

**ADOPTED REGULATION OF THE BOARD OF TRUSTEES OF
THE COLLEGE SAVINGS PLANS OF NEVADA**

LCB File No. R150-03

Effective August 25, 2004

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

AUTHORITY: §§1-5 and 7-11, NRS 353B.090; §§6, 12 and 13, NRS 353B.090 and NRS 353B.100.

A REGULATION relating to the Nevada Higher Education Prepaid Tuition Program; defining “refund amount”; increasing the fee for processing an application for enrollment; revising provisions governing a request for payment of a refund; providing that a contract must require the purchaser to pay a penalty under certain circumstances in accordance with statute; revising various other provisions governing the Program; and providing other matters properly relating thereto.

Section 1. Chapter 353B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, “Board” has the meaning ascribed to it in NRS 353B.002.*

Sec. 3. 1. *“Refund amount” means the total contract payments received, less any amounts paid out pursuant to the contract and any enrollment fees, multiplied by the percentage of the market value of the assets in the Trust Fund less the present value of any outstanding loan obligations, divided by the total contract payments received less any amounts paid out pursuant to the contract and any enrollment fees.*

2. In determining the percentage for purposes of calculating the refund amount:

(a) The present value of the outstanding loan obligations will be applied at an annual rate determined by the Board; and

(b) The maximum percentage is 100 percent, regardless of whether the actual percentage exceeds that amount.

Sec. 4. NAC 353B.010 is hereby amended to read as follows:

353B.010 As used in NAC 353B.010 to 353B.510, inclusive, *and section 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NRS 353B.030 to 353B.070, inclusive, and NAC 353B.020 to 353B.090, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NAC 353B.090 is hereby amended to read as follows:

353B.090 “Tuition” means fees required for the enrollment of a full-time student into an eligible school, except for any amounts charged:

1. To nonresident students only;
2. As fines, application fees, entrance fees, parking fees, *technology fees*, athletic fees or studio fees, laboratory fees or other fees imposed for specific courses, whether or not charged to all students; and
3. For books, supplies, room or board, whether or not charged to all students.

Sec. 6. NAC 353B.180 is hereby amended to read as follows:

353B.180 1. A person who desires to enter into a contract must submit to the Board an application for enrollment in the Program, on a form provided by the Board, and a fee of ~~[\$60]~~ *\$100* for processing the application. The application must include:

- (a) The expected date of matriculation of the qualified beneficiary;
- (b) The desired contractual plan; and
- (c) Any other relevant information requested by the Board.

2. The Board may accept an application for enrollment in the Program which is received after the appropriate dates for enrollment established pursuant to NAC 353B.200, but not later than 60 days before the dates established pursuant to that section for enrollment during the next year, if the purchaser pays, in addition to the fee for processing the application:

(a) The amount the Board determines would have been due if the application had been submitted on an appropriate date; and

(b) Any additional sum the Board determines to be necessary to ensure the actuarial soundness of the Trust Fund.

3. After processing an application for enrollment in the Program, the Board will ~~mail~~ send a copy of the contract to the purchaser.

Sec. 7. NAC 353B.210 is hereby amended to read as follows:

353B.210 1. The Board will not provide any benefits pursuant to a contract:

(a) Earlier than 2 years after the date the first payment is due from the purchaser pursuant to the contract.

(b) Until:

(1) The purchaser has paid the entire amount due pursuant to the contract, including any outstanding fees and penalties; and

(2) The Board has received:

(I) The social security number of the qualified beneficiary;

(II) If the qualified beneficiary enrolls in an eligible school that is not a member of the System, at least 60 days' notice of that enrollment; and

(III) Any other information relating to the contract requested by the Board.

(c) Earlier than the expected date of matriculation of the qualified beneficiary, as specified pursuant to NAC 353B.180 or 353B.310, except that the Board may allow the commencement of those benefits not more than 2 years before that date if the qualified beneficiary ~~graduates from~~ *is a senior in* high school and enrolls into an eligible school before that date.

(d) Later than 10 years, excluding any period during which the qualified beneficiary is on active duty in the Armed Services of the United States, after the expected date of matriculation of the qualified beneficiary, as specified pursuant to NAC 353B.180 or 353B.310.

(e) If the provision of benefits does not commence before the qualified beneficiary attains the age of 30 years plus any period during which the qualified beneficiary was on active duty in the Armed Services of the United States.

