

Amended by R.2000 d.447, effective November 6, 2000.
See: 32 N.J.R. 2192(a), 32 N.J.R. 3987(a).

9A:10-6.14 Delinquency

(a) In keeping with the Authority's goals of default prevention in the NJCLASS Program, the Authority may perform a series of default prevention activities beginning when an NJCLASS loan is 10 days delinquent.

(b) Default prevention activities shall include, but not be limited to, letters and telephone calls to the borrower and cosigner, if any, beginning after the first 10 days of delinquency. Thirty days before sending a letter of default (180 days delinquent, or 240 days delinquent depending on whether payments are due monthly or less frequently than monthly), the Authority shall telephone the borrower and cosigner and send the borrower and cosigner a final demand letter.

Amended by R.2000 d.447, effective November 6, 2000.
See: 32 N.J.R. 2192(a), 32 N.J.R. 3987(a).
Amended by R.2002 d.288, effective September 3, 2002.
See: 33 N.J.R. 4050(a), 34 N.J.R. 3085(a).

In (a), substituted "may" for "shall".

Amended by R.2003 d.465, effective December 1, 2003.
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (b), inserted references to cosigner following borrower throughout.

9A:10-6.15 Credit bureau reporting

The Authority shall report the status of all NJCLASS loans, for borrowers and cosigners, in the NJCLASS portfolio to a national credit bureau each month.

Amended by R.2002 d.288, effective September 3, 2002.
See: 33 N.J.R. 4050(a), 34 N.J.R. 3085(a).
Deleted the second and third sentences.

9A:10-6.16 Default and consequences of default

(a) Default occurs when a borrower fails to make an installment payment when due, or to meet other terms of the Promissory Note under circumstances where the Authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided failure to repay persists for:

1. At least 180 days when payments are due monthly;
or
2. At least 240 days during the student's in-school period when payments are due less frequently than monthly.

(b) Upon default, the borrower and/or cosigner, if any, are liable for the entire balance of the loan. Upon default, the Authority shall notify credit bureaus of this negative information. Default may result in any or all of the following: loss of State income tax refunds or State tax rebates, legal action, assessment of collection charges including attorney fees, loss of eligibility for other student aid, negative credit reports, administrative wage garnishment, offset of lottery prize winnings, and suspension of New Jersey occupational and professional license.

Amended by R.2000 d.447, effective November 6, 2000.
See: 32 N.J.R. 2192(a), 32 N.J.R. 3987(a).

In (b), inserted "or State tax rebates" following "State income tax refunds" and inserted ", and suspension of New Jersey occupational license" following "lottery prize winnings".

Amended by R.2003 d.465, effective December 1, 2003.

See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (b), inserted a reference to cosigner following borrower in the first sentence, and inserted "and professional" following "occupational" in the last sentence.

9A:10-6.17 Discharge

(a) Rules governing the discharge of loans based on filing for relief in bankruptcy, and discharge of loans due to death or total and permanent disability are set forth in this section. If an NJCLASS loan was obtained by two borrowers as co-makers or by a borrower and one or more cosigners, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower or cosigner remains obligated to repay the loan, beginning with NJCLASS loans using promissory notes dated 1994 or later.

(b) If an individual borrower dies, the obligation of the borrower to make any further payments on the loan is discharged. In determining that a borrower has died, the Authority must receive acceptable proof of death, which shall be a certified copy of the death certificate with a raised seal.

(c) If the Authority determines that an individual borrower is totally and permanently disabled, the obligation of the borrower to make any further payments on the loan is discharged. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled. Totally and permanently disabled means the condition of any individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death. After being notified by the borrower that the borrower claims to be totally and permanently disabled, the Authority shall request that the borrower submit on a form provided or approved by the Authority a certification of the existence thereof by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state that the borrower is totally and permanently disabled.

(d) The following pertain to borrower bankruptcy;

1. If the Authority is notified that any of the parties to the note has filed a petition for relief in bankruptcy under Chapters 12 or 13 of the Federal Bankruptcy Code, the Authority shall immediately suspend any collection efforts outside the bankruptcy proceeding against any other of the parties to the note. If the Authority is notified that any of the parties to the note has filed a petition for relief in bankruptcy under Chapters 7 or 11 of the Federal Bankruptcy Code, the Authority may suspend any collection efforts outside the bankruptcy proceeding against any other of the parties to the note.

2. The Authority shall determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other confirmation issued by the bankruptcy court.

3. In general, the Authority shall follow the Federal regulations governing guaranty agency participation in bankruptcy proceedings, set forth in 34 CFR 682.402, except that the Authority in its discretion may choose to differ from Federal cost benefit analysis in deciding whether to oppose an undue hardship discharge petition, to oppose a plan proposed under Chapters 11, 12, or 13 of the Federal Bankruptcy Code, or to oppose a discharge pursuant to a plan under Chapters 11, 12, or 13 of the Federal Bankruptcy Code.

