

**LCB File No. R185-01**

**PROPOSED REGULATION OF THE  
OFFICE OF THE STATE TREASURER**

**NOTICE OF INTENT TO ACT UPON A REGULATION**

**Notice of Public Workshop and Hearing for the Adoption of a Regulation  
for the College Savings Plans of Nevada  
by Board of Trustees of the  
College Savings Plans of Nevada**

The Board of Trustees of the College Savings Plans of Nevada will hold a public workshop and hearing at 2:00 PM, on Tuesday, February 26, 2002, at the State of Nevada Office of the Treasurer, 101 North Carson Street, Suite 4, Carson City, Nevada 89701. The purpose of the public workshop and hearing is to solicit and receive comments from all interested persons regarding the adoption of a regulation that pertains to chapter 353, of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation is to implement and establish the administrative requirements for the college savings plan, as required by Assembly Bill 554.
2. The substance of the regulation is the creation of the administrative requirements allowing citizens to open a college savings plan account. Nevada has named its program America's College Savings Plan, which is designed as a savings vehicle for higher education expenses. The exact text of the proposed regulation is attached to this notice.
3. There is no estimated economic effect of the regulation on the business community or the public. The America's College Savings Plan is an optional program for interested Nevada citizens.
  - (a) It is not anticipated that there will be any adverse or beneficial effects, and
  - (b) There are no immediate or long-term effects.
4. There is no estimated additional cost to the agency for the enforcement of the proposed regulation.
5. There are no regulations of a federal, state, or local government agency, which overlap or duplicate this college savings plan regulation.
6. This regulation is not required by any federal law.
7. The United States Internal Revenue Code (IRC) of 1986, Section 529 established the basic requirements for 529 plans in the United States. This proposed regulation is not more stringent than IRC Section 529.
8. This proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Board of Trustees of the College Savings Plans of Nevada may appear at the scheduled public workshop and hearing or may

address their comments, data, views, or arguments, in written form, to Office of the State Treasurer, 101 North Carson Street, Suite 4, Carson City, Nevada 89701. Written submissions must be received by the Office of the State Treasurer on or before February 19, 2002. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board of Trustees of the College Savings Plans of Nevada may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Office of the State Treasurer, on the Internet at [www.nevadatreasurer.com](http://www.nevadatreasurer.com) and in all counties in which the office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State Of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Capitol Building, 1<sup>st</sup> & 2<sup>nd</sup> floors, Carson City, NV  
Legislative Building, 401 South Carson Street, Carson City  
Capitol Press Corps, Basement, Capitol Building 101 North Carson Street, Carson City  
Nevada Press Association, 102 North Curry, Carson City  
Nevada State Library, 100 Stewart Street, Carson City  
Blasdel Building, 209 East Musser Street, Carson City  
City Hall, 201 North Carson Street, Carson City  
On the Internet at <http://www.nevadatreasurer.com>

Notice of this meeting was FAXED for posting to the following Nevada locations:

Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas  
City Hall, Reno, NV  
City Hall, Elko, NV

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify in writing, Janice A. Wright at the State Treasurer's Office, 101 North Carson Street, Suite 4, Carson City, Nevada 89701, or call (775) 684-5778, as soon as possible.

# PROPOSED REGULATION OF THE OFFICE OF THE STATE TREASURER

PROPOSED REGULATION FOR THE COLLEGE SAVINGS PLAN  
LCB File No. R-01  
December 7, 2001

Explanation: Matter in italics is new; matter in brackets **[H]** is material to be omitted.

AUTHORITY: NRS 353B and Section 7 of Assembly Bill 554

Sec. 1. *Chapter 353B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41 inclusive, of this regulation.*

Sec. 2. *As used in sections 2 to 41 inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NRS 353B.010 to 353B.810 and Sections 6 to 13 of Assembly Bill 554, inclusive, and sections 3 to 14, inclusive of this regulation have the meanings ascribed to them in those sections. All terms are used in NAC Chapter 353B as defined in the Act. Where a conflict is found to exist between a definition stated in these regulations and the corresponding definition in the Act, the statutory definition shall apply.*

## DEFINITIONS

Sec. 3. *“Act” means NRS 353B as amended from time to time.*

Sec. 4. *“Business day” means any weekday on which both the New York Stock Exchange (NYSE) is open and commercial banks are permitted to be open for business in Nevada.*

Sec. 5. *“Designated beneficiary” has the meaning found in IRC Section 529.*

Sec. 6. *“Eligible Educational Institution” has the meaning found in IRC Section 529.*

