

**ADOPTED REGULATION OF  
THE STATE TREASURER**

**LCB File No. R054-09**

Effective October 27, 2009

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

AUTHORITY: §§1-22, NRS 353B.310.

A REGULATION relating to college savings plans; revising provisions governing the Nevada College Savings 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.** *“Plan” means an investment plan that is approved by the Board for inclusion in the Program which is promoted by a private entity and is offered for sale under the management of the Program Manager or through a contract between the Program Manager and a Plan Investment Manager.*

**Sec. 3.** *“Plan Investment Manager” means a private entity that has contracted with the Program Manager and is approved by the Board to offer plans, invest accounts opened under a plan and to manage plans within the Program.*

**Sec. 4.** NAC 353B.550 is hereby amended to read as follows:

353B.550 As used in NAC 353B.550 to 353B.725, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 353B.555 to 353B.595, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 5.** NAC 353B.555 is hereby amended to read as follows:

353B.555 “Account owner” means a person who:

1. Is legally able to contract under the laws of this State;
2. Meets all federal and state requirements governing the Program ~~{}~~ *and a plan*; and
3. Establishes an account under ~~{the Program.}~~ *a plan.*

**Sec. 6.** NAC 353B.560 is hereby amended to read as follows:

353B.560 “Business day” means any weekday on which ~~{~~

- ~~1. The} *the* New York Stock Exchange is open . ~~{; and~~~~
- ~~2. Commercial banks are permitted to be open for business in this State.}~~

**Sec. 7.** NAC 353B.585 is hereby amended to read as follows:

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

**Sec. 8.** 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}~~ *Plan Investment* Manager a written designation of a successor account owner containing the information required by the ~~{Program}~~ *Plan Investment* Manager. A designation of a successor account owner is not effective until received by the ~~{Program}~~ *Plan Investment* Manager and recorded in the records of the ~~{Program}~~ *Plan Investment* 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] Plan Investment** Manager receives the court order, affidavit or declaration requiring the change and the change of ownership is recorded in the records of the **[Program] Plan Investment** Manager.

**Sec. 9.** NAC 353B.610 is hereby amended to read as follows:

353B.610 An account owner may change the designated beneficiary of the account if the new designated beneficiary is a member of the family of the current designated beneficiary. A change of designated beneficiary is not effective until the **[Program] Plan Investment** Manager receives a written request containing the information required by the **[Program] Plan Investment** Manager and the change is recorded in the records of the **[Program] Plan Investment** Manager.

**Sec. 10.** NAC 353B.615 is hereby amended to read as follows:

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

(a) An initial contribution; or

(b) A designation of an alternative method of funding approved by the **[Program] Plan Investment** Manager.

2. The acceptance by the **[Program] Plan Investment** Manager for processing of an application and an initial contribution or the designation of an alternate method of funding does not constitute the agreement of the **[Program] Plan Investment** 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 in accordance with the investment policies of the Program.

**Sec. 11.** NAC 353B.620 is hereby amended to read as follows:

353B.620 The ~~[Program]~~ *Plan Investment* Manager may, without limitation, refuse to open an account if:

1. The applicant is not eligible to be an account owner.
2. The applicant has not provided all the information required by the participation agreement.
3. The total account balance of all accounts for the same designated beneficiary in the Program and the Nevada Higher Education Prepaid Tuition Program is greater than or equal to the maximum aggregate balance for the accounts of a designated beneficiary established by the Board pursuant to NAC 353B.655. If more than one applicant has submitted an application and an initial contribution or selection of contribution method to open an account for the same designated beneficiary, and all contributions, together with the total account balance of all existing accounts for that designated beneficiary, would exceed the maximum aggregate balance for the accounts of a designated beneficiary established by the Board pursuant to NAC 353B.655, the Program Manager will *allow a Plan Investment Manager to* accept applications to open accounts for the designated beneficiary in the order of their receipt until the maximum limit has been reached.
4. The execution of a participation agreement between the ~~[Program]~~ *Plan Investment* Manager and the applicant violates any federal or state law.