Amended by R.2000 d.447, effective November 6, 2000.

See: 32 N.J.R. 2192(a), 32 N.J.R. 3987(a).

Rewrote (d)1.

9A:10-6.18 Rehabilitation

(a) Effective no earlier than June 1, 1999, the Authority may offer a rehabilitation program for NJCLASS loans. If the Authority offers a rehabilitation program for NJCLASS loans, the Authority shall notify NJCLASS borrowers of the availability of this program. In the event the Authority offers a rehabilitation program for NJCLASS loans, an NJCLASS borrower who has defaulted on an NJCLASS loan is permitted to rehabilitate the loan with an enforceable promissory note and remove that loan from default status, provided the borrower satisfies the requirements of (c) below. A defaulted NJCLASS loan may be rehabilitated only once.

(b) An NJCLASS loan is considered to be rehabilitated only after the borrower has made one voluntary full payment each month and the payment is received by the Authority within 15 days of the scheduled due date for 12 consecutive months, with no deferments or forbearances permitted during the 12 month period.

(c) An NJCLASS borrower may request the rehabilitation of the borrower's defaulted NJCLASS loan held by the Authority. The borrower shall make one voluntary full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, "full payment" means the minimum acceptable monthly payment as defined in N.J.A.C. 9A:10-6.11(d). "Voluntary payments" are those made directly by the borrower regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(d) The maximum repayment period for a rehabilitated NJCLASS loan shall be the same as that of the NJCLASS loan prior to default. A borrower who wishes to rehabilitate a loan on which a judgment has been entered must sign a new promissory note. The maximum repayment period of the new promissory note shall be the same as that of the NJCLASS loan prior to default. Once an NJCLASS loan subject to a judgment has been rehabilitated, the Authority shall have the judgment marked satisfied.

(e) The Authority shall report to a national credit bureau within 30 days of the date the loan was rehabilitated that the loan is no longer in a default status, and is now in a "current was collection account" status.

(f) The Authority may elect to hold the rehabilitated loan directly, or transfer the loan to another lender, including, but not limited to, the trustee of the trust estate held for the benefit of NJCLASS Program bondholders.

Amended by R.1998 d.534, effective November 16, 1998.

See: 30 N.J.R. 2805(a), 30 N.J.R. 4041(b).

Rewrote (a), (c) and (d); in (b), deleted "reasonable and affordable" following "voluntary", and added "with no deferments or forbearances permitted during the 12 month period" at the end; and in (e), added "and is now in a 'current was collection account' status" at the end. Amended by R.2000 d.447, effective November 6, 2000.

See: 32 N.J.R. 2192(a), 32 N.J.R. 3987(a).

In (c), amended the N.J.A.C. reference.

9A:10-6.19 Authority enforcement requirements for schools participating in the NJCLASS Program

(a) To assess the administrative and financial capability of a school participating in the NJCLASS Program, the Authority may expand the scope of either a FFEL Program review or a State scholarship and Tuition Aid Grant management review to cover the NJCLASS Program.

(b) In the event a school is selected for review, the Authority shall provide the school at least 30 days notice of the date of the on-site review. The Authority shall also notify the school of the financial and administrative information required for the on-site visit.

(c) The school shall be required to cooperate with Authority reviewers by making staff available to reviewers at entrance and exit interviews and by supplying additional material to reviewers if requested during the on-site visit.

(d) The program review follow up procedures set forth in N.J.A.C. 9A:10-1.18(g) shall apply to NJCLASS Program reviews, with the exception of notifications to the United States Department of Education and Federal limitation, suspension, or termination actions.

Amended by R.2000 d.447, effective November 6, 2000.

See: 32 N.J.R. 2192(a), 32 N.J.R. 3987(a).

In (d), amended the N.J.A.C. reference.

SUBCHAPTER 7. POLICY GOVERNING NEW JERSEY BETTER EDUCATIONAL SAVINGS TRUST (NJBEST) PROGRAM

9A:10-7.1 Purpose

The rules established by this subchapter are designed to promote savings for college through a college savings program that provides Federal and State tax benefits to participants.

9A:10-7.2 Scope

The requirements set forth under this subchapter cover the administration, the policies and the procedures for participation in the New Jersey Better Educational Savings Trust (NJBEST) Program.

9A:10-7.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Account” means an individual trust account or savings account established as prescribed in this subchapter.

“Authority” means the New Jersey Higher Education Student Assistance Authority.

“Cash” means cash, check, money order or wire transfer.

“Contributor” means the person or organization contributing to and maintaining an account and having the right to withdraw monies from the account before the account is disbursed to the designated beneficiary.