Sec. 7. *“IRC” means the United States Internal Revenue Code of 1986, as amended from time to time.*

Sec. 8. *“Member of the Family” has the meaning found in IRC Section 529.*

Sec. 9. *“Participation agreement” means a participation agreement and an account application executed by an account owner and the program manager setting forth the terms and conditions governing an account in the form approved from time to time by the State Treasurer.*

Sec. 10. *“Person” shall have the same meaning as used in IRC Section 529 and as defined in IRC Section 7701(a), including an individual, a trust, estate, partnership, association, company or corporation.*

Sec. 11. *“Program” means the qualified state tuition program established under the Act, including America’s College Savings Plan and portfolios marketed under any other names.*

Sec. 12. *“Program manager” means the third party entity serving as plan administrator, marketing agent and investment manager of the program.*

Sec. 13. *“Qualified Higher Education Expenses” has the meaning found in IRC Section 529.*

Sec. 14. *“Account Owner” means any person legally able to contract under applicable state law and who meets federal and state legal requirements governing the program, and who establishes an account under the Program.*

## FUNDING

Sec.15. *The state treasurer may accept, on behalf of the trust fund, money provided by private entities for direct expenses or marketing. Such money is not a part of the trust fund and shall be held in an account established by the state treasurer in the state treasury but outside the trust fund. The state treasurer may expend such money from time to time for direct expenses or marketing activities related to the Program, including expenses of educational programs in Nevada that encourage saving for college as part of an overall approach to financial planning.*

## ELIGIBILITY

Sec. 16. *1. There are neither restrictions on the age of a designated beneficiary nor any required relationship between the account owner and the designated beneficiary of an account.*

*(a) At any one time there shall be only one account owner and one designated beneficiary per account.*

*(b) There is no limit on the number of accounts that may be opened for one designated beneficiary by one or more account owners.*

## CHANGE IN ACCOUNT OWNERSHIP OR DESIGNATED BENEFICIARY

### *Change of Account Ownership*

Sec. 17. *1. An account owner may designate a successor account owner who shall become the new account owner automatically upon the death of the original account owner. An account owner, in the application or at any time, may make this 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 shall not be effective until received by the program manager.*

*(a) If a change in the ownership of an account is required by a court order directing such change of ownership or by an affidavit or declaration that is recognized under applicable law as requiring transfer of ownership upon death without a court order, such change of account ownership shall not be effective until the program manager receives the court order or affidavit or declaration requiring such change, and the change of account ownership is recorded in the records of the program manager, unless otherwise required by law.*

### *Change of Designated Beneficiary*

Sec. 18. *An account owner may change the designated beneficiary of the account, provided the new designated beneficiary is a member of the family of the current designated beneficiary. A change of designated beneficiary shall not be effective until the program manager receives a written request containing the information required by the program manager and such change is recorded in the records of the program manager.*

## OPENING AN ACCOUNT; APPLICATION; PARTICIPATION AGREEMENT

### *Opening an Account; Application*

Sec. 19. 1. *To open an account, an applicant must submit to the program manager a completed application, together with (a) an initial contribution or (b) a selection of electronic funds transfer, automatic investment plan or payroll deduction as the method of contribution. Acceptance by the program manager of an application and an initial contribution or selection of contribution method for processing shall not be deemed to be agreement by the program manager to open an account.*

2. *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 selection for an account, except as permitted under IRC Section 529 and any regulations, rulings, announcements, or other guidance issued thereunder.*

### *Refusal to Open an Account*

Sec. 20. 1. *The program manager may refuse to open an account for reasons that may include but are not necessarily limited to the following:*

*(a) The applicant is not eligible to be an account owner.*

*(b) The applicant has not provided all of the information required by the participation agreement.*

*(c) The total account balance of all accounts for the same designated beneficiary in the program and the Board's prepaid tuition program is equal to the maximum limit permitted hereby. 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 limit permitted hereby, the program manager shall accept applications to open accounts for the designated beneficiary in the order of their receipt until the maximum limit has been reached.*

*(d) The execution of a participation agreement between the program manager and the applicant violates any federal securities or state "blue sky" laws or any other federal or state law.*

*(e) The Board determines that, for any other reason, it would be advisable to limit the number of accounts in the program.*

### *Participation Agreement*

Sec. 21. *An account owner must execute a participation agreement for each account by completing and signing an account application. The participation agreement sets forth terms and conditions under which the account owner participates in the program.*

