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**IDAPA 54
TITLE 02
Chapter 01**

54.02.01 - RULES GOVERNING THE COLLEGE SAVINGS PROGRAM

000. LEGAL AUTHORITY.

In accordance with Section 33-5402(1), Idaho Code, the State College Savings Program Board shall make, adopt, and publish rules pursuant to Title 33, Chapter 54, Idaho Code, as may be necessary or appropriate to carry out the provisions and purposes of the College Savings Program. (3-15-02)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 54.02.01, "Rules Governing the College Savings Program". (3-15-02)

02. Scope. These rules specify the conditions and standards under which the Program shall be implemented. (3-15-02)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 33-5402(5), Idaho Code, the Board may issue written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. (3-15-02)

003. ADMINISTRATIVE APPEALS.

The provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," shall govern all contested cases filed pursuant to the provisions of Title 67, Chapter 52, Idaho Code. (3-15-02)

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. (3-15-02)

005. OFFICE - OFFICE HOURS - MAILING ADDRESS AND STREET ADDRESS.

The office of the Program is located in the State Capitol Building, 700 West Jefferson, Room 102, Boise, Idaho. The mailing address of the Program is, C/O Office of the State Treasurer, P. O. Box 83720, Boise, Idaho 83720-0091. The telephone number of the Program is (208) 334-3200. The Program's facsimile number is (208) 332-2960. (3-15-02)

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the Program are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. (3-15-02)

007. FILING OF DOCUMENTS.

All filings for rulemaking or contested cases must be filed with the Board. Whenever documents are filed by facsimile transmission, originals shall be deposited in the mail the same day or hand delivered the following business day to the Board. (3-15-02)

008. -- 009. (RESERVED).

010. DEFINITIONS.

01. Act. The College Savings Program, Title 33, Chapter 54, Idaho Code. (3-15-02)

02. Account. An individual trust account or savings account established as prescribed in Title 33, Chapter 54, Idaho Code. (3-15-02)

03. Account Owner. The Person designated at the time an Account is opened as having the right to withdraw moneys from the Account before the Account is disbursed to or for the benefit of the Designated Beneficiary. (3-15-02)

- 04. Beneficiary Or Designated Beneficiary.** Except as provided in Section 33-5404, Idaho Code, with respect to an Account, 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 or, if this Designated Beneficiary is replaced in accordance with Section 33-5404, Idaho Code, the replacement Beneficiary. (3-15-02)
- 05. Board.** The State College Savings Program Board created by Section 33-5402, Idaho Code. (3-15-02)
- 06. Cash.** Cash shall include checks (other than traveler's checks, cashier's checks or third-party checks exceeding ten thousand dollars (\$10,000)), money orders, payroll deductions, automatic contribution plans, electronic funds transfers, and transfers from another Qualified State Tuition Program. Cash does not include property. (3-15-02)
- 07. Contingent Account Owner.** The Person designated by the Account Owner, pursuant to Subsection 021.02, to become the owner of the Account upon the death of the Account Owner. (3-15-02)
- 08. Contribution.** Cash deposited into an Account established under the Act for the benefit of a Designated Beneficiary. (3-15-02)
- 09. Earnings.** The total Account balance on a particular date minus the Contributions in the Account as of that date. (3-15-02)
- 10. Higher Education Institution.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-15-02)
- 11. Member Of The Family.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-15-02)
- 12. Person Or Persons.** An individual, a trust, an estate, a partnership, an association or a corporation. (3-15-02)
- 13. Program.** The College Savings Program established under Title 33, Chapter 54, Idaho Code. (3-15-02)
- 14. Program Manager.** The financial institution selected by the Board pursuant to the provisions of Section 33-5403, Idaho Code, to act as manager of the Program. (3-15-02)
- 15. Qualified Higher Education Expense.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-15-02)
- 16. Qualified State Tuition Programs.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-15-02)
- 17. Rollover Distribution.** Includes any of the following: (3-15-02)
- a.** Within sixty (60) days of a withdrawal, an Account Owner transfers on deposit the funds withdrawn from an Account to another Account (or funds are withdrawn from another Account and deposited in the Account Owner's Account); (3-15-02)
 - b.** Within sixty (60) days of an Account Owner's withdrawal of funds from another state's Qualified State Tuition Program, the Account Owner deposits such funds in an Account in the Program; or (3-15-02)
 - c.** Within sixty (60) days of an Account Owner's withdrawal of funds from an Account in the Program, the Account Owner transfers such funds to an account established in another state's Qualified State Tuition Program. (3-15-02)
- 18. Scholarship.** Shall have the meaning set forth in 26 U.S.C. Section 529(b)(3)(C) and shall also refer to an allowance or payment described in 26 U.S.C. Section 135(d)(1)(B) or (C). Scholarship includes certain