“Designated beneficiary” means:

1. The person designated at the time the account is opened as the person whose higher education expenses are expected to be paid from the account;

2. The replacement beneficiary if the change in designated beneficiary would not result in a distribution that is included in Federal gross income under section 529 of the Federal Internal Revenue Code; and

3. In the case of an interest in the program established under P.L. 1997, c.237 purchased by a state or local government or an organization described in section 501(c)(3) of the Federal Internal Revenue Code as a part of a scholarship program operated by the government or organization, the person receiving this interest as a scholarship.

“Disability” means a condition under which an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he or she furnishes proof of the existence thereof in the form of a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a state that the individual is disabled.

“Higher education institution” means an eligible educational institution as defined in or for purposes of section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, except that with respect to proprietary institutions, only degree granting programs licensed or approved by the Commission on Higher Education shall be included in the definition of higher education institution for purposes of N.J.A.C. 9A:10-7.15, and only proprietary institutions participating in a Title IV, Higher Education Act of 1965 program shall be included in the definition of higher education institution for all other purposes of this subchapter.

“Investment Manager” means the Division of Investment in the Department of the Treasury or the private entity or entities authorized to do business in this State as may be designated by the Authority to invest the funds of the trust pursuant to the terms of P.L. 1997, c.237.

“Member of the family” means, with respect to any designated beneficiary:

1. A son or daughter, or a descendant of either;
2. A stepson or stepdaughter;
3. A brother, sister, stepbrother, or stepsister;
4. The father or mother, or an ancestor of either;
5. A stepfather or stepmother;
6. A son or daughter of a brother or sister;
7. A brother or sister of the father or mother;
8. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law;
9. A first cousin;
10. The spouse of any individual described in paragraphs 1 through 9 of this definition; and
11. Any other member of the family as defined in or for purposes of section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

For purposes of this definition, a legally adopted child of an individual shall be treated as the child of such individual by blood.

“NJBEST scholarship” means a scholarship funded by the State of New Jersey for a designated beneficiary’s undergraduate attendance at a higher education institution in New Jersey, as more fully described in N.J.A.C. 9A:10-7.15.

“Nonqualified withdrawal” means a withdrawal from an account other than:

1. A qualified withdrawal;
2. A withdrawal made as the result of the death or disability of the designated beneficiary of any account;
3. A withdrawal made on account of a scholarship (or allowance or payment described in subparagraphs (B) or (C) of paragraph (1) of subsection (d) of section 135 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 135) received by the designated beneficiary, but only to the extent of the amount of that scholarship, allowance or payment; or
4. A rollover or change in designated beneficiary which would not result in a distribution includible in Federal gross income under section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

“Program” means the New Jersey Better Educational Savings Trust (NJBEST) Program established pursuant to P.L. 1997, c.237.

“Qualified higher education expenses” means:

1. Tuition, fees, books, supplies, and equipment required for enrollment or attendance of a designated beneficiary at a higher education institution. Qualified higher education expenses shall also include room and board for a designated beneficiary at a higher education institution provided that the designated beneficiary is enrolled at least half-time (one half the normal full-time work load for the course of study the designated beneficiary is pursuing), and provided that the amount shall not exceed the minimum amount applicable to the designated beneficiary for room and board for such period in the cost of attendance defined by the Higher Education Act of 1965, 20 U.S.C. § 108711, for the higher education institution for such period; and

2. Expenses for special needs services in the case of a special needs beneficiary, who is the designated beneficiary, which are incurred in connection with such enrollment or attendance, as permitted under section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

“Qualified withdrawal” means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

“Scholarship account” means a NJBEST account opened by any state or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 501, and exempt from taxation under section 501(a) of the Federal Internal Revenue Code for a designated beneficiary as part of a scholarship program operated by such government or organization under which the designated beneficiary need not be identified until such time as a withdrawal is made on behalf of the designated beneficiary who shall receive this interest in the program as a scholarship.

“Successor contributor” means the spouse of the contributor who may be named to succeed the contributor in the event of the death of the contributor. The successor contributor would then have the right to contribute to and maintain the account and to withdraw monies from the account before the account is disbursed to the designated beneficiary.

“Trust” means the New Jersey Better Educational Savings Trust (NJBEST) established under P.L. 1997, c.237.

Amended by R.1998 d.385, effective August 3, 1998.
See: 30 N.J.R. 1707(a), 30 N.J.R. 2908(a).

In “NJBEST scholarship”, changed N.J.A.C. reference.
Amended by R.1998 d.534, effective November 16, 1998.
See: 30 N.J.R. 2805(a), 30 N.J.R. 4041(b).

