of the other

account is a member of the family of the designated beneficiary of the account out of which the rollover distribution is being made. *If the rollover distribution that is deposited in an account causes the total account balance of all accounts for a designated beneficiary to exceed the maximum aggregate balance for the accounts of a designated beneficiary established by the Board pursuant to NAC 353B.655, the excess money will be rejected and returned.*

4. When authorizing a rollover distribution, the account owner must complete the forms and make such disclosures of financial information as required by the Program Manager and the Board. ~~[If the deposit of a rollover distribution in an account would cause the total account balance of all accounts for the designated beneficiary to exceed the maximum contribution limit established by the Board, the excess deposit will be rejected and returned.]~~

**Sec. 12.** NAC 353B.685 is hereby repealed.

---

## TEXT OF REPEALED SECTION

---

**353B.685 Certification required for certain withdrawals. (NRS 353B.310)** Before a withdrawal from an account because of the death or disability of the designated beneficiary of the account, or because the designated beneficiary has received a scholarship to be applied toward attendance at a higher education institution, the account owner must provide to the Program Manager certification by the account owner that the distribution is because of the death or disability of the designated beneficiary or because the designated beneficiary has received a

scholarship, together with such additional information as may be requested by the Program Manager.



**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R041-03**

The Office of the State Treasurer adopted regulations assigned LCB File No. R041-03, which pertain to Chapter 363B of the Nevada Administrative Code on August 25, 2003.

**Date of adoption by agency:** August 25, 2003

**Filing date:** 10/29/2003

**INFORMATIONAL STATEMENT**

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The notice and R041-03 proposed regulations were mailed on July 18, 2003 to all county libraries, delivered to the Capitol Press Corps and the Nevada Press Association, the Legislative Building, the Capitol Building, the Grant Sawyer State Office Building, Nevada State Library and Bladell Building, e-mailed to all interested parties, and posted on the internet,. A regulatory workshop and public hearing was conducted by the State of Nevada Office of the Treasurer and Board of Trustees of the College Savings Plans of Nevada on August 25, 2003. All interested parties who requested notice were mailed the proposed rules. The State of Nevada Office of the Treasurer adopted the regulation after recommendation by the Board of Trustees of the College Savings Plans of Nevada on August 25, 2003. A copy of the written minutes may be obtained by calling the State of Nevada Office of the Treasurer 775-684-5600 or writing to the Office of the Treasurer at 101 North Carson Street, Suite 4, Carson City, Nevada 89701.

**2. The number of persons who:**

<b>(a) Attended the hearing:</b>	<b>6</b>
<b>(b) Testified at each hearing:</b>	<b>0</b>
<b>(c) Submitted to the agency written comments</b>	<b>0</b>

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.**

This program does not affect businesses. This program is a voluntary program for those individuals who wish to open a college savings account and receive the federal tax benefits. The Nevada College Savings Plans provide two options: a college savings option and a prepaid tuition option. Both are qualified 529 plans and comply with the Internal Revenue Service requirements. The proposed amendments to the regulations were sent to the interested parties, which include Strong Investments, Inc., and Upromise Investments, Inc. the current investment managers of the program and attorneys specializing in 529 plans. Comments and suggestions were received and incorporated into the proposed draft regulations. A copy of the written minutes of the public workshop and hearing may be obtained by calling the State of Nevada

Office of the Treasurer 775-684-5600 or writing to the Office of the Treasurer at 101 North Carson Street, Suite 4, Carson City, Nevada 89701.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The proposed amendments to the regulation were adopted without changing any part of the LCB proposed regulation because there was no public request for change. The draft regulation underwent considerable revision prior to submission to LCB and some revisions suggested by LCB. The Treasurer's Office prepared a draft of the regulations and made many changes suggested by Strong investment, Inc , the current investment manager. Many other suggestions came from Bill Donovan, attorney with Orrick, Herrington & Sutcliffe LLP. After the draft had been revised, it was submitted to LCB. Some changes were suggested by LCB. That version was circulated for comment. No requests for changes were made at the public workshop or hearing, which was held immediately after the workshop.

**5. The estimated economic effect of the adopted regulation on the business, which it is to regulate, and on the public. These must be stated separately, and each case must include:**

**(a) Estimated economic effect of the regulation on the business which it is to regulate;**

The proposed regulation is not anticipated to have an adverse direct short-term or long-term economic impact upon any businesses.

**(a) Estimated economic effect on the public;**

The proposed regulation is not anticipated to have an adverse direct short-term or long-term economic impact on the public.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

There is no additional cost to the agency for enforcement of the adopted regulation.

**7. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating agency.**

There is no overlap or duplication of any other state or government agency.

**8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.**

This regulation is no more stringent than any federal regulation, which may regulate the same activity. This regulation is in compliance with 26 U.S.C. §529.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide for any new or increased fee, and hence since no fee is involved, there is not a total amount expected to be collected or used.