## *CONTRIBUTIONS*

### *Contributions Generally*

Sec. 22. 1. *Any person may make a contribution to an existing account.*

2. *The minimum initial contribution that must be made to an account at the time the account is opened is \$250, except that the minimum initial contribution requirement is reduced to \$50 if the account owner agrees to participate in an automatic investment plan for that account. The minimum amount for additional contributions is \$50. The Board may from*

*time to time change the minimum contribution amounts.*

*3. The Board reserves the right to refuse contributions that it determines to be an abuse of the program.*

#### *Cash Contributions Only*

*Sec. 23. Contributions shall be made in cash only. Cash includes checks, money orders, electronic funds transfers, whether through payroll deduction, an automatic contribution plan or otherwise, and such other methods as the program manager determines and as permitted under applicable law. Cash does not include securities, property or debit or credit card charges.*

#### *Rollover Contributions*

*Sec. 24. 1. When rollover distributions are allowed by another state's qualified savings program, an account owner may deposit all or part of the funds from an account in that other state's qualified savings program to a new account in the 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 old account from which the funds are transferred; provided that a rollover contribution for the same designated beneficiary shall only be permitted once per twelve month period or as otherwise permitted under IRC Section 529 and any regulations, rulings, announcements, or other guidance issued thereunder.*

*2. In order to set up a new account in which to deposit a rollover distribution from an account in another state's qualified savings program, an applicant must, in addition to complying with the requirements of the previous Section of these Regulations, submit to the program manager either (a) a rollover distribution form executed by the account owner which authorizes the distribution of funds from an account in another state's qualified savings program or (b) if the rollover distribution is not deposited directly into the new account from the account in the other state's qualified savings program, documentation satisfactory to the program manager that the rollover distribution is being deposited in the new account within 60 days of distribution from the account in the other state's qualified savings program. The applicant must also state for the new account the amount of the rollover distribution from an account in another state's qualified savings program that is contributions and the amount that is earnings.*

*3. The entire amount of a rollover distribution from an account in another state's qualified savings program is counted for purposes of calculating the total account balance of all accounts for a designated beneficiary. If the rollover distribution that is deposited in the new account causes the total account balance of all accounts for a designated beneficiary to exceed the maximum limit set out in these Regulations, the excess funds shall be rejected and returned.*

#### *Maximum Contribution Limit*

*Sec. 25. Contributions to the account(s) established for a designated beneficiary shall not be accepted to the extent they would cause the total account balance of all accounts for a designated beneficiary to exceed that amount necessary to provide for the qualified higher education expenses of the designated beneficiary. The Board shall establish from time to time*

*the maximum aggregate balance for the account(s) of an individual designated beneficiary, which amount is currently set at \$246,000. Contributions that would cause the total account balance of all accounts for a designated beneficiary to exceed that limit shall be rejected and returned to the contributor(s) in order of receipt. The balance in any accounts for that designated beneficiary under the Board's prepaid tuition plan shall be included in this calculation.*

#### *Prohibition on Investment Direction*

*Sec. 26. Except as permitted under 26 USC 529 or any regulations, rulings, announcements or other guidance issued thereunder, no contributor to or designated beneficiary of the program may directly or indirectly direct the investment of any contributions to the program or any earnings thereon.*

*Sec. 27. No interest in an account may be used as security for a loan.*

#### *SEPARATE ACCOUNTING*

*Sec. 28. Separate records and accounting shall be maintained for each account established under the program. Reports shall be issued to each account owner at least annually.*

#### *DISTRIBUTIONS*

##### *Distribution Request*

*Sec. 29. 1. An account owner may request a distribution of funds from an account by submitting to the program manager no less than three business days from the date of the requested distribution a completed distribution request form and such other information as required by the Board or the program manager. The program manager will commence processing properly completed distribution request forms when received. A designated beneficiary does not have the authority to withdraw funds from an account.*

*2. A distribution from an account is classified as a nonqualified withdrawal, a qualified withdrawal, a qualified withdrawal due to death or disability of or scholarship awarded to a beneficiary, or a rollover distribution. These four types of distributions may only be arranged by the account owner and only in accordance with the following sections of these Regulations.*

##### *Nonqualified Withdrawal*

*Sec. 30. A distribution from an account for any reason other than a qualified withdrawal, a qualified withdrawal due to death or disability of or scholarship awarded to a beneficiary, or a rollover distribution is subject to federal tax on the portion of the distribution attributable to investment gains in the account. Any applicable federal tax withholding requirements will be followed.*

##### *Qualified Withdrawal*

*Sec. 31. A qualified withdrawal is a withdrawal of funds from an account to pay for the qualified higher education expenses of the designated beneficiary, or on account of death,*