Rewrote “Higher education institution”.
Amended by R.2002 d.289, effective September 3, 2002.
See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Amended the N.J.A.C. reference in “Higher education association” and “NJBEST scholarship”; amended “Member of the family”, “Non-qualified withdrawal”, “Qualified higher education expenses” and “Qualified withdrawal”; added “Successor contributor”.

Amended by R.2003 d.343, effective August 18, 2003.
See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

Added “Scholarship account”.

9A:10-7.4 Procedure for opening an account

(a) The program shall be operated as a trust through the use of accounts for designated beneficiaries. An account may be opened by any person who desires to save to pay the qualified higher education expenses of a person by satisfying each of the following requirements:

1. Completing an application in the form prescribed by the Authority and thereby entering into a participation agreement with the Authority. The application shall include identifying and financial information about the contributor, the successor contributor, if any, and the designated beneficiary, information about the amount and method of contribution, and residency information if applicable;

2. Making the minimum contribution required by the Authority for opening an account, which shall be \$25.00;

3. Indicating the account or accounts to be opened; and

4. If the investment manager is the Division of Investment in the Department of the Treasury, demonstrating to the satisfaction of the Authority that either the contributor, if an individual, or the designated beneficiary is a New Jersey resident. Residence is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever he or she is absent, he or she has the intention of returning. Documents providing evidence of residency include but are not limited to: driver's license, voter registration form, tax return(s). If the investment manager is not the Division of Investment in the Department of the Treasury, the requirement of New Jersey residency for either the contributor or the designated beneficiary would not apply unless otherwise determined by the Authority.

(b) A “scholarship account” may be opened by any state or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 501, and exempt from taxation under section 501(a) of the Federal Internal Revenue Code for a designated beneficiary as part of a scholarship program operated by such government or organization. The designated beneficiary shall receive this interest in the program as a scholarship.

1. The designated beneficiary of a scholarship account opened pursuant to (b) above need not be identified until such time as a withdrawal is made from the account.

2. The requirements for opening an account in (a)1 through 3 above must also be met when opening a “scholarship account” with the exception that the designated beneficiary need not be identified until a withdrawal is made.

Amended by R.1998 d.385, effective August 3, 1998.
See: 30 N.J.R. 1707(a), 30 N.J.R. 2908(a).

In (a), deleted a former 2, and recodified former 3 through 5 as 2 through 4.

Amended by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

In (a)1, inserted “, the successor contributor, if any,” following “the contributor”.

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

In (a)1, deleted “designated beneficiary’s educational goals,” preceding “amount and method”; added (b).

9A:10-7.5 Contributions

(a) Contributions to accounts may be made only in cash, as defined in N.J.A.C. 9A:10-7.3.

(b) Except for amounts provided to a designated beneficiary qualifying for a NJBEST scholarship, only the contributor may make contributions to an account after the account is opened.

(c) The minimum contribution to an account at any one time shall be no less than \$25.00 with the exception of automatic payroll deductions.

(d) The minimum contribution to maintain an account shall be either \$25.00 a month or \$300.00 a year. Once at least \$1,200 is contributed to an account and provided there is no nonqualified withdrawal from that account, no additional contributions are required to maintain the account.

(e) The maximum contribution for any designated beneficiary shall not exceed the amount necessary to pay the qualified higher education expenses of the designated beneficiary. To achieve this end, the Authority directly or through a contractor shall:

1. Issue procedures for aggregating the total balance of multiple accounts established for a designated beneficiary;

2. Establish a maximum contribution amount that can be deposited in accounts for a designated beneficiary;

- i. The contributions to all “qualified tuition programs” (as defined in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529) of which the NJBEST Program designated beneficiary is the designated beneficiary shall not exceed the lesser of an amount to be determined by the Authority, subject to annual review, based on the sum of five times the annual aggregate cost of undergraduate tuition, room, board, and required fees, as published for financial aid purposes, at an eligible undergraduate higher education institution in the United States that the Authority determines to be among the highest-cost and two times the annual aggregate cost of graduate or professional school tuition, room, board, and required fees, as published for financial aid purposes, at an eligible graduate or professional higher education institution in the United States that the Authority determines to be among the highest-cost, with the sum then being rounded down to the nearest \$5,000 increment, or such lesser amount as the Authority may determine to be the maximum contribution limit permitted by section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529. Notice of any change in the amount will be published as a public notice in the New Jersey Register; and

3. Require that any excess contributions with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with N.J.A.C. 9A:10-7.8 through 7.11.

(f) No contributor to or designated beneficiary under the NJBEST program may directly or indirectly direct the investment of any contributions to the program (or the earnings thereon).

Amended by R.1998 d.385, effective August 3, 1998.

See: 30 N.J.R. 1707(a), 30 N.J.R. 2908(a).

In (a) and (e), changed N.J.A.C. references.

