

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).

Executive Order No. 66(1978) Expiration Date

Chapter 10, Student Loan and College Savings Programs, expires on June 30, 2003.

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Subchapter 1, Roles and Relationship of NJHEAA and NJOSA, was repealed and Subchapter 1, Federal Family Education Loan Program: Policies and Procedures, was recodified from N.J.A.C. 9A:10-2 by R.2000 d.92, effective March 6,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

2. The administrative and financial information normally required for the on-site visit includes, but is not limited to, the following for schools: school catalog, documentation from prior program reviews, independent audit results, student financial aid audit results, audited financial statements, program participation agreement, accreditation reports or certification, state licensing documentation, default management plan, if applicable, and individual borrower files. For lenders, this information includes, but is not limited to, FFELP lending policies, documentation from prior program reviews, independent audit results, United States Department of Education Form 799 billings, documentation of loan transfers, and individual borrower files.

(f) The Authority shall provide the school or lender the opportunity to present questions or supply additional information. The school or lender being reviewed shall 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.

(g) Program review follow up and other enforcement procedures are as follows:

1. The Authority shall issue a program review report to the school or lender being reviewed.

2. The program review ends when all required actions are completed and all liabilities are paid by the school or lender being reviewed.

3. When the program review ends, the Authority shall notify the school or lender in writing that the program review is closed. The Authority shall at the same time notify the United States Department of Education that the program review is closed.

4. If the Authority is unable to close a program review because the school or lender is uncooperative in taking the required corrective action, the Authority shall refer the case to the United States Department of Education.

5. The Authority may pursue a limitation, suspension, or termination action regarding participation in the FFELP as a result of a program review. The limitation, suspension, and termination process for lenders and schools is set forth in 34 CFR 682.700, Subpart G.

6. If potential fraud or abuse with respect to FFELP participation is identified during a program review, the Authority reviewers shall be obligated to notify and forward all supporting documentation to the United States Department of Education's Office of Inspector General. The Authority shall also be obligated to comply with other applicable enforcement requirements set forth in 34 CFR 682.410(c).

Amended by R.2000 d.92, effective March 6, 2000.
See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

In (c), added the fifth through seventh sentences.

SUBCHAPTER 2. (RESERVED)

Subchapter Historical Note

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

SUBCHAPTERS 3 THROUGH 5. (RESERVED)

SUBCHAPTER 6. THE NEW JERSEY COLLEGE LOANS TO ASSIST STATE STUDENTS (NJCLASS) PROGRAM: POLICIES AND PROCEDURES

9A:10-6.1 Purpose

The purpose of this subchapter is to provide guidance on the implementation of the New Jersey College Loans to Assist State Students (NJCLASS) Program, a State student loan program intended to supplement the subsidized Federal Stafford Loan Program and make State sponsored student loans available to students who cannot obtain Federally backed student loans, either because those loans are not available, because the student does not meet the program eligibility requirements as defined by the Federal government, or because the student has additional financial need unmet by Federally backed student loans. In the NJCLASS Program, the Authority issues bonds, notes, or another form of debt instrument, and with the proceeds of that issuance, funds student loans and either directly or through an agent serves as lender and servicer of the loans. Because funding for the NJCLASS Program is not backed by a Federal guarantee, funding sources are safeguarded by requiring as key elements of borrower eligibility for this State program that the borrower either be creditworthy or not have adverse credit.

9A:10-6.2 Scope

These rules provide the policies and procedures that govern the NJCLASS Program, a State student loan program administered by the Higher Education Student Assistance Authority (HESAA). The Authority also publishes an NJCLASS policies and procedures manual for participating schools, which provides detailed guidance on the operation of the NJCLASS Program.

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

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

Substituted "Higher Education Student Assistance Authority (HESAA)" for "New Jersey Office of Student Assistance (NJOSA) and established under the Authority" in the first sentence.

9A:10-6.3 Definitions

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

“Adjusted gross income” means total family income reported for Federal income tax purposes.

“Authority” means Higher Education Student Assistance Authority.

