

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.

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 of 1986, 26 U.S.C. § 529) of which the NJBEST Program designated beneficiary is the designated beneficiary does not exceed the lesser of \$100,000, 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.
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".

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), 30 N.J.R. 4079(b).

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:10-7.9 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;

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) 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.

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.

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.

(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).