Amended by R.1998 d.534, effective November 16, 1998.

See: 30 N.J.R. 2805(a), 30 N.J.R. 4041(b).

In (e)3, substituted “\$100,000” for “a maximum college savings account established by the Authority from time to time” following “lesser of”.

Amended by R.2000 d.324, effective August 7, 2000.

See: 32 N.J.R. 1279(a), 32 N.J.R. 2898(a).

In (e)3, substituted “\$100,000” for “\$150,000”.

Amended by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

In (c), deleted “that may be made” following “contribution” and inserted “with the exception of automatic payroll deductions” at the end; in (d), rewrote the first sentence; rewrote (e).

Amended by R.2003 d.141, effective April 7, 2003.

See: 34 N.J.R. 4340(a), 35 N.J.R. 1545(a).

In (e), rewrote 3.

Public Notice: Maximum dollar contribution limit for NJBEST Program designated beneficiary.

See: 35 N.J.R. 1594(a).

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

Rewrote (e).

9A:10-7.6 Cancellations and withdrawals

(a) A contributor may at any time cancel a participation agreement with the Authority by providing the Authority 60 days’ notice to terminate the agreement. If the participation agreement is cancelled, the contributor is entitled to a withdrawal of contributions and earnings.

(b) Contributors may withdraw part or all of the balance from an account upon prior notice to the Authority.

(c) For qualified withdrawal of contributions and earnings from an account, a certification acceptable to the Authority must be provided that the withdrawal is for one or more of the following reasons:

1. The withdrawal is to be used for qualified higher education expenses of the designated beneficiary;

2. The withdrawal is made on account of the death or disability of the designated beneficiary; or

3. The withdrawal is made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C) of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 135) received by the designated beneficiary, but only to the extent of the amount of that scholarship, allowance or payment.

(d) All other withdrawals of contributions and earnings from an account will be considered nonqualified withdrawals, and may generate State and Federal tax consequences for either the contributor or designated beneficiary.

Amended by R.2002 d.289, effective September 3, 2002.
See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

In (a), substituted "contributions" for "principal"; in (b), inserted "or all" following "part"; in (c), rewrote the introductory paragraph and deleted 4; added (d).

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

Rewrote (b).

9A:10-7.7 Procedures for changes in designated beneficiary in the New Jersey Better Educational Savings Trust (NJBEST) Program

A contributor may change the designated beneficiary of an account as permitted in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, by providing prior notice to the Authority of the request to change and evidence acceptable to the Authority that the new designated beneficiary is a member of the family of the current designated beneficiary.

Amended by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Rewrote the section.

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

Substituted "by providing prior notice to the Authority of the request" for "by providing the Authority 60 days' notice of the request".

9A:10-7.8 Rollover to a different qualified tuition program for the benefit of the same designated beneficiary or a new designated beneficiary

A contributor may rollover all or a portion of an account to a different qualified tuition program for the benefit of the designated beneficiary or to the credit of another designated beneficiary who is a member of the family of the current beneficiary as permitted in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, by paying the fee required under N.J.A.C. 9A:10-7.12(b), and providing the Authority with prior notice of the request to change and evidence acceptable to the Authority that the new program is a qualified tuition program and the new beneficiary is the same as the current beneficiary or a member of the family of the current designated beneficiary as permitted in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

New Rule, R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.8, Fees and charges, recodified to N.J.A.C. 9A:10-7.12.

Amended by R.2003 d.141, effective April 7, 2003.

See: 34 N.J.R. 4340(a), 35 N.J.R. 1545(a).

Amended the N.J.A.C. reference.

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

Substituted "with prior" for "60 days'" following "the Authority".

9A:10-7.9 Limitation on rollover to a qualified tuition program other than NJBEST

Any transfer, if such transfer occurs within 12 months from the date of a previous transfer, to any qualified tuition program for the benefit of the designated beneficiary may be a nonqualified withdrawal which may result in a distribution includible in Federal gross income to the extent required under section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

New Rule, R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.9, Penalty for nonqualified withdrawals, repealed.

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

Substituted "may" for "shall" following "designated beneficiary", substituted "may" for "would" preceding "result" and inserted "to the extent required" following "gross income".

9A:10-7.10 Rollover to an alternative investment strategy within NJBEST

A contributor may rollover all or a portion of an account to an alternative investment strategy if offered by the NJBEST Program for the benefit of the designated beneficiary or to the benefit of another designated beneficiary who is a member of the family of the current beneficiary as permitted in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529 by providing the Authority 60 days' notice of the request to change and evidence acceptable to the Authority that the new beneficiary is the same as the current beneficiary or is a member of the family of the current designated beneficiary as permitted in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

New Rule, R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.10, Statements, reports on distributions, information returns, recodified to N.J.A.C. 9A:10-7.13.