“Cohort default rate” means the percentage of Federal Family Education Loan Program (FFELP) and William D. Ford Federal Direct Loan Program (Direct Loan) borrowers who default before the end of the Federal fiscal year following the Federal fiscal year in which they entered repayment on their loans, unless otherwise defined by the United States Department of Education. 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.

“Consolidation loan” means a new NJCLASS loan that discharges previous NJCLASS loans. NJCLASS loan consolidation enables a borrower with several loans to obtain one loan with one repayment schedule, and one interest rate.

“Cosigner” means an individual who signs a promissory note and agrees to repay the loan in the event the borrower does not.

“Delinquency” means a payment on an NJCLASS loan made late. Delinquency begins the first day after the due date of the first missed payment that is not later made. The due date of the first payment is established by the Authority.

“Eligible institution” means a public or private non-profit institution eligible for Title IV, Higher Education Act of 1965 assistance, approved or licensed by the New Jersey Commission on Higher Education or its equivalent in another state and accredited by a nationally recognized accrediting association and having an annual cohort default rate of 20 percent or less. Eligible institution shall also include certain proprietary institutions but only for certain degree granting programs as approved by the New Jersey Commission on Higher Education. An eligible institution for purposes of the NJCLASS Variable Rate Program shall have a lower cohort default rate threshold, as set forth in N.J.A.C. 9A:10-6.4(c). Eligible institution for purposes of the NJCLASS Postgraduate Program means an American Bar Association approved law school, a graduate medical school accredited by either the Liaison Committee on Medical Education or the American Osteopathic Association, or a graduate dental school accredited by the American Dental Association.

“In-school period” means the period in which a student is enrolled at an eligible institution on at least a half-time basis as certified by the institution.

“Lender” means Higher Education Student Assistance Authority or its agent for the purposes of this program.

“NJCLASS” means the New Jersey College Loans to Assist State Students Loan Program.

“NJCLASS Postgraduate Program” means an NJCLASS program for law, medical, and dental students intended to assist with higher education costs incident to the cost of attendance, such as bar examination and medical and dental residency travel and relocation expenses. The provisions governing NJCLASS loans in this subchapter shall apply to NJCLASS Postgraduate loans, unless this subchapter otherwise provides. The Authority may offer the NJCLASS Postgraduate Program subject to the availability of funding and conditioned on market demand.

“NJCLASS Variable Rate Program” means an NJCLASS Program, initiated in 1997, targeted for graduate and professional students with eligibility requirements specially tailored for such students, as set forth in N.J.A.C. 9A:10-6.4. The provisions governing NJCLASS loans in this subchapter shall apply to NJCLASS Variable Rate loans unless this subchapter otherwise provides.

“Parent borrower” means a parent(s), spouse, legal guardian, or other relative of a dependent undergraduate or graduate student.

“Rehabilitation” (of a defaulted NJCLASS loan) means a process by which a borrower may bring an NJCLASS loan out of default by adhering to specified repayment requirements.

“Student borrower” means an undergraduate or graduate student.

(b) Terms not defined in this section shall be defined in accordance with 34 CFR parts 600, 668 and 682, including all subsequent amendments and supplements thereto.

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

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

Rewrote the section.

9A:10-6.4 Eligibility for NJCLASS Loan, NJCLASS Variable Rate Loan, and NJCLASS Postgraduate Loan

(a) To be eligible for an NJCLASS loan, each applicant must:

1. Be a citizen, national or legal resident of the United States or be in the U.S. for other than temporary purposes and intend to become a permanent resident (as evidenced by Immigration and Naturalization Service documentation);

2. Not owe a grant refund, be in default on a student loan, have a student loan discharged in default, have a student loan written off as uncollectible, or be in violation of any of the other criteria for determining creditworthiness as outlined in N.J.A.C. 9A:10-6.5, as further described in the NJCLASS Loan Application and Promissory Note booklet;

