



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-009

AN ORDER to create chapter Treas 1, relating to the college savings program.

Submitted by **STATE TREASURER**

01-28-02 RECEIVED BY LEGISLATIVE COUNCIL.

02-22-02 REPORT SENT TO AGENCY.

RS:MM:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

I. Statutory Authority

a. Section Treas 1.12 regulates distributions due to death, disability, or the scholarship of a beneficiary. This section appears to be predicated upon the provisions of 26 U.S.C. s. 529 (b) (3) as found in the Internal Revenue Code. However, this provision applies to tax years beginning on or before December 31, 2001. The provision has been removed for tax years 2002 to 2010 by P.L. 107-16. Has this provision been restated in another portion of the Internal Revenue Code? If not, is it necessary to retain s. Treas 1.12?

b. Section Treas 1.02 (2) defines the term "account owner" in a manner inconsistent with that found in the statutory definition in s. 14.64 (1) (a), Stats. The rule should use the statutory definition and designate in a substantive provision that an account owner may select or change the designated beneficiary or designate any person other than the designated beneficiary to whom funds may be paid from an account.

c. The rule avoids the rule-making process in numerous areas. For example, s. Treas 1.02 (9) provides that the maximum contribution limit will be established by the Wisconsin College Savings Program Board (Board). Unless statutorily exempted, this is a standard that meets the definition of the term "rule" in s. 227.01 (13), Stats., and must be promulgated as a rule. While it may be convenient to draft a rule that allows an agency to set standards and policies in the future without public or legislative review, such a practice does not comport with the statutes. [See also ss. Treas 1.06 (information required for a change of account ownership), 1.08 (2) (information required to change a beneficiary), 1.09 (1) (maximum contribution limit),

1.09 (3) (disclosure of financial information), 1.11 (2) (information required to request distributions), 1.14 (account termination), and 1.16 (penalties).] Also, s. Treas 1.09 (2) that states that minimum contribution amounts will be established from time to time by the board, while s. 14.64 (3) (c), Stats., specifically directs the board to establish a minimum initial contribution to a college savings account.

2. Form, Style and Placement in Administrative Code

- a. In s. Treas 1.01, the word "rule" should be replaced by the word "chapter."
- b. The numbers designating the subsection headings in s. Treas 1.02 should be in parentheses and should not be followed by periods.
- c. In s. Treas 1.02 (8), "educational institution" should not be capitalized.
- d. In s. Treas 1.02 (11), "of funds from an account" should be inserted after "distribution."
- e. Section Treas 1.02 (16) states that a qualified distribution may be made only pursuant to a "distribution notice" from the account owner. However, s. Treas 1.11 (2) provides that an account owner may request a distribution of funds by submitting a "distribution request form." The rule should be revised so that consistent terminology is used.
- f. In s. Treas 1.04 (2), "must" should be changed to "shall." [See s. 1.01 (2), Manual.]
- g. In s. Treas 1.05 (intro.), the phrase "any of" should be inserted after the phrase "account for."
- h. In s. Treas 1.06, a subsection should be created containing the material immediately following the title and the existing subsections should be renumbered correspondingly. This comment also applies to s. Treas 1.09. Also, in s. Treas 1.06 (2), the word "must" should be replaced by the word "shall." See, also, s. Treas 1.08 (2).
- i. A title should be inserted for s. Treas 1.11 (3). See s. 1.05 (1), Manual.
- j. It appears that the material contained in the first sentence of s. Treas 1.11 (5) is unnecessary since the definition of "qualified distribution" is set forth in s. Treas 1.02 (16). In addition, the rest of the material in that subsection pertains to distribution requests and therefore should be included in s. Treas 1.11 (2).

