

CHAPTER 35
QUALIFIED EDUCATIONAL INSTITUTIONS

Authority

N.J.S.A. 17:1-15(e) and 17:9A-213.

Source and Effective Date

R.2007 d.44, effective January 8, 2007.
See: 38 N.J.R. 4273(a), 39 N.J.R. 363(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 35, Qualified Educational Institutions, expires on July 7, 2014. See: 46 N.J.R. 259(a).

Chapter Historical Note

Chapter 35, Qualified Educational Institutions, was adopted as new rules by R.2001 d.314, effective September 4, 2001. See: 33 N.J.R. 1981(a), 33 N.J.R. 2988(a).

Chapter 35, Qualified Educational Institutions, was readopted as R.2007 d.44, effective January 8, 2007. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 35, Qualified Educational Institutions, was scheduled to expire on January 8, 2014. See: 43 N.J.R. 1203(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. QUALIFIED EDUCATIONAL INSTITUTIONS

- 3:35-1.1 Purpose and scope
- 3:35-1.2 Definitions
- 3:35-1.3 Required disclosures and minimum standards
- 3:35-1.4 Registration to act as a qualified educational institution
- 3:35-1.5 Filing of annual report
- 3:35-1.6 Examination by Commissioner
- 3:35-1.7 Records of registration
- 3:35-1.8 Revocation or suspension of registration

SUBCHAPTER 1. QUALIFIED EDUCATIONAL INSTITUTIONS

3:35-1.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:9A-213(b) which permits qualified educational institutions to exercise certain trust powers as set forth in N.J.S.A. 17:9A-28(6) and (9).

(b) This subchapter shall apply to all educational institutions that seek to exercise powers pursuant to N.J.S.A. 17:9A-213(b), except those exempt from the requirements pursuant to N.J.S.A. 17:9A-213(f).

3:35-1.2 Definitions

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

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Qualified educational institution” means a not-for-profit corporation which is operated pursuant to Title 15A of the New Jersey Statutes and which is organized and operated exclusively for educational purposes, is exempt from Federal income taxation pursuant to paragraph (3) of subsection (c) of section 501 or 115 of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3) and 26 U.S.C. § 115, and has registered with the Department to act as executor, trustee, guardian or administrator pursuant to this subchapter.

“Qualified interest” means the interest of the qualified educational institution as an income beneficiary, a principal beneficiary of a trust, or both, which is a charitable remainder trust, charitable lead trust or pooled income fund, or similar split interest trust, and in which the qualified educational institution is entitled to receive at least 51 percent of the income of the trust or 51 percent of the principal.

“Unrestricted net assets” means the part of the net assets of the educational institution that is neither permanently restricted nor temporarily restricted by donor imposed stipulations.

3:35-1.3 Required disclosures and minimum standards

(a) A qualified educational institution shall have unrestricted net assets in an amount at least equal to the amount of assets under trust management.

(b) A qualified educational institution shall provide for adequate vault or other safekeeping facilities for the safeguarding of stocks and other securities held in its trust accounts.

(c) A qualified educational institution shall have in effect liability insurance in the amount of \$1,000,000, for each director, officer or other employee of the educational institution responsible for administering and investing assets of its trust accounts.

(d) A qualified educational institution shall have among its officers or other employees persons determined by the Commissioner to possess the qualifications, experience and character required for the duties and responsibilities for which they will be responsible in administering and investing assets of its trust accounts.

(e) A qualified educational institution shall have available competent legal counsel licensed to practice law in this State to advise about trust matters whenever necessary.

(f) All monies, securities and other properties held by a qualified educational institution in trust shall be kept separate and apart from the monies, securities and other property be-

longing to the qualified educational institution. This requirement shall be satisfied as long as the qualified educational institution at all times maintains records that show the name of the party on whose account the monies, securities and other property is held.

