

This is amendment to 5.7.30 NMAC, Sections 1, 7, 8.

5.7.30.1 ISSUING AGENCY: EDUCATION TRUST BOARD, State of New Mexico, C/O Commission on Higher Education [~~1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, Attention: Dr. Bruce D. Hamlett~~]. [5.7.30.1 NMAC - N, 6/29/2001; A, 11/15/2001]

5.7.30.7 DEFINITIONS: The following terms shall have the following meanings in this rule

- A. "Account" means the formal record of transactions relating to a particular designated Beneficiary established for purposes of the Plan.
- B. "Account Owner" means any person who has entered into a Customer Agreement pursuant to this rule.
- C. "Act" means N. M. Stat. Ann. Section 21-21K-3 et seq.
- D. "Beneficiary" means any person who: (i) is designated by a Customer Agreement to benefit from payments for Qualified Higher Education Expenses at an Eligible Higher Educational Institution or else is eligible to receive benefits pursuant to such Customer Agreement in accordance with Plan Procedures and Guidelines; and (ii) constitutes a designated Beneficiary for purposes of the Federal Requirements.
- E. "Benefits" means the payment of Qualified Higher Education Expenses on behalf of a Beneficiary by the Board during the Beneficiary's attendance at an Eligible Higher Educational Institution.
- F. "Board" means the Education Trust Board of the State of New Mexico.
- G. "Chair" means the chair of the Board or any person acting under the delegated authority and supervision of the Chair.
- H. "Contributions" means amounts deposited by an Account Owner to an Account within the Plan.
- I. "Customer Agreement" means an agreement between an Account Owner and the Board providing for the establishment by the Account Owner of one or more accounts within the Plan fund and for the administration of those accounts for the benefit of the Account Owner and of one or more Beneficiaries.
- J. [~~"Early Termination Event" means any of the following, if documented in compliance with Plan Procedures and Guidelines:~~
 - ~~(1) the death of a Beneficiary;~~
 - ~~(2) the permanent disability of mental incapacity of the Beneficiary, as determined by certification of a physician;~~
 - ~~(3) a Rollover Distribution; or~~
 - ~~(4) an award of an Eligible Scholarship, to the extent of the amount thereof.~~] [Reserved]
- K. "Eligible Higher Educational Institution" or "Institution" means an institution which is described in section 481 of the Higher Education Act, and which is eligible to participate in a program under Title IV of such Act. Such institutions generally are accredited post-secondary educational institutions offering credit toward the attainment of associate, baccalaureate, graduate level or professional degrees or another recognized post-secondary credential. The institution must be eligible to participate in United States Department of Education student aid programs.
- L. "Eligible Scholarship" means any allowance or payment described in section 135(d) (1) (B) or (C) of the Internal Revenue Code or any scholarship.
- M. "Federal Requirements" means the provisions of the Internal Revenue Code, as amended from time to time, addressing qualified State tuition [~~plans~~] programs, any regulations promulgated or, if so determined by the Chair, proposed thereunder and any rulings thereunder addressed, or in the opinion of counsel, applicable to the Board.
- N. "Financial Institution" means a credit union or financial institution that meets standards established by the Board.
- O. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
- P. "Higher Education Act" means the Higher Education Act of 1965, as amended.
- Q. "Members" means the members of the Education Trust Board of the State of New Mexico.
- R. "Plan" means programs as described in and governed by the Act, [~~the Declaration of Trust referenced in Section 2 of this rule~~] and this rule.
- S. "Plan Procedures and Guidelines" means such operating procedures and guidelines for Plan administration, consistent with the Act, this rule and Federal Requirements, as may be established by the Board.
- T. "Qualified Higher Education Expenses" means:
 - (1) The certified costs of tuition, fees, books, supplies and equipment required for the enrollment or attendance of a Beneficiary at an Eligible Higher Educational Institution; and

(2) To the extent allowable in accordance with Plan Procedures and Guidelines, the reasonable costs of room and board of a Beneficiary incurred while attending an Eligible Higher Educational Institution and enrolled at least half-time, provided that the costs of room and board shall not exceed the maximum room and board allowance set forth in Federal Requirements.

U. ~~["Rollover Distribution" means a distribution or transfer from an Account which (i) is transferred to or deposited in another Plan Account or is otherwise applied in accordance with Plan Procedures and Guidelines; and (ii) which constitutes a Rollover Distribution pursuant to Federal Requirements.] [Reserved.]~~

V. "Tuition" means the charges imposed to attend an Eligible Higher Educational Institution and required as a condition of enrollment.
[5.7.30.7 NMAC – N, 6/29/2001; A, 11/15/2001]

5.7.30.8 ACTION

A. Trust. The Board shall establish a trust. The purpose of the trust is to create a vehicle for the Board to carry out the provisions of the Act and this Rule, to protect the financial integrity of the "Education Trust Fund" as defined in the Act, to preserve the Plans integrity and to assure the appropriate use of tax benefits. The Board shall be the trustee of the trust so created.