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. Treas 1.04 (1), the notation "s." should be inserted before the reference to "Treas 1.09." [See, also, s. Treas 1.09 (2).]

b. If s. Treas 1.11 (2) requires a new form, then the provisions of s. 227.14 (3), Stats., should be met. [See, also, s. Treas 1.04 (1).]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Notes should be added to the rule indicating where the reader can obtain information about the minimum and maximum contribution limits (but see comment 1. c.) and how the various forms which are referred to may be obtained.

b. It appears that s. Treas 1.05 (3) would be more clear if it were written as follows: "The maximum contribution level for the proposed designated beneficiary has already been met."

c. In order to open an account under s. Treas 1.04, must an applicant make an initial contribution? If so, what is the minimum amount of the initial contribution? Is the payment of an application fee required to open an account?

d. It appears that s. Treas 1.04 (3) should specify that the program manager has the duty to supply the information listed.

e. Section Treas 1.04 should specify how an applicant is to be notified that an application has been accepted and an account has been opened.

f. It appears that s. Treas 1.04 (5) should specify that the program manager shall accept applications that meet all the requirements for opening an account under the program.

g. In s. Treas 1.06 (intro.), in the sentence immediately following the title, "his or her death" should be replaced with "the death of the account owner."

h. In s. Treas 1.06, is there any requirement that the program manager process designations in a certain amount of time from when they are received?

i. Section Treas 1.06 (1) should specify what must be received by the program manager in order for a change in the ownership of an account to be effective.

j. Should s. Treas 1.08 require the program manager to obtain verification that a proposed new beneficiary is a member of the family of the current beneficiary?

k. The last sentence of s. Treas 1.09 (3) should be rewritten to specify who shall refuse the excess funds. Likewise, the last sentence of s. Treas 1.10 should be rewritten to specify who must issue the reports to the account owners.

l. In s. Treas 1.11 (1), "a" should be changed to "the."

m. In s. Treas 1.11 (3), "shall" should be changed to "may." [See s. 1.01 (2), Manual.]

n. In s. Treas 1.12 (1), "Prior to a distribution" should be changed to "Prior to making a distribution." In addition, in that subsection, "the beneficiary" should be changed to "a beneficiary." Also, in that subsection, should "may" be changed to "shall"? If not, how will the program manager verify that a beneficiary has died, become disabled, or received a scholarship? Finally, it is unclear why the rule states that the program may require "either" of the following, when par. (a) appears to require written confirmation from an appropriate authority in addition to certification from the account owner.

o. In s. Treas 1.12 (1) (a), it is unclear exactly what an account owner must provide to the program manager in order to obtain a distribution due to the death or disability of, or receipt of a scholarship by, a beneficiary. Specifically, what is meant by "certification" and "appropriate authority"?

p. In s. Treas 1.13, should "or for any other reason" be inserted after "expenses"?

q. In s. Treas 1.14 (1) (a), "the" should be capitalized.

r. In s. Treas 1.14 (1) (b), "is" should be changed to "has been."

EDVEST
COLLEGE SAVINGS PROGRAM



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January 9, 2002

Wisconsin Legislators
Wisconsin Senate and Assembly
State Capitol
Madison, Wisconsin

RE: Wisconsin College Savings Program Board

Dear Legislator:

Enclosed is a copy of an emergency rule creating Chapter Treas 1 of the Wisconsin Administrative Code relating to the "EDVEST" College Savings Program. The emergency rule was published in the Wisconsin State Journal on Monday January 7, 2002. Certified copies of the rule were also filed with the Revisor of Statutes and Secretary of State on January 7, 2002. The "plain language" analysis and fiscal estimate are also enclosed.

If you have any questions, please do not hesitate to contact me at (608) 264-7886.

Sincerely,

A handwritten signature in black ink that reads "Marty Olle".

Marty Olle
EDVEST College Savings Program Manager

Enclosures



ORDER ADOPTING EMERGENCY RULE

The Wisconsin College Savings Program Board creates Treas 1 of the Wisconsin Administrative Code.

EXEMPTION FROM FINDING OF EMERGENCY:

(Section 15(1), 2001 Wisconsin Act 7)

This rule shall take effect upon publication in the official state newspaper pursuant to s.227.24, Stats.