9A:10-7.11 Limitation on rollover within NJBEST

Rollover of all or a portion of an account to an alternative investment strategy if offered by the NJBEST Program for the benefit of the designated beneficiary is permitted only once per calendar year. Rollover of all or a portion of an account to an alternative investment strategy if offered by the NJBEST Program for the benefit of another designated beneficiary who is a member of the family of the current beneficiary as permitted in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529 is not subject to the once in a calendar year requirement.

New Rule, R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.11, Exclusion from New Jersey gross income, recodified to N.J.A.C. 9A:10-7.14.

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

Substituted "per calendar year" for "within any 12 month period" and "calendar year requirement" for "12 month restriction".

9A:10-7.12 Fees and charges

(a) The Authority may impose and collect reasonable fees and charges in connection with any agreement, contract or transaction relating to NJBEST. Charges on assets may include administrative and program management fees of 40 basis points (0.40 percent), investment management fees and other Trust expenses not in excess of 150 basis points (1.50 percent), and, in addition, sales loads and other ongoing distribution fees as may be set by the Investment Manager and which are fully disclosed to the contributor prior to any investment in NJBEST. Fees and charges may be imposed directly on contributors (such as sales loads) or may be taken as a percentage of the assets in the Trust or each contributor's account, as applicable.

(b) The Authority may charge a service fee up to the amount of \$75.00 for all outgoing account rollovers to a qualified tuition program other than NJBEST as defined in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

Amended by R.1998 d.385, effective August 3, 1998.

See: 30 N.J.R. 1707(a), 30 N.J.R. 2908(a).

Added (b) and (c).

Petition for Rulemaking.

See: 30 N.J.R. 3863(b), 30 N.J.R. 4079(b).

Amended by R.2000 d.324, effective August 7, 2000.

See: 32 N.J.R. 1279(a), 32 N.J.R. 2898(a).

In (b), decreased the fee from \$15.00 to \$5.00; and in (c), substituted references to one-half percent for references to one percent throughout.

Recodified from N.J.A.C. 9A:10-7.8 and amended by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Deleted former (a); recodified former (b) and (c) as new (a) and (b); in new (a), substituted "maintenance fee on each account" for "account maintenance fee"; added (d). Former N.J.A.C. 9A:10-7.12, Eligibility for NJBEST scholarship, recodified to N.J.A.C. 9A:10-7.15.

Administrative correction.

See: 34 N.J.R. 3778(a).

Amended by R.2003 d.141, effective April 7, 2003.

See: 34 N.J.R. 4340(a), 35 N.J.R. 1545(a).

Deleted former (a) and (b); inserted a new (a); recodified former (c) as (b) and substituted "The Authority may charge a service fee up to the amount of \$75.00" for "The Authority shall charge a service fee in the amount of \$75.00".

Case Notes

Value of notice provided by Higher Education Assistance Authority's proposed rule on fees and charges for the New Jersey Better Education Savings Trust (NJBEST) was not destroyed by charges limiting investment fees and service charges to one, rather than four, percent of earnings, dropping application fee, and adding \$15 annual maintenance fee in response to bank's request, and thus, re-proposal was not required. In re Adoption of N.J.A.C. 9A:10-7.8(b), 326 N.J.Super. 149, 742 A.2d 997 (N.J.Super.A.D. 2000)

9A:10-7.13 Statements, reports on distributions, information returns

(a) The Authority or its designee shall prepare, distribute, and file statements, reports on distributions, and information returns relating to accounts to the extent required by section 529 of the Federal Internal Revenue Code or regulations issued thereunder. Separate records and accounting shall be maintained for each account for each designated beneficiary.

(b) Statements shall be provided to each contributor at least once each year within 31 days of the end of the 12-month period to which they relate. The statement shall identify the contributions made during the preceding 12-month period, the value of the account as of the end of such period, distributions made during such period and any other matters that the Authority shall require to be reported to the contributor, to the extent required by section 529 of the Federal Internal Revenue Code or regulations issued thereunder.

(c) If there is any contribution to or distribution from an account to any individual or for the benefit of any individual during a calendar year, such contribution or distribution shall be reported to the Internal Revenue Service and to the contributor or designated beneficiary to the extent required by Federal law or regulation.

(d) Statements and information returns relating to accounts shall be prepared and filed to the extent required by Federal or State tax law.

Recodified from N.J.A.C. 9A:10-7.10 and amended by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

In (b), in second sentence deleted "the total contributions made through the end of the period," after "preceding 12-month period." Former N.J.A.C. 9A:10-7.13, Amount excluded from State need-based financial aid eligibility, recodified to N.J.A.C. 9A:10-7.16.