B. Plan Implementation. The administration of the Plan is delegated to the Chair.

C. Opening an Account

(1) Each applicant shall submit an application to the Chair or any agent or contractor designated by the Chair on such forms and with such attachments as the Chair may require.

(2) The application shall contain the following:

- (a) The name of the proposed Beneficiary. Beneficiaries may be changed to any eligible individual as permitted by the Plan Procedures and Guidelines then in effect, upon the receipt of a request of the Account Owner in the form designated in the Plan Procedures and Guidelines;
- (b) Any minimum investment required by the Chair to open an Account;
- (c) The birth date of the Beneficiary;
- (d) The social security number of the Beneficiary. Distributions from Accounts that lack a valid social security number may be subject to penalties or the withholding of taxes at the time of distribution;
- (e) The estimated matriculation date of the Beneficiary;
- (f) The name, social security number, address, phone number and, if available, the e-mail address of the Account Owner; and

(g) Such other information as the Board may require including such factual representations as the Board may reasonably require to evidence compliance with the Plan Procedures and Guidelines.

D. Customer Agreements

(1) The Board will enter into a Customer Agreement with ~~[all Account Owners]~~ each Account Owner

(2) The Customer Agreement may include the following:

- (a) The name and address of the Account Owner and the Beneficiary;
- (b) The tax identification numbers of the Beneficiary and the Account Owner;
- (c) The maximum amount of funds which may be contributed by the Account Owner annually or as a lump sum;
- (d) Any obligations of the Board, the Account Owner and the Beneficiary;
- (e) A summary of the fees and penalties which may be assessed against the Account, the Account Owner or the Beneficiary;
- (f) The manner in which funds may be withdrawn and by which the ownership rights of the Account may be transferred;
- (g) Provisions for periodic reporting of the status of Accounts;
- (h) Provisions of this Rule; and
- (i) Such other information as the Board may determine to be necessary or appropriate, including such factual representations as the Board may reasonably require to evidence compliance with the Plan Procedures and Guidelines.

(3) Customer Agreements may be amended in order to enable Account Owners to increase or decrease the amount contributed, change the Beneficiary and carry out similar matters. Changes that affect the ownership and registration (e.g., mailing address, name of Beneficiary) of the Account must be submitted by the Account Owner in the form set forth in the Plan Procedures and Guidelines.

(4) Applications and Customer Agreements may be submitted, accepted and become binding contracts by electronic means (including over the Internet) as may be set forth in the Plan Procedures and

Guidelines.

E. Limitations on Contributions

(1) No Account Owner or Beneficiary may directly or indirectly direct the investment of any contributions or of any other amounts held by the Plan. Members of the Board will not be deemed to be directly or indirectly directing the investment of any Account on which they are the Account Owner. At the time an Account Owner opens an Account, an Account Owner may choose among any investment options offered by the Board.

(2) An Account Owner may contribute to an Account by making cash contributions in the form of:

- (a) Lump sum payment;
- (b) Installments;
- (c) Electronic funds transfer from an existing account of the Account Owner; and
- (d) Employer payroll deduction, if provided by the employer.

(3) Contributions may be made at any time subject to any minimum deposit requirements.

(4) Total contributions to an Account may not exceed the amount projected to be necessary to pay Qualified Higher Education Expenses of the beneficiary ~~[to attend five years of undergraduate enrollment]~~ as determined by the Board in accordance with Plan Procedures and Guidelines and Federal Requirements. For the calendar year 2000 the amount projected to be necessary to pay Qualified Higher Education Expenses is \$160,539. In subsequent years such amount will be based on the highest cost private college in the United States of America, as published by the College Board or, if the College Board discontinues publication of such data, by any other similar organization selected by the Chair. The Board will prohibit additional contributions to an Account when the balance in the Account reaches an amount to be specified annually. The Board may establish contribution limits which vary based upon factors, which may include: the ages of the Beneficiaries, their expected year of enrollment, and the investment allocation of the Plan.

F. Ownership of Contributions and Earnings

(1) The Account Owner shall retain ownership of all contributions made under any Customer Agreement and earnings on those contributions up to the date of utilization for payment of Qualified Higher Education Expenses for the Beneficiary.

(2) In the event the Customer Agreement is terminated by the Account Owner prior to payment of Qualified Higher Education Expenses for the Beneficiary, the Account Owner shall retain ownership of all contributions made under the Customer Agreement and, if provided for under the Customer Agreement, a right to receive earnings (less any applicable taxes and/or penalties, administrative fees and investment losses) on all contributions to the Account.