3. Provide an acceptable cosigner if it is determined by the Authority that one is required; and in the case of any Federal Family Education Loan amount, Federal Direct Loan amount, or any NJCLASS loan amount that previously was canceled due to the applicant's total and permanent disability, obtain a certification from a physician that the applicant's condition has improved and that the applicant is able to engage in substantial gainful activity and sign a statement acknowledging that the NJCLASS loan the applicant receives cannot be canceled in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates. If the applicant is not the student, and the student had any loan amount described in this paragraph canceled due to the student's total and permanent disability, the student on whose behalf another borrower is applying for an NJCLASS loan must obtain the physician certification as to the student's improvement and sign the statement limiting future cancellation on the basis of the student's present impairment; and

4. Provide three references.

(b) In addition to all of the requirements in (a) above, a student applicant or a student on whose behalf the parent is applying for an NJCLASS loan shall:

1. Be a citizen, national or legal resident of the United States or be in the U.S. for other than temporary purposes and intend to become a permanent resident (as evidenced by Immigration and Naturalization Service documentation);

2. Be a permanent resident of New Jersey prior to filing an application; however, residency is not required if enrolled in an eligible institution located in New Jersey, meaning that either the main campus of that institution or the place of instruction is located in New Jersey;

3. Have a high school diploma or a high school equivalency certificate;

4. Be enrolled or accepted for enrollment on at least a half-time basis in an eligible institution;

5. If currently enrolled in an eligible institution, be determined by the institution to be making satisfactory academic progress;

6. If applying for an NJCLASS loan financed in whole or in part by qualified student loan bonds, as described in section 144(b) of the Federal Internal Revenue Code of 1986, as amended, 26 U.S.C. § 144(b), have met the eligibility criteria described in that section or have not

violated any other criteria which would result in the bonds no longer to be qualified under section 144(b) of the Federal Internal Revenue Code of 1986, as amended, 26 U.S.C. § 144(b); and

7. If applying for an NJCLASS loan not financed in whole or in part by qualified student loan bonds, as described in section 144(b) of the Federal Internal Revenue Code of 1986, as amended, 26 U.S.C. § 144(b), have met the eligibility criteria described in this subchapter.

(c) To be eligible for a Variable Rate NJCLASS loan for student borrowers, each student must satisfy the requirements of (b)1, 3 and 6 above as well as the following:

1. Be a permanent resident of New Jersey prior to filing an application; however, residency is not required if enrolled in an eligible institution for purposes of this program that is located in New Jersey, meaning that either the main campus of that institution or the place of instruction is located in New Jersey;

2. Be enrolled in an eligible institution for purposes of this program, which shall mean an eligible institution of higher education under Title IV, Higher Education Act of 1965 and accredited by a nationally recognized accrediting association that is licensed by the New Jersey Commission on Higher Education or its equivalent in another state with a three year average cohort default rate of 10 percent or less;

3. Not owe a grant refund, be in default on a student loan, have a student loan discharged in default, have a student loan written off as uncollectible, be delinquent on an NJCLASS loan or have adverse credit as outlined in N.J.A.C. 9A:10-6.5(c), as further described in the NJCLASS Variable Rate Loan Application and Promissory Note booklet;

4. Be a graduate or professional student enrolled or accepted in a graduate or professional program as certified by an eligible institution for purposes of this program; and

5. If currently enrolled in an eligible institution for purposes of this program, be making satisfactory academic progress.

(d) To be eligible for an NJCLASS Postgraduate loan for student borrowers, each student must satisfy the requirements of (b)1, 3 and 7 above as well as the following:

1. Be a permanent resident of New Jersey prior to filing an application; however, residency is not required if enrolled in an eligible institution for purposes of this program that is located in New Jersey, meaning that either the main campus of that institution or the place of instruction is located in New Jersey. An eligible institution is an American Bar Association approved law school, a graduate medical school accredited by either the Liaison Committee on Medical Education or the American Oste-

opathic Association, or a graduate dental school accredited by the American Dental Association;

2. Be enrolled in the final year at an eligible institution, be making satisfactory academic progress, and expect to be awarded a J.D., M.D., D.O., D.D.S. or D.M.D. degree during the current academic year;

3. Not owe a grant refund, be in default on a student loan, have a student loan discharged in default, have a student loan written off as uncollectible, be delinquent on an NJCLASS loan or have adverse credit as outlined in N.J.A.C. 9A:10-6.5(c), as further described in the NJCLASS Loan Application and Promissory Note booklet;

4. Not have a maximum total outstanding education debt of over the amount permitted in the NJCLASS Loan Application and Promissory Note booklet. Maximum total outstanding education debt includes Federal, State, and private loans for graduate and undergraduate education, including a loan under this NJCLASS Program; and

5. School certification of the NJCLASS application no earlier than one year prior to the student's anticipated graduation date and no later than the student's actual graduation date.

