

CHAPTER 10

STUDENT LOAN AND COLLEGE SAVINGS PROGRAMS

Authority

N.J.S.A. 18A:72-10 and 18A:72-47.

Source and Effective Date

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

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 10, Student Loan and College Savings Programs, expires on December 27, 2003. See: 35 N.J.R. 2770(b).

Chapter Historical Note

Subchapter 7, Policy Governing New Jersey Better Educational Savings Trust (NJBEST) Program, was originally adopted as N.J.A.C. 9:9-8 by R.1998 d.4, effective January 5, 1998. See: 29 N.J.R. 4372(a), 30 N.J.R. 68(a). Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:9-8 was readopted by R.1998 d.385, effective June 30, 1998, and was recodified as N.J.A.C. 9A:10-7, Policy Governing New Jersey Better Educational Savings Trust (NJBEST) Program, effective August 3, 1998. See: 30 N.J.R. 1707(a), 30 N.J.R. 2908(a).

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SUBCHAPTER 1. FEDERAL FAMILY EDUCATION LOAN PROGRAM: POLICIES AND PROCEDURES

Subchapter Historical Note

Subchapter 1, Roles and Relationship of NJHEAA and NJOSA, was repealed and Subchapter 1, Federal Family Education Loan Program: Policies and Procedures, was recodified from N.J.A.C. 9A:10-2 by R.2000 d.92, effective March 6, 2000. See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

9A:10-1.1 Purpose

The purpose of this subchapter is to provide guidance on the implementation of the Federal Family Education Loan Program (FFELP) in New Jersey, and in particular, on policies and procedures that reflect areas where the Federal

Higher Education Act of 1965, as amended, and its implementing regulations permit guaranty agency discretion, areas that comply with State law, areas that reflect guaranty agency specific policies that differ in some way from the Common Manual, a national compilation of uniform FFELP policies, and, finally, areas that address services and operations not described or defined in Federal law.

9A:10-1.2 Scope; Federal rules and statutes incorporated by reference

(a) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part B, 20 U.S.C. §§ 1071 et seq., including all subsequent amendments and supplements, is hereby adopted as rules and incorporated within this subchapter. The part of the Code of Federal Regulations known as 34 CFR 682.100 et seq., as well as other parts of the Code of Federal Regulations that govern the FFELP, including all subsequent amendments and supplements are hereby adopted as rules and incorporated within this subchapter.

(b) These rules provide both an outline for the implementation of the FFEL Program in this State and detailed guidance on the areas described in N.J.A.C. 9A:10-1.1. These rules do not attempt to reproduce in full the extensive body of Federal law and regulation governing the FFELP; however, they do attempt to be consistent with Federal law. If any part of these rules is inconsistent with or in conflict with Federal law, that part shall be preempted by Federal law, but not affect the validity of the remaining parts of these rules.

Amended by R.2000 d.92, effective March 6, 2000.
See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).
In (b), changed N.J.A.C. reference.

9A:10-1.3 Definitions

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

“Authority” or “HESAA” means the Higher Education Student Assistance Authority, a State agency established whose purpose is the funding of access to postsecondary education, whether by loans, grants, scholarships or other means. The student assistance programs HESAA administers include the Federal Family Education Loan Program.

“Blanket Certificate of Loan Guaranty” means an insurance program agreement with the Secretary of the United States Department of Education under which the Authority may offer eligible lenders participating in the agency’s guaranty program a Blanket Certificate of Loan Guaranty that permits the lender to make FFELP loans without receiving prior approval from the Authority of individual loans.

“Cohort default rate” means the percentage of FFELP and Federal Direct Student Loan Program (FDSLP) borrowers who default before the end of the Federal fiscal year following the Federal fiscal year in which they entered repayment on their loans. The United States Department of Education calculates this rate annually to determine the default experience of students who attended a particular school during a particular period of time.

“Commission” or “CHE” means the Commission on Higher Education, a State higher education policy-making agency presided over by a governing board, whose chairman is a member, ex officio, of the Authority. The Commission’s statutory responsibilities include final administrative decisions over institutional licensure and university status in this State.

“Common Manual: Unified Student Loan Policy” or “Common Manual” means a publication developed by guarantors in the FFELP that provides a detailed compilation of the policies adopted by guarantors participating in the FFELP, and is intended to be consistent with the Federal Higher Education Act of 1965, as amended, and its implementing regulations and subregulatory Federal guidance.

“CommonLine Network” means a standardized electronic exchange of data intended to simplify the guaranteeing of FFELP loans. Participation in the CommonLine Network allows schools to transmit and receive certification and guarantee data in common file formats, which in turn allows application processing for multiple guarantors through a single school-based software package.

“Consolidation loan” means a new loan that discharges a previous loan or loans. Loan consolidation enables a borrower with several loans to obtain one loan with one repayment schedule, and with the exception of Health Education Assistance Loan (HEAL) Program loans consolidated, one interest rate.

“Default” means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the United States Secretary of the Department of Education or the guaranty agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 270 days for a loan repayable in monthly installments; or 330 days for a loan repayable in less frequent installments.

“Default aversion assistance” means the activities of a guaranty agency that are designed to prevent a default by a borrower who is at least 60 days delinquent and that are directly related to providing collection assistance to the lender. This assistance is available on or after the October 7, 1998 effective date of the 1998 amendments to the Higher Education Act of 1965, as amended.

“Delinquency” means the failure of the borrower to make a payment when due. Delinquency begins the day after a payment is due and continues for a period up until the loan status meets the definition of default.

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.

“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”.

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 designated

beneficiary’s educational goals, 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.

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”.

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;

3. Require that persons who contribute to an account certify that to the best of their knowledge 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 do 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

4. 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).

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 on 60 days' notice.

(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).

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 the Authority 60 days' notice 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.

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 60 days' 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.

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 shall be a nonqualified withdrawal which would 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.

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.

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 within any 12 month period. 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 12 month restriction.

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.

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 distribution from an individual trust account or savings account established under the NJBEST Program.

(b) "Distribution" means a withdrawal which pays the designated beneficiary's qualified higher education expenses described in section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, or which represents contributions net of earnings thereon.

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.

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 for at least four years 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;

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 qualified 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.

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).