5. The Board determines that, for any other reason, it would be advisable to limit the number of accounts in the ~~[Program.]~~ *particular plan managed by that Plan Investment Manager.*

**Sec. 12.** NAC 353B.635 is hereby amended to read as follows:

353B.635 Separate records and accounting will be maintained for each account established under ~~[the Program.]~~ *a plan.* Reports will be issued to each account owner at least annually.

**Sec. 13.** NAC 353B.645 is hereby amended to read as follows:

353B.645 1. Any person may make a contribution to an existing account.

2. The Board will establish the minimum amounts for initial contributions and additional contributions to an account *for each plan* and will, from time to time, revise those amounts as it determines necessary.

3. The Board will refuse contributions that it determines constitute an abuse of the Program.

**Sec. 14.** NAC 353B.660 is hereby amended to read as follows:

353B.660 1. Except as otherwise provided in subsection 2, if a qualified 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 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. An account owner who wishes to deposit a rollover distribution pursuant to this section must:

(a) Submit to the ~~[Program]~~ *Plan Investment* Manager either:

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

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

(b) State the amount of the rollover distribution that constitutes contributions and the amount of the rollover distribution that constitutes earnings ~~[ ]~~ *and provide verified documentation to support the stated amount.*

4. The entire amount of a rollover distribution from an account in the qualified 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 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. 15.** NAC 353B.665 is hereby amended to read as follows:

353B.665 1. An account owner may request a distribution of money from the account by submitting to the ~~[Program]~~ *Plan Investment* Manager not less than 3 business days before the date of the requested distribution a completed distribution request form and such other information as required by the Board or ~~[the Program]~~ *a Plan Investment* Manager. The

~~[Program]~~ *Plan Investment* Manager will begin processing properly completed distribution request forms upon receipt. A designated beneficiary may not withdraw money from an account.

2. A distribution from an account will be classified as a:

(a) Nonqualified withdrawal;

(b) Qualified withdrawal;

(c) Qualified withdrawal because of the death or disability of, or a scholarship awarded to, a beneficiary; or

(d) Rollover distribution.

3. A distribution may only be arranged by the account owner and only in accordance with NAC 353B.665 to 353B.695, inclusive.

**Sec. 16.** NAC 353B.670 is hereby amended to read as follows:

353B.670 When ~~[the Program]~~ *a Plan Investment* Manager makes a distribution of money from an account pursuant to NAC 353B.665 to 353B.695, inclusive, the ~~[Program]~~ *Plan Investment* 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 may be subject to federal tax on the portion of the distribution attributable to investment gains in the account; and

3. That it is the responsibility of the account owner to determine his *or her* liability for federal tax, if any, on the distribution.

**Sec. 17.** NAC 353B.675 is hereby amended to read as follows:

353B.675 1. A qualified withdrawal is a withdrawal of money from an account to pay for the qualified higher education expenses of the designated beneficiary, or because of death, disability or scholarship, as permitted by 26 U.S.C. § 529 or any regulations, rulings, announcements or other guidance issued pursuant thereto. An account owner may request a qualified withdrawal by submitting to ~~{a-Program}~~ *the Plan Investment* Manager a completed distribution request form.

2. When requesting a qualified withdrawal, the account owner, and the designated beneficiary if required by the ~~{Program}~~ *Plan Investment* Manager, must sign the distribution request form and provide such additional information as may be requested by the ~~{Program}~~ *Plan Investment* Manager.

**Sec. 18.** NAC 353B.680 is hereby amended to read as follows:

353B.680 A refund of all or part of a qualified distribution that is used to pay for qualified higher education expenses of a designated beneficiary must be paid by the higher education institution to the ~~{Program}~~ *Plan Investment* Manager for credit to the appropriate accounts for that designated beneficiary.

**Sec. 19.** NAC 353B.690 is hereby amended to read as follows:

353B.690 1. Except as otherwise provided in subsection 2, if a qualified 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 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}~~ *Plan Investment* Manager and the Board.

**Sec. 20.** NAC 353B.695 is hereby amended to read as follows:

353B.695 1. An account may be terminated if the account has a balance of less than \$1,000 and no contributions or withdrawals have been made within the preceding 2 calendar years. Before the termination of an account, the account owner will be given such notice as the Board determines adequate and will be given an opportunity to prevent the termination of the account by making an additional contribution or a qualified withdrawal within the period specified by the ~~{Program}~~ *Plan Investment* Manager. Upon the involuntary termination of an account, the account balance will be paid to the account owner as a nonqualified distribution.