ANALYSIS PREPARED BY THE OFFICE OF THE STATE TREASURER:

Statutory authority: Section 14.64 (2)(e), Stats., and section 15, 2001 Wisconsin Act 7.

Statutes interpreted: s. 14.64 *et seq.*, Stats.

The Wisconsin College Savings Program Board establishes a rule for the operation of the College Savings Program. The rule is designed to grant flexibility to program participants wherever possible, while enabling the State and its private-sector partners to administer the program in a manner that protects the program's financial integrity and viability. Maintaining eligibility as a "qualified tuition program" pursuant to section 529 of the Internal Revenue Code [26 USC 529] is another primary objective. "529" programs are eligible for a number of federal tax benefits that are attractive to families saving for future college costs. Significant features of the rule are addressed below:

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to open an account. Section Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account. Sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Section Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to "rollover" an account balance to another section 529 program. IRS requirements relating to investment direction are also detailed.

Sections Treas 1.11, 1.12 and 1.13 describe account withdrawals, distributions and refunds. Special circumstances are also provided for in these sections, such as the death or disability of the beneficiary or receipt of a scholarship by a beneficiary. Section Treas 1.14 sets forth conditions under which the Board may terminate an owner's account. Sections Treas 1.15 and 1.16 address related fees and penalties.

Final Regulatory Flexibility Analysis: Pursuant to s.227.114, Stats., the rule herein is not expected to negatively impact small business.

**Office of the State Treasurer
Administrative Rules
WISCONSIN College Savings Program**

The Wisconsin Office of State Treasurer proposes an order to create Treas 1, relating to the college savings program.

Statutory authority: s. 14.64 (2) (e), Stats., and section 15, 2001 Wisconsin Act 7.

Statutes interpreted: ss. 14.64, 16.255, and 25.17(2)(f), Stats.

Treas 1.01 Purpose and Analysis. This rule establishes the procedures, standards and eligibility requirements for investment in accounts under the Wisconsin college savings program, into which a participant may invest funds to be used by individual beneficiaries to pay the cost of attendance at an institution of higher education. The Wisconsin college savings program is established as a qualified tuition program pursuant to section 529 of the internal revenue code [26 USC 529], and is administered by the Office of State Treasurer.

Treas 1.02 Definitions. In this chapter:

1. "Account" means a formal record of transactions maintained for a particular designated beneficiary to meet qualified higher education expenses under the program.
2. "Account owner" means the person who is entitled to select or change the designated beneficiary of an account, or designate any person other than the designated beneficiary to whom funds may be paid from the account.
3. "Board" means the Wisconsin college savings program board.
4. "Cash" includes checks, money orders, wire transfers, or electronic funds transfers through payroll deduction, automatic contribution plans or similar methods, but does not include currency.
5. "Contribution" means any payment directly allocated to an account for the benefit of a designated beneficiary or that is used to pay late fees or administrative fees associated with the account.
6. "Department" means the Wisconsin department of administration.
7. "Designated beneficiary" has the meaning found in section 529(e)(1) of the internal revenue code.
8. "Eligible Educational Institution" has the meaning found in section 529(e)(5) of the internal revenue code.

9. "Maximum contribution limit" is the sum total market value amount established by the board that may be accumulated in the accounts of a designated beneficiary to meet qualified higher education expenses.
10. "Member of the family" has the meaning found in section 529(e)(2) of the internal revenue code.
11. "Non-qualified distribution" means any distribution that is not a qualified distribution.
12. "Participation agreement" means the contract between an account owner and the board setting forth the terms and conditions under which the account owner participates in the program.
13. "Person" includes an individual, a trust, or a body corporate or politic.
14. "Program" means the qualified tuition program established under s.14.64, Stats.
15. "Program manager" means the entity under contract with the department to serve as the program administrator, marketing agent and investment manager of the program.
16. "Qualified distribution" means any distribution of funds, as defined in section 529 of the internal revenue code, for qualified higher education expenses from an account pursuant to a distribution notice from the account owner.
17. "Qualified higher education expenses" has the meaning found in section 529(e)(3) of the internal revenue code.
18. "Qualified tuition program" means a savings program to help defray the cost of college expenses under section 529 of the internal revenue code.
19. "Rollover contribution" means the transfer of all or part of an account from one qualified tuition program account to another qualified tuition program account.