2. If any benefits cannot be provided pursuant to a contract as a result of the provisions of paragraph (d) or (e) of subsection 1, the Board may terminate the contract and provide to the purchaser, after deducting the total amount of any fees and penalties imposed pursuant to the contract, ~~and any payments from the Trust Fund made on behalf of the qualified beneficiary,~~ a refund ~~of the balance of the amount paid by the purchaser pursuant to the contract,~~ *amount* with interest on that ~~balance~~ *amount* in accordance with the applicable rates established pursuant to NAC 353B.200.

Sec. 8. NAC 353B.430 is hereby amended to read as follows:

353B.430 Upon the receipt of a written request signed by a purchaser and such documentation as the Board deems adequate to prove that the qualified beneficiary has died or become totally disabled, the Board will terminate the contract and provide to the purchaser, after deducting the total amount of any fees ~~and penalties~~ imposed pursuant to the contract, ~~and any payments from the Trust Fund made on behalf of the qualified beneficiary,~~ a refund ~~of the~~

~~balance of the amount paid by the purchaser pursuant to the contract,]~~ *amount* with interest on that ~~[balance]~~ *amount* in accordance with the applicable rates established pursuant to NAC 353B.200.

Sec. 9. NAC 353B.440 is hereby amended to read as follows:

353B.440 1. Upon the receipt of a written request signed by a purchaser and such documentation as the Board deems adequate to prove that the qualified beneficiary has been awarded a scholarship to attend an eligible school which ~~is~~:

~~—(a) Duplicates]~~ *duplicates* all the benefits to be provided pursuant to the contract, the Board will:

~~[(1)]~~ (a) Amend the contract to change the identity of the qualified beneficiary and waive the required fee for the change; or

~~[(2)]~~ (b) Terminate the contract and provide to the purchaser, after deducting the total amount of any fees and penalties imposed pursuant to the contract and any payments from the Trust Fund made on behalf of the qualified beneficiary, a refund ~~[of the balance of the]~~ *amount not to exceed the total* amount paid by the purchaser pursuant to the contract, with interest on that ~~[balance]~~ *adjusted amount* in accordance with the applicable rates established pursuant to NAC 353B.200 . ~~[; or~~

~~—(b) Duplicates a portion of the benefits to be provided pursuant to the contract, the Board will:~~

~~—(1) Provide the benefits pursuant to the contract that are not duplicated by the scholarship and pay to the purchaser the amount of the benefits that are duplicated by the scholarship; or~~

~~—(2) Terminate the contract and provide to the purchaser, after deducting the total amount of any fees and penalties imposed pursuant to the contract and any payments from the Trust Fund~~

~~made on behalf of the qualified beneficiary, a refund of the balance of the amount paid by the purchaser pursuant to the contract, with interest on that balance in accordance with the applicable rates established pursuant to NAC 353B.200.]~~

2. As used in this section, “scholarship” does not include a loan.

Sec. 10. NAC 353B.450 is hereby amended to read as follows:

353B.450 **1.** Upon the receipt of a written request signed by a purchaser to terminate the contract for any reason other than as provided in NAC 353B.430 and 353B.440, the Board will terminate the contract and provide to the purchaser, after deducting the total amount of any fees and penalties imposed pursuant to the contract and any payments from the Trust Fund made on behalf of the qualified beneficiary, a refund ~~[of the balance of the]~~ *amount not to exceed the total* amount paid by the purchaser pursuant to the contract, with interest on that ~~[balance]~~ *adjusted amount* in accordance with the applicable rates established pursuant to NAC 353B.200. *The Board will, as soon as practicable following the end of a calendar month, disburse a refund amount to a purchaser who has agreed to accept, in full satisfaction of a refund claim, the refund amount not to exceed the total amount paid by the purchaser pursuant to the contract as of the last business day of the calendar month.*

2. *If the contract was purchased before February 1, 2003, a purchaser who wishes to terminate a contract pursuant to subsection 1 may:*

(a) Accept a refund amount not to exceed the total amount paid by the purchaser pursuant to the contract, as described in subsection 1; or

(b) If the amount described in paragraph (a) is less than 100 percent of the contract payments made by the purchaser, choose to wait until the market value of the Trust Fund is

sufficient to provide a refund equal to 100 percent of the contract payments made by the purchaser.