3:35-1.4 Registration to act as a qualified educational institution

(a) The educational institution shall register with the Department prior to exercising the powers specified in N.J.S.A. 17:9A-28(6) and 28(9) as trustee of funds in which the educational institution has a qualified interest. The application for registration to act as a qualified educational institution shall be on a form approved by the Commissioner and shall contain the following:

1. The name of the educational institution and the address of the principal office of the educational institution located in this State;

2. The names of the officers or employees of the educational institution, responsible for administering and investing the assets of the trusts together with a summary of each person's education and experience in the field of trust management;

3. The address of the office(s) or location(s) at which the institution will manage the trusts;

4. The names and home addresses of the directors and officers of the educational institution;

5. An audited financial statement with an unqualified opinion prepared by a certified public accountant or public accountant disclosing the institution's assets and liabilities and its unrestricted net assets;

6. Proof of liability insurance for directors and officers in an amount set forth in N.J.A.C. 3:35-1.3(c);

7. Evidence that the applicant has adequate vault or other safekeeping facilities for safeguarding stocks and other securities held for their trust accounts at its own offices or has made adequate arrangements for the safekeeping of all the securities;

8. The name and address of its legal counsel for trust matters;

9. Proof of compliance with all standards set forth in N.J.A.C. 3:35-1.3(c); and

10. An application fee of \$250.00.

(b) The president or vice president of the institution shall certify that the information contained on the application was reviewed by the Board of Directors and is true to the best of his or her knowledge and belief.

3:35-1.5 Filing of annual report

(a) Within 60 days of receipt of the audited financial statement referred to in (a)2 below, each qualified institution shall

file an annual report on a form approved by the Commissioner containing the following:

1. The name of the educational institution and the address of the principal office of the educational institution located in this State;

2. An audited financial statement with an unqualified opinion as of the end of its most recent fiscal year prepared by a certified public accountant or a public accountant disclosing the institution's assets and liabilities and its unrestricted net assets;

3. Proof of liability insurance for directors and officers in an amount set forth in N.J.A.C. 3:35-1.3(c);

4. A statement whether any of the information contained in the initial application for registration has changed and the updated information; and

5. A filing fee of \$100.00.

(b) The president or vice president of the institution shall certify that the information contained on the annual report was reviewed by the Board of Directors and is true to the best of his or her knowledge and belief.

Amended by R.2006 d.233, effective June 19, 2006.

See: 38 N.J.R. 5(a), 38 N.J.R. 2671(a).

Substituted "April 1" for "December 31" in (a).

Amended by R.2007 d.44, effective February 5, 2007.

See: 38 N.J.R. 4273(a), 39 N.J.R. 363(a).

In the introductory paragraph of (a), substituted "Within 60 days of receipt of the audited financial statement referred to in (a)2 below" for "On or before April 1 of each year".

3:35-1.6 Examination by Commissioner

The Commissioner may at any time, by a person or persons duly designated by him or her, examine the financial records of a qualified educational institution. The costs of such examination shall be borne by the qualified educational institution so examined in accordance with the fees established at N.J.A.C. 3:1-6.6(a).

3:35-1.7 Records of registration

The Commissioner shall provide public access to the names and addresses of all qualified educational institutions registered pursuant to this subchapter. There shall be a fee of \$25.00 per request to provide a written confirmation whether a particular institution has a current registration.

3:35-1.8 Revocation or suspension of registration

(a) The Commissioner may revoke or suspend the registration of any qualified educational institution if, after notice and hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Commissioner determines that the licensee:

1. Has violated any provision of N.J.S.A. 17:9A-213 or any order or rule issued pursuant thereto, or has violated

any other banking law of this State in connection with the exercise of its trust powers;

2. Has failed to pay any fee imposed by the Commissioner;

3. Has withheld information from the Department, or has made a material misstatement in its registration with the Department or any other submission to the Department;

4. Has failed to meet the minimum standards set forth in N.J.A.C. 3:35-1.3;

5. Has demonstrated unworthiness, incompetence, bad faith or dishonesty in the exercise of its trust powers; or

6. Has engaged in any other conduct determined by the Commissioner to be grounds to revoke or suspend a registration.