

LCB File No. T006-02

**ADOPTED TEMPORARY REGULATION OF THE
OFFICE OF THE STATE TREASURER**

Makes changes to adopted regulation LCB File No. R185-01;

EXPLANATION – New matter is *italicized*; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-37, NRS 353B.310.

Section 1. Chapter 353B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 3~~7~~6, inclusive, of this regulation.

Sec. 2. As used in sections 2 to 3~~7~~6, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 3. “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
3. Establishes an account under the program.

Sec. 4. “Business day” means any weekday on which:

1. The New York Stock Exchange is open; and
2. Commercial banks are permitted to be open for business in this state.

Sec. 5. “Designated beneficiary” has the meaning ascribed to it in 26 U.S.C. § 529.

Sec. 6. “Member of the family” has the meaning ascribed to it in 26 U.S.C. § 529.

Sec. 7. “Participation agreement” means a participation 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. 8. “Person” has the meaning ascribed to it in 26 U.S.C. § 7701(a).

Sec. 9. “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. 10. “Program manager” means the private entity that has contracted with the board to serve as the administrator, marketing agent and investment manager of the program.

Sec. 11. “Qualified higher education expenses” has the meaning ascribed to it in 26 U.S.C. § 529.

Sec. 12. If the state treasurer, pursuant to NRS 353B.360, accepts on behalf of the Nevada college savings trust fund money provided by private entities for direct expenses or marketing, the state treasurer will account for the money separately in the state treasury. The state treasurer will expend the money from time to time for direct expenses or marketing activities related to the program, including expenses of educational programs in this state that encourage saving for college as part of an overall approach to financial planning.

Sec. 13. 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~~ Limits on the number of accounts that may be opened for a designated beneficiary by one or more account owners~~.~~ ***will be set forth in accordance with the applicable program description and participation agreement.***

Sec. 14. 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.

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. 15. 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 manager receives a written request containing the information required by the program manager and the change is recorded in the records of the program manager.

Sec. 16. 1. To open an account, an applicant must submit to the program manager a completed application and~~.~~ ***an initial contribution or selection of an alternative funding method as provided in the applicable program description.***

~~[(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.]~~

2. The acceptance by the program manager for processing of an application and an initial contribution or the selection of a method of contribution 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/***years to college*** 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.]~~ ***shall occur in accordance with the investment policies of the program.***

Sec. 17. The program 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 section 22 of this regulation. 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 section 22 of this regulation, the program manager will 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 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.

Sec. 18. 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. 19. 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 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. 20. 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. 21. 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 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 to deposit a rollover distribution pursuant to this section, an applicant must, in addition to complying with the requirements of sections 2 to 37, inclusive, of this regulation:

(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 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 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 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 aggregate balance for the accounts of a designated beneficiary established by the board pursuant to section 22 of this regulation, the excess money will be rejected and returned.

Sec. 22. 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. *Separate aggregate balance maximums will be set for the Nevada Tuition Program and for Nevada College Savings Programs, provided however that the combined maximums for both program types will not exceed the total aggregate balance maximum set by the board.*

3. All contributions that would cause the total account balance of all accounts for a designated beneficiary to exceed the maximum aggregate balance established by the board 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. 23. Except as permitted by 26 U.S.C. § 529 or any regulations, rulings, announcements or other guidance issued pursuant thereto, 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. 24. No interest in an account may be used as security for a loan.

Sec. 25. Separate records and accounting will be maintained for each account established under the program. Reports will be issued to each account owner at least annually.

Sec. 26. 1. An account owner may request a distribution of money from the account by submitting to the program 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 manager. The program 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]~~ *can* 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.

Although the Program Manager will report the earnings portion of all distributions, it is the final responsibility of the account owner to determine the classification of the withdrawal, and to calculate and report any resulting tax liability.

3. A distribution may only be arranged by the account owner and only in accordance with sections 27 to 3~~2~~¹, inclusive, of this regulation.

Sec. 27. 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 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.

Sec. 28. 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 manager a completed distribution request form.

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

Sec. 29. 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 manager for credit to the appropriate accounts for that designated beneficiary.

~~**Sec. 30.**—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.~~

Sec. 3~~1~~⁰ 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.

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. 3~~2~~1. 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 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 manager of all information requested by the program manager.

Sec. 3~~3~~2. 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 as directed by the board.

Sec. 3~~4~~3 The program manager may charge such fees as are agreed to by the program manager and the board.

Sec. 3~~5~~4. The board will from time to time review the investment policies for the program and modify those policies if it determines necessary.

Sec. 3~~6~~5. All joint decisions and interpretations by the board and the program manager in connection with the operation of the program are final and binding upon the account owner and the designated beneficiary and all other persons affected thereby. Any claim by an account owner against the State of Nevada, the board, the program or any of their respective affiliates, officers, employees or agents pursuant to the participation agreement or the program must 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 will review the documentation and other submissions and issue a written determination within 60 days after receiving the appeal. The determination of the board on an appeal is final.

Sec. 3~~7~~6. Provisions substantially similar to the following will be included in each participation agreement:

1. Any controversy or claim arising out of or relating to this participation agreement, or the breach, termination or validity thereof, must be settled by arbitration administered by the American Arbitration Association in accordance with its rules for commercial arbitration, and judgment on the award rendered in the arbitration may be entered in any court of competent jurisdiction.

2. By signing this participation agreement, the parties agree as follows:

(a) All parties to this 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, and the ability of a party 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 reasons for their award.

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

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T006-02**

INFORMATIONAL STATEMENT

AMENDMENTS TO LCB FILE NUMBER R185-01

The following statement is submitted for temporary adopted amendments to Nevada Administrative Code (NAC) 361.

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 amendments to R185-01 regulations were mailed on December 5, 2002 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, e-mailed to all interested parties, and posted on the internet,. A regulatory workshop was conducted by the State of Nevada Office of the Treasurer on September 26, 2002. All interested parties who requested notice were mailed the proposed rules. The State of Nevada Office of the Treasurer adopted the amended regulation after recommendation by the Board of Trustees of the College Savings Plans of Nevada on January 13, 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:

(a) Attended the hearing:	12
(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 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 Plan provides 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 regulations were sent to the interested parties, which include Strong Investments, Inc., and Upromise, 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 prior to being submitted to the Board. 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 amended regulation was adopted without changing any part of the proposed regulation because there was no public request for change. The draft regulation underwent considerable revision prior to submission to the Board. The Treasurer's Office prepared a draft of the regulations and made many changes suggested by Strong investment, Inc. and Upromise Inc., the current investment managers. Many other suggestions came from Bill Donovan and Margaret Paradis, attorneys with Orrick, Herrington & Sutcliffe LLP. After the draft had been revised, it was submitted to the Board. No changes were suggested after the Board version was circulated for comment. No requests for changes were made at the public workshop or hearing.

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.

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.