Sec. 11. NAC 353B.460 is hereby amended to read as follows:

353B.460 Upon the receipt of a written *refund* request *on a form approved by the Board*, signed by a purchaser, the Board will provide to the purchaser:

1. A refund ~~[of any]~~ *amount not to exceed the total* amount received for a contract which:
 - (a) Was paid before the date the amount was due pursuant to the contract; or
 - (b) Exceeds the amount due pursuant to the contract, including any overpayments resulting from an amendment of the terms of the contract pursuant to NAC 353B.010 to 353B.510, inclusive; and
2. Interest on that amount in accordance with the applicable rates established pursuant to NAC 353B.200,

↪ unless the purchaser is in default pursuant to NAC 353B.370 or payment of the refund will cause the purchaser to become in default.

Sec. 12. NAC 353B.500 is hereby amended to read as follows:

353B.500 A contract may require the purchaser to pay:

1. For a change in:
 - (a) The amount, time or method of payment;
 - (b) The contractual plan;
 - (c) The identity of the purchaser; *or*
 - (d) ~~[The identity of a person designated pursuant to NAC 353B.190; or~~
 - ~~—(e)]~~ The designation of the qualified beneficiary,
- ↪ a fee of \$20.

2. For the replacement of any lost or destroyed documents, a fee of \$7.

3. For the payment of tuition to an eligible school other than a state community college or state university, a fee of \$25 for ~~each~~ *the first* quarter or semester for which tuition is paid. *The fee of \$25 must be paid each time a beneficiary transfers to a new eligible school other than a state community college or state university.*

Sec. 13. NAC 353B.510 is hereby amended to read as follows:

353B.510 *1. A contract must require the purchaser to pay a penalty of \$25 if a payment is returned for insufficient funds in accordance with NRS 353C.115 and the regulations adopted pursuant thereto.*

2. A contract may require the purchaser to pay:

~~{1.}~~ ~~If a check is returned for insufficient funds, a penalty of \$15.~~

~~—2.}~~ *(a)* If a monthly remittance is not received within 15 days after the date due, a penalty of \$15.

~~{3.}~~ *(b)* If a remittance by a lump sum is not received within:

~~{(a)}~~ *(1)* Fifteen days after the date due, a penalty of \$15; and

~~{(b)}~~ *(2)* Forty-five days after the date due, a penalty of 1 percent of the total amount due, including the amount of all outstanding fees and penalties imposed pursuant to the contract, for each period of 30 days or portion thereof that passes after the period described in ~~{paragraph (a)}~~ ~~until:~~

~~—(1)}~~ *subparagraph (1) until:*

(I) The total amount due is paid; or

~~{(2)}~~ *(II)* The contract is terminated,

↪ whichever occurs earlier.

~~[4.]~~ (c) If a contract is terminated pursuant to NAC ~~[353B.410,]~~ **353B.370, 353B.400, 353B.410 or 353B.450**, a penalty of ~~[\$250 or the total amount paid by the purchaser pursuant to the contract, excluding the amount of any fees and other penalties paid pursuant to the contract, whichever is less.~~

~~—5.]~~ **\$100.**

(d) If a contract is terminated pursuant to NAC ~~[353B.370, 353B.400, subparagraph (2) of paragraph (b) of subsection 1 of NAC 353B.440 or NAC 353B.450,]~~ **NAC 353B.440**, a penalty ~~[of \$150 or 50 percent of the total amount paid by the purchaser pursuant to the contract, excluding the amount of any fees and other penalties paid pursuant to the contract, whichever is less.~~

~~—6.—~~ In addition to any penalties imposed in accordance with subsection 4 or 5, for the termination of a contract pursuant to which the purchaser was required to pay by:

~~—(a) Remittances on a monthly basis, a contract maintenance fee of \$3 for each calendar month or portion thereof during which the purchaser was enrolled in the Program.~~

~~—(b) Remittance in a lump sum, a penalty of \$20.]~~ **, if required, to the Internal Revenue Service pursuant to 26 U.S.C. § 529(c)(6) or any other applicable section of the Internal Revenue Code.**

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R150-03**

The Office of the State Treasurer and the Board of Trustees of the College Savings Plans of Nevada adopted regulations assigned LCB File No. R150-03 with minor modifications, which pertain to Chapter 353B of the Nevada Administrative Code on April 27,2004.