educational assistance allowances under federal law and certain payments for educational expenses, or attributable to attendance at certain education institutions, that are exempt from federal income tax. (3-15-02)

19. Transfer. A distribution as described in 26 U.S.C. Section 529(c)(3)(C)(i). (3-15-02)

011. -- 019. (RESERVED).

020. CHANGE OF BENEFICIARY.

01. Change Of Beneficiary Form. An Account Owner may change the Beneficiary designated for the Account at any time by submitting a completed change of Beneficiary form to the Program Manager. (3-15-02)

02. Change Of Beneficiary Through Rollover Distribution. A change of Beneficiary may also be accomplished by means of a Rollover Distribution. (3-15-02)

021. CHANGE OF ACCOUNT OWNERSHIP.

01. Transfer Of Ownership. An Account Owner may transfer ownership of an Account to another eligible Account Owner at any time. The change of ownership shall be effective if the transfer: (3-15-02)

a. Is irrevocable; (3-15-02)

b. Transfers all ownership, reversionary rights, powers of appointments, and powers to direct the withdrawal of funds; and (3-15-02)

c. Is submitted to the Program Manager in writing. (3-15-02)

02. Contingent Account Owner. An Account Owner may designate a contingent Account Owner to become the owner of the Account automatically upon the death of the Account Owner by submitting a written request to the Program Manager. The contingent Account Owner designation may be revoked by the Account Owner at any time by submitting to the Program Manager another written request that either designates a new contingent Account Owner or revokes all previous designation(s) of a contingent Account Owner. The successor Account Owner shall provide: (3-15-02)

a. A certified copy of a death certificate sufficiently identifying the deceased by name and Social Security Number, or such other proof of death as is recognized under applicable law and is acceptable to the Program Manager, and (3-15-02)

b. A participation agreement signed by the successor Account Owner. (3-15-02)

03. Court Order. A change in an Account Owner may be effected by submitting to the Program Manager a written request that is not signed by the Account Owner of record if the change of Account ownership is accompanied by a court order directing the change of ownership or by an affidavit or declaration that is recognized under applicable law to require the transfer of ownership upon death without a court order. The Program Manager shall not implement a change in ownership (other than a change in ownership described in Subsection 021.02 of this regulation) without first receiving a written request signed by the Account Owner of record, a court order, or an affidavit or declaration as herein described. The successor Account Owner must submit a completed participation agreement to the Program Manager. (3-15-02)

022. -- 029. (RESERVED).

030. WITHDRAWALS.

01. Qualified Withdrawal. Contributions must be on deposit in an Account a minimum of ten (10) days before being withdrawn. Following the request of an Account Owner for a qualified withdrawal of all or part of the balance from an Account, payment shall be made not later than seven (7) days after the date on which a determination is made by the Program Manager, that a qualified withdrawal request should be effected. (3-15-02)