(3) The Eligible Higher Educational Institution shall own payments made to it for Qualified Higher Education Expenses at the time each is made to the Institution.

G. Withdrawals for the Payment of Qualified Higher Education Expenses

(1) To withdraw funds from an Account for the payment of Qualified Higher Education Expenses, the Board must first be advised in accordance with Plan Procedures and Guidelines of the Institution the Beneficiary will attend and the date of anticipated enrollment. The Board requires evidence confirming the Beneficiary's enrollment at the Eligible Higher Educational Institution.

(2) Upon receipt of documentation required in accordance with Plan Procedures and Guidelines (including copies of invoices and/or proof of disbursement), the Board will make distributions to the specified Institution for the benefit of the Beneficiary, will make distributions to the specified Institution and the Beneficiary on a copayment basis or, if consistent with Plan Procedures and Guidelines, to another party as expressly authorized in writing. Distribution of benefits will begin within thirty (30) days after receipt by the Board from the Account Owner of a notice to use Account assets and shall continue, as authorized pursuant to documentation satisfactory to the Board, throughout the Beneficiary's period of enrollment at an Eligible Higher Educational Institution or until the Account balance has been exhausted, whichever comes first.

(3) To make withdrawals from an Account for the payment of off campus room and board, and other allowed Qualified Higher Education Expenses, the Board requires satisfactory documentation reflecting the expenses being submitted for payment in a form acceptable to the Board. If a Beneficiary resides off campus, the Board will pay, consistent with Plan Procedures and Guidelines, whomever is designated by the Account Owner, in addition to the amounts paid to the Institution, an amount, not in excess of that permitted by Federal Requirements with respect to the cost of lodging and meals for an academic period.

(4) The Board may make distributions to a Beneficiary prior to the expenditure if the Beneficiary certifies prior to the distribution that the distribution will be expended for Qualified Higher Education Expenses of the Beneficiary within a reasonable time after the distribution and within 30 days of the distribution the Beneficiary provides substantiation satisfactory to the Board that the amounts disbursed were used for the payment of Qualified

Higher Education Expenses. Distributions made pursuant to this section may be made only to the extent the Board retains a sufficient amount in the Beneficiary's account to pay any State or Federal taxes or penalty which may accrue if the Beneficiary fails to provide timely valid substantiation of the Qualified Higher Education Expense.

(5) All distributions made during a tax year may be treated as one distribution when necessary to comply with Federal Requirements.

H. Participating Financial Institutions

(1) The Board may enter into agreements with Financial Institutions which agree to:

(a) Permit deposits to be made into Accounts by payroll deposit or other electronic funds transfer on a periodic or lump sum basis;

(b) Participate in such marketing and public awareness programs as requested by the Chair; or

(c) Such other terms and conditions as the Chair deems appropriate.

(2) Any Financial Institution is eligible to participate in the Plan.

I. Administration Agreements. The Board may enter agreements for assistance with the implementation and administration of the Plan, including terms and conditions the Chair determines to be necessary or appropriate.

J. Fees and Penalties

(1) Each Customer Agreement may provide for an annual administrative fee based on amounts in the Plan fund accrued daily at an annualized rate not to exceed 1.5%. Such fees may be used only for the cost of administration of the Plan. In determining such fees, the Board shall at least consider: (1) the amount and estimated rate of increase of tuition and fees at institutions of higher education; (2) estimated investment returns; (3) estimated administrative costs; and (4) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(2) Customary and usual investment costs (including fees and expenses of any fund in which Plan assets are invested) and distribution costs may be deducted from the Plan fund in connection with the investment thereof and are not included in the administrative fees. Customary and usual account maintenance fees may be deducted from individual accounts opened and held by Account Owners who are not New Mexico residents, unless it is opened and held on behalf of a Beneficiary who is a New Mexico resident.

(3) ~~[Except upon the occurrence of an Early Termination Event or the overfunding of an account, if the Account Owner terminates the Customer Agreement prior to the use of all funds for an eligible purpose, the Account Owner must pay an early termination penalty not to exceed 10% of the portion of the distribution attributable to investment earnings on amounts contributed to the Account.]~~ [Reserved.]

(4) If the Board determines that the Account Owner or the Beneficiary have made any material misrepresentations on the application form, in requests for disbursements or in any other communications with the Board or any Plan manager, acting pursuant to an agreement with the Board, the Account may be involuntarily liquidated by the Board. If the Board liquidates any account pursuant to this provision, the Account Owner will be entitled to a refund subject to ~~[a penalty of 10% of the portion of the refund attributable to investment earnings on amounts contributed to the Account]~~ any penalty as the Board may determine in accordance with the Plan Procedures and Guidelines and Federal Requirements.