Notice date: 1/14/2004 & 3/24/2004

Date of adoption by agency: 4/27/2004

Hearing date: 2/17/2004 & 4/27/2004

Filing date: 8/25/2004

INFORMATIONAL STATEMENT

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

The notice of public workshop and public hearing on R150-03 proposed regulations was mailed on January 14, 2004 and a notice of an additional public hearing on R150-03 was mailed on March 24, 2004 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 Blasdel Building, e-mailed to all interested parties, and posted on the internet. A regulatory workshop and public hearing was conducted by the Office of the State Treasurer and Board of Trustees of the College Savings Plans of Nevada on February 17, 2004 and an additional public hearing was held on April 27, 2004. All interested parties who requested notice were mailed the proposed rules. The Office of the State Treasurer adopted the regulation after recommendation by the Board of Trustees of the College Savings Plans of Nevada on April 27, 2004. A copy of the written minutes may be obtained by calling the Office of the State Treasurer at 775-684-5600 or writing to the Office of the State Treasurer at 101 North Carson Street, Suite 4, Carson City, Nevada 89701.

2. The number of persons who:

(a) Attended the hearing:	8
(b) Testified at each hearing:	0
(c) Submitted to the agency written comments:	0

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

The program does not affect businesses. This program is a voluntary program for those individuals who wish to open a qualified Section 529 Nevada Prepaid Tuition Program account to save for college tuition and receive the federal tax benefits. The Nevada 529 College Savings Plans provide two options: a college savings plan option and a prepaid tuition program option. Both are qualified Section 529 plans and comply with the Internal Revenue Service requirements. The proposed amendments to the regulations were sent to the interested parties, which include GIF Services, the current investment manager of the Higher Education Tuition

Trust Fund and Orrick, Herrington and Sutcliffe, LLP, attorneys specializing in 529 plans. The proposed amendments to the regulations were also posted at the State Library, the State Capitol, and the Legislative Building, sent to all county libraries and posted in three other public places. Comments and suggestions were received and incorporated into the proposed draft regulations. A copy of the written minutes of the public workshop and hearings may be obtained by calling the Office of the State Treasurer at 775-684-5600 or writing to the Office of the State 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 with minor changes to the LCB proposed regulation because the Board wanted to clarify the definition of the refund amount and specify the formula for the refund amount as being the market value of the assets in the Trust Fund divided by the dollar amount of the contract payments received. The State Treasurer's Office prepared a draft of the regulations and made changes suggested by 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. The Board requested minor changes at the first public workshop and hearing on February 17, 2004. The Board directed that a second notice be sent and an additional public hearing be held on April 27, 2004. The Board did not make any changes at the April 27, 2004 hearing and adopted the draft regulations.

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.

(b) 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. The one-time enrollment fee will be increased from \$60 to \$100 but that will not impact on anyone already in the Program because those people have already enrolled and paid the \$60. New prospective purchasers will be informed of the \$100 one-time enrollment fee prior to purchase. The termination fee is being reduced from \$150 to \$0 (zero) if the contract is terminated because the student receives a scholarship. The termination fee is also being reduced from \$150 to \$100 for voluntary termination, failure to provide information, and failure to pay. The termination fee for fraud is being reduced from \$250 to \$100 to make all the termination fees consistent at \$100. This has been difficult to understand by the public and it will make it easier for them to understand a consistent \$100 termination fee.

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. The change in fees will not cost the agency any additional amount to enforce.

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 provide for an increased one-time enrollment fee from \$60 to \$100. This fee is designed to partially reimburse the State Treasurer's office for the staff costs associated with reviewing and approving each application and establishing the new purchaser's account and payment and participation schedule.

Background

In 1998, the Board of Trustees established an enrollment fee of \$60 for all Prepaid Tuition contracts sold. The purpose of this \$60 enrollment fee was to help offset the costs of processing each contract. That \$60 enrollment fee has not been increased since the inception of the Prepaid Tuition Program in 1998.

The one-time enrollment fee will be increased from \$60 to \$100 but that will not impact on anyone already in the Program because those people have already enrolled and paid the one-time \$60 enrollment fee. New prospective purchasers will be informed of the \$100 one-time enrollment fee prior to purchase. The termination fee is being reduced from \$150 to \$0 (zero) if the contract is terminated because the student receives a scholarship. The termination fee is also being reduced from \$150 to \$100 for voluntary termination, failure to provide information, and failure to pay. The termination fee for fraud is being reduced from \$250 to \$100 to make all the termination fees consistent at \$100. This has been difficult to understand by the public and it will make it easier for them to understand a consistent \$100 termination fee.