02. Non-qualified Withdrawal. If the Program Manager determines that a withdrawal is a non-qualified withdrawal, the Program Manager shall pay the amount of the withdrawal to the Account Owner net of penalties described in Subsection 040.02. Following the request of an Account Owner for a non-qualified withdrawal of all or part of the balance from an Account, payment shall be made not later than seven (7) days after the date on which a determination is made by the Program Manager, that a non-qualified withdrawal request should be effected. If such withdrawal is subsequently determined to be a qualified withdrawal, pursuant to procedures established by the Board and the Program Manager, the Account Owner may request a refund of penalties from the Board and the Board shall refund such penalties not later than seven (7) days after the date on which the determination is made that the withdrawal was a qualified withdrawal. (3-15-02)

03. Excess Scholarship Withdrawal. The portion of a sum withdrawn from an Account due to the award of a Scholarship to the Designated Beneficiary that is greater than the amount of the Scholarship identified in the third-party written confirmation required under Subsection 031.02.c. shall be considered a non-qualified withdrawal and subject to the penalty described in Subsection 040.02. (3-15-02)

04. Refunds Of Payments Of Qualified Higher Education Expenses. If a Higher Education Institution refunds to a Beneficiary any portion of an amount withdrawn from an Account that the institution receives under the Program for the payment of Qualified Higher Education Expenses, the Beneficiary or Account Owner must provide the Program Manager with a signed statement identifying the amount of any such refunds at the end of each year in which withdrawals from the Account for Qualified Higher Education Expenses were made. Any such refund may be treated as a non-qualified withdrawal unless the Account Owner or Beneficiary provides substantiation that the refund has been allocated to other Qualified Higher Education Expenses or the refund was made due to the death of, disability of, or receipt of a scholarship by the Beneficiary. (3-15-02)

031. CONFIRMATION OF DEATH, DISABILITY OR SCHOLARSHIP OF DESIGNATED BENEFICIARY.

01. Certify Reason For Withdrawal. Prior to a withdrawal from an Account due to the death or disability of the Designated Beneficiary of that Account, or because the Designated Beneficiary has received a Scholarship to be applied toward attendance at a Higher Education Institution, the Account Owner shall certify the reason for the withdrawal and provide written confirmation from a third party that the Designated Beneficiary has in fact died, become disabled, or received a Scholarship for attendance at a Higher Education Institution. A request to make a withdrawal due to the death or disability of, or a Scholarship award to, the Designated Beneficiary shall not be considered complete until such third party written confirmation is received by the Program Manager. (3-15-02)

02. Third Party Confirmation. For purposes of Subsection 031.01 of these rules, third party written confirmation shall consist of the following documentation: (3-15-02)

a. For death of the Designated Beneficiary, a certified death certificate sufficiently identifying said Beneficiary by name and social security number, or such other proof of death as is recognized under applicable law. (3-15-02)

b. For disability of the Designated Beneficiary, a certification by a physician who is a doctor of medicine or osteopathy that indicates that he or she is legally authorized to practice in a state of the United States and that the Beneficiary is unable to attend any Higher Education Institution because of an injury or illness that is expected to continue indefinitely or result in death. Such certification shall be on a form provided or approved by the Program Manager. (3-15-02)

c. For a Scholarship award to the Designated Beneficiary, a letter from the grantor of the Scholarship or from the Higher Education Institution receiving or administering the Scholarship, that identifies the Beneficiary by name and social security number as the recipient of the Scholarship and states the amount of the Scholarship, the period of time or number of credits or units to which it applies, or the date of the Scholarship, and, if applicable, the Higher Education Institution to which the Scholarship is to be applied. (3-15-02)

032. -- 039. (RESERVED).