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

In (a), added 4; rewrote (b) and (c); added (d).

9A:10-6.5 NJCLASS creditworthiness

(a) To be approved for an NJCLASS loan, a borrower must be determined creditworthy by the Authority.

(b) In determining whether a borrower is creditworthy, the Authority shall require that borrowers submit to the Authority information that includes the most recent signed Federal Income Tax Return, including all schedules, and current pay stub. For joint filers, this documentation shall include the current pay stub of both filers.

(c) As further detailed in the NJCLASS Loan Application and Promissory Note booklet, a borrower with one or more of the items listed below in his or her credit history may be denied an NJCLASS loan for not being creditworthy unless that borrower is able to secure a creditworthy cosigner. These items include delinquent accounts, paid and unpaid collection accounts, paid and unpaid charged off accounts, foreclosure, repossession, bankruptcy, a paid or unpaid judgment, an unpaid tax lien, a student loan in default, or a delinquent NJCLASS loan.

(d) To be approved for an NJCLASS loan, a creditworthy borrower or cosigner must also meet a monthly total debt to monthly adjusted gross income ratio, which shall not exceed 40 percent.

(e) To be approved for an NJCLASS loan, a creditworthy borrower or cosigner must have an income that exceeds Federal poverty guidelines, as adjusted annually by the United States Department of Health and Human Services.

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 “, including all schedules, and” following “Federal Income Tax Return” and deleted “, and most recent W-2 Form” following “current pay stub” in the first sentence; deleted “and most recent W-2 Form” preceding “of both files” in the second sentence; in (c), inserted “; or a delinquent NJCLASS loan” at the end of the second sentence.

9A:10-6.6 Loan amounts

(a) If the NJCLASS loan is financed in whole or in part by qualified student loan bonds, as described in section 144(b) of the Federal Internal Revenue Code, as amended, 26 U.S.C. § 144(b), the amount borrowed shall not exceed a student's estimated cost of attendance at the eligible institution minus all other financial assistance for which the student is eligible (excluding any financial assistance which would not cause the bonds to fail to qualify under section 144(b) of the Federal Internal Revenue Code) for the academic period for which the loan is intended. This means that an eligible institution shall determine a student borrower's loan amount eligibility for Stafford loans or Federal Direct Stafford loans prior to determining a student borrower's loan amount eligibility for an NJCLASS loan. This eligibility determination excludes eligibility for Federal PLUS, Federal Direct PLUS, and Health Education Assistance loans.

(b) If the NJCLASS loan is not financed in whole or in part by qualified student loan bonds, the amount borrowed may not exceed the maximum total outstanding education debt permitted under N.J.A.C. 9A:10-6.4, and the maximum loan amount permitted in the NJCLASS Loan Application and Promissory Note booklet.

(c) To borrow additional amounts of NJCLASS funds for which an eligible institution has certified the borrower to be eligible, a borrower may submit a completed Addendum and Promissory Note to the Authority, provided the completed Addendum and Promissory Note is received by the Authority within 60 days of the date the original NJCLASS loan was approved by the Authority. The Authority shall notify the school of the request for additional amounts of NJCLASS funds, and provided the school confirms the borrower's eligibility for these amounts, the Authority will disburse the funds.

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

Rewrote (a); inserted a new (b); and recodified former (b) as (c).