Treas 1.03 Account owner eligibility. Any person legally able to contract under applicable state law is eligible to establish an account for the benefit of a designated individual. There shall be only one account owner per account.

Treas 1.04 Opening an account. (1) To open an account, an applicant shall submit a properly completed and signed application, which incorporates the program description and participation agreement, to the program manager. A contribution may be made as provided in Treas 1.09 or by any alternate method established by the board or the program manager.

(2) An applicant must select an available investment option in which all contributions to the account shall be invested. After an account has been opened, the investment option selected may only be changed as permitted under section 529 of the internal revenue code and any regulations issued thereunder.

(3) The participation agreement shall be accompanied by a program description disclosing the program characteristics, including the investment options, investment risks, program fees, and other information as determined by the board and the program manager.

(4) Acceptance by the program manager of application materials, the initial contribution, or selection of contribution method for processing shall not be deemed an agreement to open an account.

(5) The program manager shall accept applications to open accounts and accept subsequent contributions for a designated beneficiary in the order they are received, up to the maximum contribution limit.

Treas 1.05 Refusal to open an account. The program manager or the board may refuse to open an account for the following reasons:

- (1) The applicant is not an eligible account owner.
- (2) The applicant has not provided all of the information required in the application.
- (3) The maximum contribution level for the designated beneficiary will be exceeded.
- (4) The execution of a participation agreement violates any federal or state law.
- (5) The board determines that the number of accounts in the program should be limited.

Treas 1.06 Change of account ownership. An account owner may designate a successor who shall become the new account owner automatically upon his or her death. This designation may be made at any time by submitting a written designation of the successor to the program manager containing the information required by the program manager and the board. Designation of a successor shall be effective upon registration in the records of the program manager.

- (1) If a change in the ownership of an account is required by a court order directing such change, or by an affidavit or declaration that is recognized under applicable law as requiring transfer of ownership upon death without a court order, such change shall be effective upon receipt by the program manager unless otherwise required by law.
- (2) Any other request to transfer ownership to a new account owner must be made by submitting to the program manager a written designation of a new account owner containing the information required by the program manager and the board. Transfer of ownership shall not be effective until registered in the records of the program manager.

Treas 1.07 Designated beneficiary. Any individual regardless of age or relationship to the account owner, including the account owner, may be a designated beneficiary under the program.

There shall be only one designated beneficiary per account. Subject to the maximum contribution level, any number of accounts may be opened for a single designated beneficiary.

Treas 1.08 Change of designated beneficiary. (1) Only an account owner may change the designated beneficiary of an account. The designated beneficiary may only be changed to a member of the family of that designated beneficiary.

(2) To change a designated beneficiary, the account owner must submit a written request to the program manager containing all the information required by the program manager and the board.

(3) Upon receipt of the written request, the program manager shall register the information regarding the newly designated beneficiary in the records of the program. The change of the designated beneficiary shall be effective upon registration.

Treas 1.09 Contributions. Any person may make a contribution to an account of a designated beneficiary. Contributions shall be made only in cash.

(1) **MAXIMUM CONTRIBUTION LIMIT.** Contributions to the accounts established for a designated beneficiary shall not, in the aggregate, exceed that amount necessary to provide for the qualified higher education expenses of the designated beneficiary. The board shall establish from time to time the maximum amount that may be contributed in the aggregate to the accounts of an individual designated beneficiary. Contributions in excess of that limit shall not be accepted and shall be returned to the contributor.