040. ACCOUNT BALANCE LIMIT ON CONTRIBUTIONS - PENALTY.

01. Account Balance Limit On Contributions. (3-15-02)

a. A Contribution for any Designated Beneficiary shall be rejected (or, if accepted in error, returned to the Account Owner with any earnings thereon and less any penalties applicable thereto) if such contribution would cause the total balance of the Account, together with other Accounts established under the Program for the benefit of the same Beneficiary, to exceed the maximum amount established by the Board from time to time (the "Account Balance Limit on Contributions"), but in no event more than the amount permitted under 26 U.S.C. Section 529. Any payment of such excess amounts to the Account Owner may be a non-qualified withdrawal subject to the penalties set forth in Subsection 040.02. Accounts that have reached the Account Balance Limit on Contributions may continue to accrue earnings, and no withdrawal or Rollover Distribution will be required as the result of such accrual. In determining an Account's balance for purposes of the Account Balance Limit on Contributions, only balances in Accounts established under the Program shall be included. (3-15-02)

b. For purposes of applying the Account Balance Limit on Contributions, qualified withdrawals and withdrawals due to death or disability of, or Scholarship to, a Designated Beneficiary from an Account and all other Accounts in the Program, if any, for the same Beneficiary will be treated as reducing the Account Balance Limit on Contributions. Therefore, subsequent Contributions cannot be made to replenish the Account to the extent the Contribution would cause the aggregate amount held for the Beneficiary to exceed this reduced Account Balance Limit on Contributions. Such subsequent Contributions shall be rejected (or, if accepted in error, returned to the Account Owner with any earnings thereon and less any penalties applicable thereto as provided in Subsection 040.01.a. However, a non-qualified withdrawal or Rollover Distribution will not be treated as reducing the Account Balance Limit on Contributions, so that when such distributions are taken, subsequent Contributions may be made to the Account to effectively replenish the Account up to the Account Balance Limit on Contributions. (3-15-02)

02. Penalty. A penalty shall be withheld, and paid to the Board, from any non-qualified withdrawal from an Account, in an amount equal to ten percent (10%) of the portion of the withdrawal constituting earnings. Such penalty amount is a more than de minimis penalty for the purposes of 26 U.S.C. Section 529. Such penalty amount shall be increased, if required, in order for it to be "more than a de minimis penalty" for purposes of 26 U.S.C. Section 529. Penalties shall be imposed, collected, and applied in a manner consistent with 26 U.S.C. Section 529. (3-15-02)

041. ROLLOVER DISTRIBUTIONS.

01. Rollover Distribution From Another Qualified State Tuition Program. An Account Owner may transfer funds at any time from another Qualified State Tuition Program to an Account established under the Act, either owned by the same or a different Account Owner, by submitting a written request to the Program Manager. The rollover of funds from the other Qualified State Tuition Program shall be effective provided that: (3-15-02)

a. The funds are transferred to an Account for a new Beneficiary who is a Member of the Family of the Beneficiary of the Account in the other Qualified State Tuition Program; and (3-15-02)

b. The transfer of funds does not cause the aggregate amount of contributions held for the new Beneficiary to exceed the Account Balance Limit on Contributions applicable to that Beneficiary. (3-15-02)

02. Rollover Of Account Funds Methods. A rollover of Account funds from or to another Qualified State Tuition Program or within this Program shall be effected through a direct Transfer of funds to an Account or as a deposit of the funds into an Account established under a Qualified State Tuition Program within sixty (60) days of withdrawal of the funds from the other Qualified State Tuition Program. (3-15-02)

03. Transfer Of Account Funds As Rollover Distribution. An Account Owner may transfer funds from an Account established under the Act to another Account established under the Act, or an Account established under a Qualified State Tuition Program in another state, either owned by the same or a different Account Owner at any time by submitting a written request to the Program Manager. The transfer of Account funds shall be effective provided that: (3-15-02)

a. The funds are transferred to an Account for a new Beneficiary who is a Member of the Family of the Beneficiary of the Account from which the funds are being transferred; and (3-15-02)

b. The transfer of funds does not cause the aggregate amount of contributions held for the new Beneficiary to exceed the Account Balance Limit on Contributions applicable to that Beneficiary. (3-15-02)

04. Execution Of New Participation Agreement. Any Rollover Distribution that is intended to transfer funds to a new Account not yet established under the Act shall not be effective until the Account Owner who is to receive the transferred funds has submitted a completed participation agreement for the new Account and the Account has been established. (3-15-02)

042. -- 999. (RESERVED).

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