The costs of processing a Prepaid Tuition contract have increased substantially since 1998. Those costs include:

Staff salaries for those employees whose primary responsibilities involve contract processing and administration.

Supplies such as paper, envelopes, pens, etc. corresponding to contract purchasers.

Enrollment kits must be printed showing the new prices for each different credit hour program. The enrollment kit contains an application, master agreement, return envelope, and a detailed explanation about the program.

The SCT-Banner system is our record keeping system used to administer all contracts. A small percentage of this system has been allocated to new participants as part of the initial set-up of their accounts.

A percentage of the telephone bill which represents the new participants calls regarding their applications for contracts.

Postage associated with the new applications and contracts.

The applicable portion of the costs of computer and the leased copy machine expense associated with processing the new contracts was allocated. Costs of producing coupon books for those new contracts using the installment payment plan were included.

Analysis of Costs

The following costs are based on the most recent sales of 405 during FY 04.

Salaries

Fifty percent (50%) of the Administrative Aid (\$25,423)	\$12,712
Thirty percent (30%) of the Program Officer 1 (\$37,389)	\$11,217
Total \$23,929	
Total salaries divided by 405 contracts	\$59.08 per contract

Supplies

Fifty percent (50%) of \$450.96 for FY 04 Supplies	\$225.48
Application processing, welcome packages, follow-up correspondence for incomplete enrollment forms, application copying, toner and ink.	
Total supplies divided by 405 contracts	\$0.56 per contract

Printing

Fifty percent (50%) of \$3,423.03 for FY 04 Printing	\$1,711.52
Application forms, master agreements, welcome letters, payment and participation schedules, automatic payments authorizations and signature verifications for on-line enrollments were provided to the purchasers.	
Total printing divided by 405 contracts	\$4.23 per contract

Record Keeping

Twenty percent (20%) of \$80,000 for the Banner system \$16,000
 The Banner computer system allows us to create and maintain all accounts, apply monthly charges, manage the lockbox and ACH files, produce mass mailings and create summary reports.
Total record keeping divided by 405 contracts \$39.51 per contract

Telephone Expense

Thirty percent (30%) of \$2,596.26 for telephone calls \$778.88
 It is necessary to call new applicants for more information and fax materials to them.
Total telephone divided by 405 contracts \$1.92 per contract

Postage

Forty percent (40%) of \$8,880.91 for postage \$3,552.36
 Enrollment kits need to be sent to all purchasers. After enrollment, a completed welcome package is sent to each contract purchaser. Other letters are sent to them as required.
Total postage divided by 405 contracts \$8.77 per contract

Equipment

Forty percent (40%) of \$2,273.78 for equipment and repairs \$909.51
 This includes the copier, computer and associated hardware and software.
Total equipment divided by 405 contracts for FY 04 \$2.25 per contract

Total of all category FY 04 costs per contract \$1 16.32 per contract

FY 04 Comparison of Other States

Virginia	\$85	Same since inception 1996
Michigan	\$85	Increased from \$25 in 2002
South Carolina	\$75	Increased from \$70 in 1998
Illinois	\$75	Same for the last two years
Alabama	\$75	Same since inception 1990
Mississippi	\$60	Same since inception 1997
Texas-(closed)	\$50	Same since inception 1996
Washington	\$50	Same since inception 1998
Kentucky-(closed)	\$50	Same since inception 2001
Florida	\$50	Raised from \$42
Colorado-(closed)	\$0	Never charged a fee
West Virginia-(closed)	\$0	Never charged a fee
Ohio-(closed)	\$0	Never charged a fee
Tennessee (closed)	\$0	Never charged a fee

This most recent cost analysis indicates it cost \$116.32 in FY 04 to process each new contract. It is no longer fiscally possible to continue subsidizing so much of the cost of processing the new contract from the Trust Fund. The increase from \$60 to \$100 would be the first and only increase during the past seven years. This increase is not out of line considering the charge in other states. The Nevada Prepaid Tuition Program is not funded with General Fund monies but is self-funded through its fees and earnings.