(2) **MINIMUM CONTRIBUTION LIMIT.** The minimum amount contributed at the time an account is opened under Treas 1.04, and the minimum amount of any additional contribution to be made to an account shall be established from time to time by the board.

(3) **ROLLOVER CONTRIBUTIONS.** If rollover distributions are allowed by another state's qualified tuition program, an account owner may deposit all or part of the funds from an account in that state's qualified tuition program to a new account in the program as provided under section 529 of the internal revenue code, and any regulations issued thereunder. When making a rollover contribution, the account owner shall complete the forms and make such disclosures of financial information as required by the program manager and the board. If the rollover distribution deposited in the program account would cause the total account balance of all accounts for that designated beneficiary to exceed the maximum contribution limit, the excess funds shall be refused.

(4) **INVESTMENT DIRECTION PROHIBITION.** Except as permitted under section 529 of the internal revenue code and any regulations issued thereunder, no person contributing to an account may direct the investment or investment earnings of any contribution of an account.

Treas 1.10 Separate Accounting. Separate records and accounting shall be maintained for each account established under the program. Reports shall be issued to each account owner at least annually.

Treas 1.11 General Distributions. (1) **CALCULATING EARNINGS ON MULTIPLE ACCOUNTS.** If an individual is a designated beneficiary of more than one account, contributions and earnings with respect to those accounts shall be treated as directed under section 529 of the internal revenue code for purposes of calculating the earnings portions of any distribution with respect to that designated beneficiary.

(2) **DISTRIBUTION REQUESTS.** An account owner may request a distribution of funds by submitting to the program manager at least three business days prior to the date of the requested distribution a completed distribution request form and all other information as may be required by the program manager and the board. Upon receipt, the program manager shall commence processing properly completed distribution request forms as soon as practicable. Distributions shall be subject to any applicable state and federal tax withholdings.

(3) A designated beneficiary shall not authorize distribution or withdrawal of account funds.

(4) **NONQUALIFIED DISTRIBUTION.** A distribution of funds from an account for any use other than qualified higher education expenses for the designated beneficiary constitutes a nonqualified distribution and may be subject to the additional tax imposed by section 529(c)(6) of the internal revenue code.

(5) **QUALIFIED DISTRIBUTION.** A distribution of funds to pay for the qualified higher education expenses of a designated beneficiary constitutes a qualified distribution. An account owner may request a qualified distribution by submitting a properly completed distribution request form, and all documentary evidence necessary to verify the claimed qualified higher education expenses, as determined by the program manager and the board, to the program manager.

Treas 1.12 Distributions due to Death, Disability or Scholarship of Beneficiary. (1) Prior to a distribution from an account due to the death or disability of the designated beneficiary, or because the beneficiary has received a scholarship to be applied toward attendance at an eligible education institution, the program manager may require either of the following:

(a) Certification by the account owner that the distribution is due to the death or disability of the designated beneficiary or because the designated beneficiary has received a scholarship. The program manager may withhold and reserve as a penalty a portion of the distribution made as a result of such distribution request until the program manager receives written confirmation from an appropriate authority.

(b) Written confirmation from an appropriate authority that the designated beneficiary has died, become disabled, or received a scholarship in the amount of the requested distribution.

(2) A penalty-free distribution due to the death or disability of a beneficiary may be for an amount up to the total account balance for all accounts for that designated beneficiary. A penalty-free distribution due to a scholarship awarded to a designated beneficiary may be for an amount up to the total scholarship award.

Treas 1.13 Refund of qualified distribution payment. An eligible educational institution that owes a full or partial refund of a qualified distribution due to an overpayment of educational expenses shall pay the refund directly to the program manager for credit to the applicable designated beneficiary's account. A refund may not be paid directly to the designated beneficiary or account owner.