9A:10-7.14 Exclusion from New Jersey gross income

(a) Gross income shall not include the earnings on or qualified distribution from an individual trust account or savings account established under the NJBEST Program.

(b) "Qualified distribution" is defined in accordance with N.J.S.A. 54A:6-25(c)(3) as follows:

1. A distribution from a qualified state tuition program account that is used for qualified higher education expenses as defined pursuant to section 529(e)(3) of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529;

2. A rollover from one qualified tuition program account to another qualified tuition program account as described in section 529(c)(3)(C)(i) or section 530(d)(5) of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529 or § 530; or

3. A change in designated beneficiaries of an account as prescribed in section 529(c)(3)(C)(ii) or section 530(d)(6) of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529 or § 530.

Recodified from N.J.A.C. 9A:10-7.11 by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.14, Statement on contracts and applications, recodified to N.J.A.C. 9A:10-7.17.

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

In (a), inserted "qualified" preceding "distribution"; rewrote (b).

9A:10-7.15 Eligibility for NJBEST scholarship

(a) An additional amount of \$500.00, subject to appropriations available therefor, shall be credited toward the qualified higher education expenses of a designated beneficiary at the time of a qualified withdrawal provided:

1. The contributor demonstrates to the satisfaction of the Authority that the contributor participated in the program by making and not withdrawing a qualifying minimum initial deposit of \$1,200 or by making qualifying minimum annual contributions of \$300.00 for a designated beneficiary based on the time periods for crediting these contributions in (a)1i through iii below. In all cases involving the eligibility of a designated beneficiary for a NJBEST scholarship, the Authority reserves the right to make the final determination as to whether the contributor has met the time periods as stated in this paragraph for participation in the NJBEST Program.

i. For students enrolling for the first time in the fall semester of an academic year, the first contribution to NJBEST must have been credited to the contributor's account more than 48 months prior to September 1st of that academic year;

ii. For students enrolling for the first time in the spring semester of an academic year, the first contribution to NJBEST must have been credited to the contributor's account more than 48 months prior to February 1st of that academic year; or

iii. For students enrolling for the first time in any trimester of an academic year at an institution operating on a trimester or other academic schedule, the first contribution to NJBEST must have been credited to the contributor's account more than 48 months prior to the first day of the month in which the student is first enrolled.

2. The designated beneficiary in (a) above demonstrates his or her undergraduate attendance or enrollment in a higher education institution in this State by submitting a certification by the higher education institution at the time of initial attendance or enrollment;

i. With respect to proprietary institutions, undergraduate attendance or enrollment must be in a degree granting program licensed or approved by the Commission on Higher Education; and

3. Either the contributor, if a person, or the designated beneficiary demonstrates to the satisfaction of the Authority that the contributor or designated beneficiary is a New Jersey resident. Residence for purposes of the NJBEST scholarship is defined in N.J.A.C. 9A:10-7.4(a)4.

(b) For every two additional years in which the minimum annual contribution of \$300.00 is deposited in the account of a designated beneficiary, an additional amount of \$250.00, up to a maximum scholarship of \$1,500, subject to appropriations available therefor, shall be credited toward the quali-

fied higher education expenses of a designated beneficiary at the time of a qualified withdrawal provided the requirements of (a)2 and 3 above are met.

(c) The additional amounts provided under (a) and (b) above shall meet the requirements of a qualified scholarship within the meaning of section 117 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 117, for a designated beneficiary satisfying the requirements of (a) or (a) and (b) above.

(d) A designated beneficiary satisfying the requirements of (a) or (a) and (b) above shall not be eligible to receive more than one such additional amount provided under (a) or (a) and (b) above.

Amended by R.1998 d.385, effective August 3, 1998.

See: 30 N.J.R. 1707(a), 30 N.J.R. 2908(a).

In (a)3, changed N.J.A.C. reference.

Amended by R.1998 d.534, effective November 16, 1998.

See: 30 N.J.R. 2805(a), 30 N.J.R. 4041(b).

In (a)2, added i.

Amended by R.2000 d.324, effective August 7, 2000.

See: 32 N.J.R. 1279(a), 32 N.J.R. 2898(a).

Inserted a new (b); recodified former (b) and (c) as (c) and (d), and made internal reference changes.

Recodified from N.J.A.C. 9A:10-7.12 by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.15, Selection of investment manager, recodified to N.J.A.C. 9A:10-7.18.

Amended by R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).

In (a), rewrote 1.

9A:10-7.16 Amount excluded from State need-based financial aid eligibility

(a) A dollar amount of an account, which shall be \$25,000, shall be excluded from consideration in evaluating the financial need of a student, or not be deemed a financial resource or a form of financial aid or assistance to each student, for purposes of determining the eligibility of a student for any scholarship, grant, or monetary assistance awarded by the State; nor shall the amount of any account as determined by the Authority provided for a designated beneficiary under this subchapter reduce the amount of any scholarship, grant or monetary assistance which such student is otherwise entitled to be awarded by the State.