9A:10-6.7 Application procedures, disbursement, and students who transfer

(a) To borrow under the NJCLASS Program, the process shall be as follows:

1. The applicant shall complete the NJCLASS application and promissory note. All parts of the application and promissory note, including all related documentation, must be completed regardless of the applicant's age or marital status;

2. The applicant shall forward the application materials to the Authority; and

3. The Authority shall notify the eligible institution the student attends or plans to attend of the application and request certification of enrollment and completion of the school application information.

(b) The Authority shall process the application and the borrower and school shall be notified of Authority approval or disapproval.

(c) The Authority shall disburse loan funds to parent borrowers in either one disbursement or multiple disbursements. Loan proceeds may be disbursed by individual check, master check, or by electronic means. Funds disbursed by individual check to a student borrower shall be made jointly payable to the student and the eligible institution, sent directly to the school and may be multiply disbursed. If the Authority issues an individual NJCLASS loan check, and the student is enrolled in a study-abroad program approved for credit and if the student requests, the loan check may be made payable to the student only.

(d) An NJCLASS loan may be used only to cover the educational costs of attendance at the school that completes the school certification form providing school data. NJCLASS Postgraduate loans may be used to cover the educational expenses incident to the educational costs of attendance at the school that completes the school certification form providing school data. If a student transfers between schools at any time, neither the student nor the parent borrower are eligible to receive proceeds from an application and promissory note for which the school certification form was completed by the previous school. If a student transfers from one school to another before a loan is fully disbursed, the student or parent borrower is not eligible for any remaining disbursements of that loan, and the student or parent borrower must notify the Authority to cancel the loan or the balance of any undisbursed portion of the loan. The student or parent borrower may submit a second application and promissory note with new cost of attendance and estimated financial assistance figures certified by the new school.

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

In (a)3, substituted "institution" for "school" preceding "the student attends"; in (c), substituted "institution" for "school" preceding "sent directly to the school"; in (d), added the second sentence.

9A:10-6.8 Fees

(a) A recipient of an NJCLASS loan shall be required to pay an application and an administrative fee to the Authority

which combined shall not exceed five percent of the total approved loan amount.

1. These fees shall be deducted from the loan proceeds.

2. For multiply disbursed loans, these fees shall be deducted in equal installments, from each loan disbursement.

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

9A:10-6.9 Interest

(a) The NJCLASS loan shall have a daily fixed simple annual interest rate, a variable interest rate, or another type of interest rate, as determined by the bonds or notes whose proceeds are funding the loan or by the NJCLASS Application and Promissory Note if the loan is funded through other means. For NJCLASS loans funded through bonds, the NJCLASS interest rate will be a pass through rate of the bond interest rate, associated costs of sale, and such other costs or reserves which may be required, and/or determined as the bonds are issued.

(b) Interest on an NJCLASS loan shall begin to accrue at the time of the first loan disbursement.

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

Rewrote (a).

9A:10-6.10 Late charge

The Authority may collect a late charge from the borrower if the borrower fails to pay all or part of the required payment of an NJCLASS loan within 10 days of the date the payment is due. The late charge may not exceed six percent of each late payment.

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

9A:10-6.11 Repayment of loan

(a) The Authority shall provide the borrower and cosigner, if any, with a completed repayment Disclosure Statement detailing due dates of required payments at the time of the first loan disbursement.

(b) Borrowers shall indicate preferred repayment options on the NJCLASS loan application. The Authority shall make best efforts to offer borrowers the repayment option selected. Should a borrower fail to indicate a preferred repayment option on both the NJCLASS Loan Application and Promissory Note, the Authority shall notify the borrower to select an option, and not process the application until the borrower has made the selection. There are three repayment options for an NJCLASS loan, as follows:

1. Borrowers begin to pay the principal and interest of the loan on a monthly basis. The first payment of principal

pal and interest is due within 60 days after the loan is first disbursed;

2. Borrowers begin to pay quarterly interest on the loan, but are not required to pay principal until graduation, withdrawal or notification of less than half-time enrollment; or