Treas 1.14 Account termination. (1) The board shall determine the conditions under which an account may be terminated, including but not limited to the following:

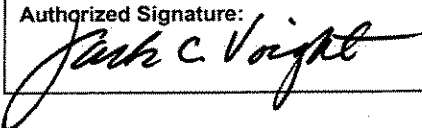
- (a) the account balance is below an established minimum.
- (b) The account is inactive for an established amount of time.
- (c) Any portion of the account remains unused 10 years after the anticipated academic year of the designated beneficiary's initial enrollment in an eligible educational institution.
- (d) The account owner or the designated beneficiary provides false or misleading information to the board, the program manager, or an eligible educational institution.

(2) Prior to termination, the program manager shall give reasonable notice to the account owner of the proposed termination. The notice shall provide a reasonable period of time, as determined by the board, in which to prevent termination by either making an additional contribution or a qualified distribution as necessary. Upon termination, the account balance shall be paid to the account owner as a nonqualified distribution, subject to applicable federal or state taxes, and any additional fees as determined by the board.

Treas 1.15 Fees. The board may charge account owners a fee for the administrative expenses of the program. Fees shall be clearly identified in the program description that accompanies the participation agreement.

Treas 1.16 Penalties. The board may impose penalties as necessary to maintain eligibility as a qualified tuition program under section 529 of the internal revenue code.

Treas 1.17 Investment Policies. The board shall establish all investment guidelines for the program.

1999 Session		LRB Number
FISCAL ESTIMATE DOA-2048 N(R06/99)		Bill Number
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		Amendment No. if Applicable
Subject Wisconsin College Savings Program Administrative Rule		Administrative Rule Number
Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input checked="" type="checkbox"/> No local government costs		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Chapter 20 Appropriations 20.585(2)(t) and (2)(tm)
Assumptions Used in Arriving at Fiscal Estimate <p>The rule establishes procedures for operation of the College Savings Program. The program has been budgeted based on estimates of participation. The procedures permit the program to proceed and do not change the basis for participation.</p>		
Long-Range Fiscal Implications None known at this time.		
Prepared by: Marty Olle	Telephone No. 264-7886	Agency State Treasurer's Office
Authorized Signature: 	Telephone No. 608-266-1095	Date 1-2-2002

Office of the State Treasurer
Administrative Rules
WISCONSIN College Savings Program

1.39(1)
1.14(1)

The Wisconsin Office of State Treasurer proposes an order to create Treas 1, relating to the college savings program.

Statutory authority: s. 14.64 (2) (e), Stats., and section 15, 2001 Wisconsin Act 7.

Statutes interpreted: ss. 14.64, 16.255, and 25.17(2)(f), Stats.

1,38

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Treas 1.01 Purpose and Analysis. This ^{chapter} rule establishes the procedures, standards and eligibility requirements for investment in accounts under the Wisconsin college savings program, into which a participant may invest funds to be used by individual beneficiaries to pay the cost of attendance at an institution of higher education. The Wisconsin college savings program is established as a qualified tuition program pursuant to section 529 of the internal revenue code [26 USC 529], and is administered by the Office of State Treasurer.

Treas 1.02 Definitions. In this chapter:

- (2) parents no period
- 1.) "Account" means a formal record of transactions maintained for a particular designated beneficiary to meet qualified higher education expenses under the program.
 - 2.) "Account owner" means the person who is entitled to select or change the designated beneficiary of an account, or designate any person other than the designated beneficiary to whom funds may be paid from the account. ^{see 14.64(1)(e)}
 - 3.) "Board" means the Wisconsin college savings program board.
 4. "Cash" includes checks, money orders, wire transfers, or electronic funds transfers through payroll deduction, automatic contribution plans or similar methods, but does not include currency.
 5. "Contribution" means any payment directly allocated to an account for the benefit of a designated beneficiary or that is used to pay late fees or administrative fees associated with the account.
 6. "Department" means the Wisconsin department of administration.
 7. "Designated beneficiary" has the meaning found in section 529(e)(1) of the internal revenue code.
 8. "Eligible Educational Institution" has the meaning found in section 529(e)(5) of the internal revenue code.
- (2)