2. An account owner may request a qualified distribution of the remaining balance of an account upon termination. Such a request will be honored following receipt by the ~~{Program}~~

*Plan Investment* Manager of all information requested by the ~~[Program]~~ *Plan Investment* Manager.

**Sec. 21.** NAC 353B.700 is hereby amended to read as follows:

353B.700 The Board may charge fees based on the total assets and accounts of the Program to support the continued operation of the Program. These fees will accrue daily and must be remitted by the Program Manager *and each Plan Investment Manager* as directed by the Board.

**Sec. 22.** NAC 353B.705 is hereby amended to read as follows:

353B.705 The Program Manager *and each Plan Investment Manager* may charge such fees as are agreed to by the Program Manager and the Board.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R054-09**

The State Treasurer adopted regulations which pertain to chapter 353B of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

The following statement is submitted for adopted amendments to Nevada Administrative Code 353B.

**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.**

Copies of the notices of workshops and notices of intent to act upon the regulation were advertised in the two largest newspapers in circulation in the state and were sent by U.S. mail, fax and email to persons who had requested notice on the subject of College Savings amendments. In addition, the proposed regulations and all notices of workshops, notices of public hearings and intent to act on the regulation was placed on the website of the State Treasurer – nevadatreasurer.gov, and posted and sent to all county libraries in Nevada and posted at the following location:

- Nevada State Capitol Building, 101 North Carson Street, Carson City, Nevada
- Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada
- Legislative Building 401 South Carson Street, Carson City Nevada
- State Library, 100 Steward Street, Carson City, Nevada
- State Treasurer’s Office, Suite 4600, Grant Sawyer Building, 555 E. Washington, Las Vegas, Nevada

A workshop was held on August 26, 2009, and the minutes of the workshop are attached and contain a summary of the discussion held. Thereafter, on September 5, 2009, the Board of Trustees of the College Savings Plans of Nevada through the State Treasurer issued a Notice of Intent to Act Upon a Regulations which incorporated in the proposed amendments any suggestions of parties submitting written comments or attending the workshops.

A copy of the summary of the public response to the proposed regulations may be obtained from the Office of the State Treasurer – Nevada State Capitol Building, 101 North Carson Street, Carson City, Nevada 89701 or by e-mail [keduddleston@nevadatreasurer.gov](mailto:keduddleston@nevadatreasurer.gov).

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

- a. **Attended the hearing:** October 7, 2009 – 5
- b. **Testified at the hearing:** October 7, 2009 – 0
- c. **Submitted to the agency written comments:** Workshop – 3; October 7, 2009 Hearing - 1

- 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.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #1.

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

The permanent regulations were adopted with changes incorporated from the written comments received at the workshop.

- 5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:
  - a. Both adverse and beneficial effects; and**
  - b. Both immediate and long-term effects.****

(a) Both adverse and beneficial effects

No effect on business.

Public: No effect on the Public as the regulations address the change in responsibility from an antiquated program described in the regulations to the current Program Manager and Investment Manager system that has developed in recent years.

(b) Both immediate and long-term effects.

See Item #5 (a)

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

There is no additional cost to the agency for enforcement of this 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 federal agency.**

There are no other state or governmental agency regulations that the proposed amendments duplicate. Several sections were removed as duplicates to the federal IRS Code 529 regulations.

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

IRS Code 529 regulates the establishment of qualified 529 Plans sponsored by states. The adopted regulations provide the local governance for the 529 Plans sponsored by the State of Nevada and the operations between Program Manager and Plan Investment Mangers.

- 9. If the regulations 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.**

N/A

- 10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business; or directly restrict the formation, operation or expansion of a small business? What method did the agency use in determining the impact of the regulation on a small business?**

The State Treasurer has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business. In making this determination, the Treasurer considered the fact that the proposed amendment only applies to activity by managers under contract to the State to administer the college savings plans and imposes no direct requirements on any local private business.