3. Borrowers are not required to pay principal or interest until graduation, withdrawal or notification of less than half-time enrollment. Once one of these circumstances occurs, the loan reverts to a repayment schedule as set forth in (b)1 above. However, interest accrued from the date of loan disbursement is deferred and capitalized (added to principal) on a quarterly basis for loans originated before June 9, 1997, and on an annual basis for loans originated on or after June 9, 1997. The first monthly payment of principal and interest shall be required within 60 days after the reversion date. In exchange for the option of deferring both principal and interest, borrowers in the repayment schedule set forth in this paragraph are required to pay an increased interest rate, as established by the Authority pursuant to N.J.A.C. 9A:10-6.9(a), over the regular program interest rate in effect at the time of borrowing. The increased interest rate applies only to NJCLASS fixed rate loans, not NJCLASS variable interest rate loans.

(c) In the case of an NJCLASS Postgraduate loan, borrowers may pay, but are not required to pay, principal or interest until the end of the deferment period. After the end of the deferment period, the loan reverts to a repayment schedule as set forth in (b)1 above. Interest accrued from the date of loan disbursement is deferred and capitalized on an annual basis and at the end of the deferment period. The deferment period for an NJCLASS Postgraduate loan means the period beginning on the initial disbursement date and ending on:

1. If the NJCLASS loan is for medical or dental residency travel and relocation expenses, the date that is nine months after the date of graduation, withdrawal or notification of less than half-time enrollment at the eligible institution named in the NJCLASS Application and Promissory Note unless on such date the borrower is participating in a required residency or postdoctoral program, in which event the deferment period will end on the date that is nine months after the date the borrower completes or otherwise ceases to participate in such program. In no event shall the deferment period end later than 57 months after the date the borrower graduates from medical school or 33 months after the date the borrower graduates from dental school. To be considered participating in a required residency or postdoctoral program during any one-year period requires that the borrower submit to the Authority a certification from the director of such program for such year; or

2. If the NJCLASS loan is for bar examination expenses, the date is nine months after the eligible institution indicated to be the borrower's anticipated or actual graduation date on the NJCLASS application.

(d) For loans made after August 3, 1998, the minimum acceptable monthly payment shall be the amount required to fully repay an NJCLASS loan in the maximum repayment period; however, the minimum acceptable monthly payment shall not be less than \$50.00 per borrower for all of that borrower's NJCLASS loans.

(e) Notwithstanding any periods of deferment and/or forbearance, an NJCLASS loan shall be paid in full no later than 15 years from the first date of loan disbursement, and an NJCLASS Variable Rate Loan shall be paid in full no later than 23 years from the first date of loan disbursement or the maximum repayment period stated on the loan disclosure, whichever is less; and an NJCLASS Postgraduate loan shall be paid in full no later than 20 years from the first date of loan disbursement or the maximum repayment period stated on the loan disclosure, whichever is less.

(f) The borrower has the right to repay the entire loan or any portion of the loan at any time without penalty.

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), rewrote the introductory paragraph, inserted "first" preceding "disbursed" in 1, and added the last sentence in 3; inserted a new (c); recodified former (c) through (e) as (d) through (f); and rewrote the new (e).

9A:10-6.12 Deferments and forbearance

(a) Under certain conditions, borrowers shall be permitted to defer payments of loan principal for specified periods of time. During periods of authorized deferment, borrowers remain responsible for the payment of the interest accruing on their loan(s). The following are available NJCLASS Program deferments and their requirements:

1. Full-time and half-time study at an eligible institution;

2. Unemployment;

i. Borrower must be currently unemployed and conscientiously seeking but unable to find full-time employment.

ii. Every three months the borrower shall provide a signed written statement describing his or her conscientious search (at least three attempts) for full-time employment that includes:

(1) The names, addresses and phone numbers of the firms contacted;

(2) The name of the contact person at each firm; and

(3) A certification of registration with a public or private employment agency.

iii. In order to remain eligible for the deferment, the borrower shall not restrict his or her search to specific fields, positions, or salaries.

3. Service as an intern or resident;

i. Borrower must be currently participating in an eligible internship or residency program of supervised training that is required by a State licensing agency prior to certification for professional practice or service.

ii. Borrower shall provide certification from the appropriate State licensing agency attesting to the necessity of the internship or residency.

iii. Borrower shall provide certification from the organization with which the internship or residency is being undertaken which specifies:

(1) Acceptance of the borrower into the internship or residency program; and

(2) Anticipated beginning and completion dates of the program.