(b) To be eligible for the exclusion provided under (a) above, the student shall demonstrate to the satisfaction of the entity or the agency awarding the State funds that the dollar amount in that student's account is less than the Authority's annual exclusion threshold. Higher education institutions may report this account information on behalf of the student.

Recodified from N.J.A.C. 9A:10-7.13 by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.16, Investment by private entity, recodified to N.J.A.C. 9A:10-7.19.

9A:10-7.17 Statement on contracts and applications

Every contract and application that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by this State nor is an investment return guaranteed by this State.

Amended by R.1998 d.534, effective November 16, 1998.

See: 30 N.J.R. 2805(a), 30 N.J.R. 4041(b).

Added (d).

Recodified from N.J.A.C. 9A:10-7.14 by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Former N.J.A.C. 9A:10-7.17, Certain limitations, recodified to N.J.A.C. 9A:10-7.19.

9A:10-7.18 Selection of investment manager

(a) Should the Authority determine to select an investment manager or managers other than the Division of Investment in the Department of the Treasury, it shall solicit proposals and shall select from among the bidders the investment manager or managers based on the following factors not necessarily listed in order of significance. These factors are general in nature. Cost shall not be the sole determining factor.

1. The investment manager's ability to adhere to the prudent person standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L. 1950, c.270 (N.J.S.A. 52:18A-89);

2. The impact of fees and costs to be imposed by the manager or managers on investment returns to contributors;

3. The comparison of fees and costs to be imposed by the manager or managers with comparable fees and costs that would be imposed if the Division of Investment in the Department of the Treasury were the investment manager;

4. The investment manager's financial stability and integrity;

5. The ability of the investment manager to satisfy recordkeeping and reporting requirements;

6. The applicable experience of proposed contract staff in providing relevant investment management services;

7. The ability to assist participation in the program through features which may include willingness to accept minimum contributions, frequent contributions, debit and other automatic contributions, as well as customer service features that enable participant access to account information such as a toll-free telephone number and extended hours of business; and

8. The investment manager's capability and flexibility to provide accounting services and computer support programs to satisfy the stringent requirements and specifications of the Program.

Recodified from N.J.A.C. 9A:10-7.15 by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

9A:10-7.19 Investment by private entity

If the investment manager is a private entity, the assets of the fund shall be invested in accordance with an investment plan approved by the State Investment Council in the Division of Investment, Department of the Treasury. Nothing in this section shall prohibit the Authority from offering part or all of the investment alternatives within the NJBEST Program to contributors with the Division of Investment as the investment manager.

Recodified from N.J.A.C. 9A:10-7.16 and amended by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

Rewrote section.

9A:10-7.20 Certain limitations

(a) Nothing in the NJBEST Program shall be construed to:

1. Guarantee that a designated beneficiary will be admitted to a higher education institution or be allowed to continue enrollment at or graduate from a higher education institution after admission;

2. Establish State residency for a person merely because the person is a designated beneficiary or contributor; or

3. Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(b) Nothing in the NJBEST Program establishes any obligation of this State or any agency or instrumentality of this State to guarantee for the benefit of any contributor or designated beneficiary the following:

1. The rate of interest or other return on any account;

or

2. The payment of interest or other return on any account.

(c) Nothing in the NJBEST Program establishes any obligation or liability of this State or any agency or instrumentality of this State with respect to any Federal or State tax liability of any contributor or designated beneficiary.

(d) The fact that an institution falls within the definition of higher education institution for purposes of section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, or these rules is no guarantee that an institution's programs are appropriate for the designated beneficiary. The NJBEST Program does not make any representations regarding the quality of any eligible institution. Participants in the NJBEST Program are advised to consult the United States Department of Education and other available sources of information before enrolling in a higher education institution.

Amended by R.1998 d.534, effective November 16, 1998.

See: 30 N.J.R. 2805(a), 30 N.J.R. 4041(b).

Added (d).

Recodified from N.J.A.C. 9A:10-7.17 by R.2002 d.289, effective September 3, 2002.

See: 33 N.J.R. 4053(a), 34 N.J.R. 3086(a).

9A:10-7.21 Assurance of the availability of principal

Pursuant to N.J.S.A. 18A:71B-44a, the assurance of the availability of principal shall only apply to qualified distribu-

tions from accounts wherein the investment manager is the Division of Investment in the Department of the Treasury. Qualified distributions are defined in accordance with N.J.S.A. 54A:6-25(c)(3).

New Rule, R.2003 d.343, effective August 18, 2003.

See: 35 N.J.R. 1483(a), 35 N.J.R. 3828(b).