(5) All amounts attributable to refund penalties remain the property of the Board, and may be used for purposes of the Plan.

(6) When a penalty is assessed, the Chair may (i) require that the amount of the penalty be set off from any funds remaining in the Account or (ii) will collect penalties by retaining a sufficient balance in an Account to pay the amount of the penalty.

(7) All penalties are in addition to all State and Federal taxes which may be due on the distribution. The Board may withhold an amount equal to any such taxes from a distribution.

K. Withdrawals For Purposes Other Than Qualified Higher Education Expenses

(1) An Account Owner may withdraw funds from an Account, subject ~~[the penalties identified in Section 10]~~ to any penalties assessed by the Plan. Any investment losses will be deducted from the principal amount of contributions. In addition, a fee may be levied by the Board to reasonably compensate the Board its costs incident to the Account Owner's account.

(2) Except as otherwise specifically provided herein, only the Account Owner for each Account may close an Account or receive a refund of amounts contributed (and earnings) .

(3) Refunds will not be made to anyone other than the Account Owner for each Account, unless the Account Owner directs the Board in writing in accordance with Plan Procedures and Guidelines to provide the refund to another person.

(4) When the Beneficiary receives an Eligible Scholarship, as determined pursuant to the Internal

Revenue Code, refund payments in an amount equal to the Eligible Scholarship may be issued to the Account Owner each academic term as long as the Eligible Scholarship is effective or the benefits may be transferred to another Beneficiary. Proof of the Eligible Scholarship must be submitted in a form acceptable to the Board in accordance with Plan Procedures and Guidelines. Refund payments may be subject to a processing fee.

(5) If the Beneficiary dies or becomes disabled, the amount of savings remaining available in the Account may be refunded or the benefits may be transferred to another Beneficiary. If a change of Beneficiary is not requested, a lump sum refund will be made to the Account Owner, provided proof of death or disability is submitted in a form acceptable to the Board consistent with Plan Procedures and Guidelines. Refund payments may be subject to a processing fee.

(6) The Board may notify the Account Owner of any Account in which a balance remains: (i) upon graduation of the Beneficiary from an Eligible Higher Educational Institution; (ii) upon the lack of any withdrawals for any ten-year period, subsequent to the expected initial withdrawal, during which period no withdrawal has been made; (iii) upon the completion of the last period of Beneficiary usage projected upon Account establishment; (iv) upon determination by the Board that no eligible Beneficiary exists; or (v) if the Account balance has fallen below \$250; of the amount of such balance and may request directions from the Account Owner as to the application of such balance, consistent with Plan Procedures and Guidelines. If the Account Owner fails to provide such direction with respect to all or part of such balance within 90 days, the Board may conclusively deem the Account to be overfunded in an amount equivalent to the portions of such balance for which no direction has been received and issue a refund for such amounts less penalties, fees and State and Federal taxes.

L. Transfer of Ownership. The Account Owner may transfer ownership rights of an account to another eligible Account Owner, provided the transfer is accomplished without consideration in accordance with Plan Procedures and Guidelines. All requests for substitution of an Account Owner must include:

- (1) The Account number;
 - (2) The name, address, social security number and telephone of the successor Account Owner;
 - (3) The reason for the transfer of ownership;
 - (4) Such evidence of verification, including without limitation the guaranteed signature of the Account Owner, as may be required or allowed by the Plan Procedures and Guidelines; and
 - (5) Such other information as the Board may require.
- (6) If an individual becomes ineligible to be a Beneficiary, the Account Owner may designate another Beneficiary in accordance with Plan Procedures and Guideline.

(7) Neither the Account Owner nor the Beneficiary may use any rights to or interest in the account as security for a loan, including as security for a loan to purchase such interest in the Plan.

M. Prepaid Tuition Contracts. Prepaid tuition contracts, once paid, will cover all tuition and required fees of State public institution of higher education.

N. Gifts and Bequests. Gifts or bequests may be made to the Education Trust Fund as defined in the Act either on behalf of a Beneficiary or to the fund generally.

O. Benefits Excluded. Benefits under prepaid tuition contracts and college investment agreements are excluded from any calculation of a ~~Beneficiary's~~ Beneficiary's eligibility for financial aid from the State.

P. Waiver of Rule. The Chair may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the Plan.

Q. Conflict of Interest. No member of the Board may vote on any matter in which the member or any organization the member works for has a conflict of interest or which may be perceived as a conflict of interest.

[5.7.30.8 NMAC - N, 6/29/2001; A, 11/15/2001]