4. Active duty status in the Armed Forces;

i. The borrower shall provide a statement from his or her commanding officer attesting to full-time active duty status.

5. Peace Corps;

i. To qualify for this deferment, a borrower shall submit a request and provide the Authority with a statement from an official of the Peace Corps program certifying:

(1) That the borrower has agreed to serve as a volunteer on a full-time basis for at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

6. Temporary total disability;

i. To qualify for this deferment, a borrower shall submit a request and provide the Authority with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled.

ii. Temporarily totally disabled means that an individual is unable to work and earn money or attend school during a period needed to recover from injury or illness.

(b) The deferment begins on the date the borrower's qualifying status is certified to begin and ends on the date the borrower's qualifying status is certified to end. Maximum allowable time periods shall be 18 months for an

unemployment deferment, and for each of the remaining deferments, as established by the Authority.

(c) Upon receipt of a borrower request for a deferment and all required documentation, the Authority shall notify the borrower regarding the deferment's authorization.

(d) The Authority may also, at its discretion, grant borrowers periods of forbearance in the repayment of the NJCLASS loan(s). Forbearance may be granted for situations including, but not limited to, economic hardship (as these terms are defined for the FFEL Program, 34 CFR part 682). The maximum allowable time period for economic hardship forbearance shall be 18 months. In granting a forbearance, the Authority permits a temporary cessation of principal payments and temporarily permits payments of interest only.

9A:10-6.13 Consolidation

(a) The Authority may offer an NJCLASS Consolidation program. A creditworthy NJCLASS borrower with several NJCLASS loans may wish to consolidate those loans to obtain one repayment schedule and one interest rate, and in so doing, discharge the underlying NJCLASS loans. To consolidate eligible NJCLASS loans as defined in (b) below, the borrower shall complete an NJCLASS Consolidation Loan application and promissory note. The borrower shall then forward the application materials to the Authority, which shall process the application and notify the borrower of approval or disapproval. The NJCLASS rules in this subchapter on creditworthiness, fees, interest, late charge, deferments, forbearance, and default apply to NJCLASS Consolidation loans. The repayment rules apply as well with the exception of the maximum repayment time. For NJCLASS Consolidation loans, the maximum repayment time is 15 years from the date the Consolidation loan is made.

(b) Loans eligible for NJCLASS Consolidation are NJCLASS loans made after August 3, 1998, in grace period preceding repayment or repayment status, but not in default status.

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 shall 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 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 send the borrower 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).

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. The following account status categories are reported: current, 30 days or more delinquent, defaults, litigation, and paid-in-full. The Authority also reports outstanding balance and amount delinquent to a national credit bureau.

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 is 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 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".

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 schedule 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 Assistance Authority established by P.L. 1967, c.271.

“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:10-7.12, 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 taxpayer:

1. A son or daughter of the taxpayer, or a descendant of either;

2. A stepson or stepdaughter of the taxpayer;

3. A brother, sister, stepbrother, or stepsister of the taxpayer;

4. The father or mother of the taxpayer, or an ancestor of either;

5. A stepfather or stepmother of the taxpayer;

6. A son or daughter of a brother or sister of the taxpayer;

7. A brother or sister of the father or mother of the taxpayer;

8. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;

9. The spouse of any individual described in paragraphs 1 through 8 of this definition; and

10. Any other member of the family as defined in or for purposes of section 529 of the Federal Internal Revenue Code.

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:10-7.12.

“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;

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; or

5. Any other withdrawal if the failure of the program to impose a more than de minimis penalty on the withdrawal would not cause the program to be a qualified State tuition program 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 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. § 10871l, for the higher education institution for such period.

“Qualified withdrawal” means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but a withdrawal shall not be considered a qualified withdrawal if the failure of the

program to impose a more than de minimis penalty on the withdrawal would cause the program not to qualify as a qualified State tuition program under section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

“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”.