*disability or scholarship, as permitted under IRC Section 529 and any applicable regulations issued thereunder. An account owner may request a qualified withdrawal by submitting to a program manager a completed distribution request form.*

*2. When requesting a qualified withdrawal, the account owner and the designated beneficiary (if the designated beneficiary is required by the program manager to sign the distribution request form), shall sign the distribution request form and provide such additional information as may be requested by the program manager.*

#### *Refund of Qualified Distribution*

*Sec. 32. A refund of all or part of a qualified distribution that is used to pay for qualified higher education expenses of a designated beneficiary shall be paid by the higher education institution to the program manager for credit to the appropriate account(s) for that designated beneficiary.*

#### *Qualified Withdrawals Due to Death, Disability or Scholarship of Designated Beneficiary*

*Sec. 33. Prior to a withdrawal from an account due to the death or disability of the designated beneficiary of that account, or because the designated beneficiary has received a scholarship to be applied toward attendance at a higher education institution, the account owner shall provide to the program manager certification by the account owner that the distribution is due to 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.*

#### *Rollover Distribution*

*Sec. 34. 1. If another state's qualified savings program allows rollover contributions, an account owner may authorize a direct rollover distribution from an account in the program to an account in the other state's qualified 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 in the program out of which the rollover distribution is being made; provided that a rollover contribution for the same designated beneficiary shall only be permitted once per twelve month period or as otherwise permitted under 26 USC 529 and any regulations, rulings, announcements, or other guidance issued thereunder.*

*2. 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 that other account is a member of the family of the designated beneficiary of the account out of which the rollover distribution is being made.*

*3. When authorizing a rollover distribution, the account owner shall complete the forms and make such disclosures of financial information as required by the program manager and the Board. If the rollover distribution deposited in an account would cause the total account balance of all accounts for that designated beneficiary to exceed the maximum contribution limit, the excess funds shall be rejected and returned.*

#### *TERMINATION OF AN ACCOUNT*



Sec. 35. *1. An account may be terminated if the account has a balance of less than \$1000 and no contributions or withdrawals have been made within the preceding two calendar years. Prior to termination, the account owner shall be given such notice as the Board deems to be adequate and shall be given an opportunity to prevent termination by making an additional contribution or a qualified withdrawal within the period of time specified by the program manager. Upon involuntary termination, the account balance shall be paid to the account owner as a nonqualified distribution.*

*2. An account may request a qualified distribution of the remaining balance of an account upon termination and such request will be honored following receipt by the program manager of any information requested by the program manager.*

### FEES

#### *Board Administration Fees*

Sec. 36. *The Board may charge fees based on total program assets and accounts to support the program's continued operation. These fees shall accrue daily and be remitted by the program manager as directed by the Board.*

#### *Other Fees*

Sec. 37. *The program manager may charge such fees as are agreed to between the program manager and the Board.*

### INVESTMENT POLICIES

#### *Investment Policies*

Sec. 38. *The Board shall establish the investment policies for the program. These policies shall be reviewed and modified from time to time as the Board, in its sole discretion and without liability, determines.*

#### *Reassignment of Accounts in the Years-to-College Portfolios*

Sec. 39. *Reassignment of an account to a different Years-to-College Portfolio shall occur on the first Business Day of August of each year.*

### DISPUTES

Sec. 40. *All joint decisions and interpretations by the Board and the program manager in connection with the operation of the program shall be final and binding upon the account owner and the designated beneficiary and any other person affected thereby. Any claim by an account owner against the State, the Board, the program or any of their respective affiliates or their officers, employees, or agents, pursuant to the participation agreement or the program shall be made solely against the assets of the program. An account owner who has had a substantial interest affected by a decision of the Board may appeal to the Board in writing. The Board shall review the documentation and other submissions and make a determination within 60 days. The Board's appeal determination shall be in writing and returned to the*

*appellant. All appeal decisions of the Board shall be final.*

### **ARBITRATION**

*Sec. 41. 1. Any controversy or claim arising out of or relating to any participation agreement, or the breach, termination or validity thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators(s) may be entered in any court having jurisdiction thereof.*

*2. The foregoing is a predispute arbitration clause and it shall be included in each participation agreement. By signing an arbitration agreement, the parties agree as follows:*

*(a) All parties to the agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the American Arbitration Association.*

*(b) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.*

*(c) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.*

*(d) The arbitrators do not have to explain the reason(s) for their award.*

*(e) The rules of the American Arbitration Association may impose time limits for bringing a claim in arbitration.*