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 and the designated beneficiary, information about the designated beneficiary’s educational goals, amount and method of contribution, and residency information if applicable;

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.

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 that may be made to an account at any one time shall be no less than \$25.00.

(d) The minimum contribution to maintain an account shall be no less than either \$25.00 a month or \$300.00 a year up to \$1,200. 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 total balance that may be held in accounts for a designated beneficiary;
3. Require that persons who contribute to an account certify that to the best of their knowledge that the balance in all "qualified State tuition programs" (as defined in section 529 of the Federal Internal Revenue Code, 26 U.S.C. § 529) of which the NJBEST Program designated beneficiary is the designated beneficiary does not exceed the lesser of a maximum college savings amount established by the Authority from time to time, or the cost in

current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary to incur; and

4. Require that any excess balances with respect to a designated beneficiary be promptly withdrawn in a non-qualified withdrawal or rolled over to another account in accordance with N.J.A.C. 9A:10-7.7.

(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.

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 principal and earnings.

(b) Contributors may withdraw part of the balance from an account on 60 days' notice.

(c) To qualify for penalty-free withdrawals of earnings on 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;
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; or
4. The withdrawal is for another reason if the failure of the program to impose a more than de minimis penalty on the withdrawal would not cause the program to cease to be a qualified State tuition program under section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

9A:10-7.7 Procedures for changes in designated beneficiary and rollovers

(a) A contributor may change the designated beneficiary of an account as permitted in section 529 of the Federal Internal Revenue Code, 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 old designated beneficiary.

(b) A contributor may rollover all or a portion of an account to another account as permitted in section 529 of the Federal Internal Revenue Code, 26 U.S.C. § 529, by providing the Authority 60 days' notice of the request to make the rollover and evidence acceptable to the Authority that the other designated beneficiary is a member of the family of the old designated beneficiary.

9A:10-7.8 Fees and charges

(a) The Authority may charge, impose and collect reasonable administrative fees, investment fees, and service charges in connection with any agreement, contract or transaction relating to the program. These fees and charges shall be determined by the Authority after consultation with the investment manager or contractor. These fees and charges may be imposed directly on contributors to the program or may be taken as a percentage of the investment earnings on accounts.

(b) The Authority shall charge contributors a \$15.00 annual account maintenance fee.

(c) The Authority shall charge an annual investment fee and service charge in the amount of the first one percent of the earnings of the Trust for periods when earnings are greater than one percent, or the actual earnings of the Trust for periods when earnings are one percent or less.

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).

9A:10-7.9 Penalty for nonqualified withdrawals

(a) In the case of any nonqualified withdrawal from an account, a penalty amount of 10 percent of the investment earnings on an account shall be withheld and paid to the Authority for use in operating and marketing the program.

(b) If a contributor makes a nonqualified withdrawal and no penalty amount is withheld pursuant to (a) above or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the contributor shall pay the unpaid portion of the penalty to the Authority at the same time that the contributor files a State income tax return for the taxable year of the withdrawal, or if the contributor does not file a return, the unpaid portion of the penalty shall be paid on or before the due date for filing of that income tax return.

9A:10-7.10 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 total contributions made through the end of the 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.

9A:10-7.11 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.

9A:10-7.12 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; 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) The additional amount provided under (a) 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) above.

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

9A:10-7.13 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.

9A:10-7.14 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.

9A:10-7.15 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.

9A:10-7.16 Investment by private entity

If the investment manager is a private entity, the investment of the principal and interest of any amount contributed under P.L. 1997, c.237 shall be backed by the full faith and credit of the United States or be fully insured by the Federal Deposit Insurance Corporation or other similar insurer backed by the full faith and credit of the United States. No account balance shall exceed the maximum amount of insurance provided by the insurer. No investment is permitted in derivatives of eligible securities, as defined in this section. Any investment shall be designed to balance prospective payments according to the following: the average maturity of all principal and interest payments (or duration of the portfolio) of fixed income assets should approximately equal the expected schedule of payments to the participants.

9A:10-7.17 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.