9. "Maximum contribution limit" is the sum total market value amount established by the board that may be accumulated in the accounts of a designated beneficiary to meet qualified higher education expenses. where can info be obtained? (5)
10. "Member of the family" has the meaning found in section 529(e)(2) of the internal revenue code. X in rule
11. "Non-qualified distribution" means any distribution that is not a qualified distribution. of funds from an account
12. "Participation agreement" means the contract between an account owner and the board setting forth the terms and conditions under which the account owner participates in the program.
13. "Person" includes an individual, a trust, or a body corporate or politic. ?
14. "Program" means the qualified tuition program established under s.14.64, Stats.
15. "Program manager" means the entity under contract with the department to serve as the program administrator, marketing agent and investment manager of the program.
16. "Qualified distribution" means any distribution of funds, as defined in section 529 of the internal revenue code, for qualified higher education expenses from an account pursuant to a distribution notice from the account owner. substance
17. "Qualified higher education expenses" has the meaning found in section 529(e)(3) of the internal revenue code.
18. "Qualified tuition program" means a savings program to help defray the cost of college expenses under section 529 of the internal revenue code.
19. "Rollover contribution" means the transfer of all or part of an account from one qualified tuition program account to another qualified tuition program account.

Treas 1.03 Account owner eligibility. Any person legally able to contract under applicable state law is eligible to establish an account for the benefit of a designated individual. There shall be only one account owner per account.

Treas 1.04 Opening an account. (1) To open an account, an applicant shall submit a properly completed and signed application, which incorporates the program description and participation agreement, to the program manager. A contribution may be made as provided in (Treas 1.09 or by any alternate method established by the board or the program manager. s.

(2) An applicant ~~must~~ ^{shall (2)} select an available investment option in which all contributions to the account shall be invested. After an account has been opened, the investment option selected may only be changed as permitted under section 529 of the internal revenue code and any regulations issued thereunder. not necessary here (2)

is this a duty of the program manager?

(3) The participation agreement shall be accompanied by a program description disclosing the program characteristics, including the investment options, investment risks, program fees, and other information as determined by the board and the program manager.

in rule

(4) Acceptance by the program manager of application materials, the initial contribution, or selection of contribution method for processing shall not be deemed an agreement to open an account.

if requests are met? (5)

(5) The program manager shall accept applications to open accounts and accept subsequent contributions for a designated beneficiary in the order they are received, up to the maximum contribution limit.

?

Treas 1.05 Refusal to open an account. The program manager or the board may refuse to open an account for the following reasons:

any of

X

- (1) The applicant is not an eligible account owner.
- (2) The applicant has not provided all of the information required in the application.
- (3) The maximum contribution level for the designated beneficiary will be exceeded.
- (4) The execution of a participation agreement violates any federal or state law.
- (5) The board determines that the number of accounts in the program should be limited.

if we have contribute a max.

the death of the acct owner (5)

Treas 1.06 Change of account ownership. (1) An account owner may designate a successor who shall become the new account owner automatically upon ~~his or her~~ death. This designation may be made at any time by submitting a written designation of the successor to the program manager containing the information required by the program manager and the board. Designation of a successor shall be effective upon registration in the records of the program manager.

in rule

any time report fed info to Regulator, notice to owner?

(1) If a change in the ownership of an account is required by a court order directing such change, or by an affidavit or declaration that is recognized under applicable law as requiring transfer of ownership upon death without a court order, such change shall be effective upon receipt by the program manager unless otherwise required by law.

of what? (5) of an account

(2) Any other request to transfer ownership to a new account owner must be made by submitting to the program manager a written designation of a new account owner containing the information required by the program manager and the board. Transfer of ownership shall not be effective until registered in the records of the program manager.

in rule

(5) Any restrictions on transfers?

Treas 1.07 Designated beneficiary. Any individual regardless of age or relationship to the account owner, including the account owner, may be a designated beneficiary under the program.

There shall be only one designated beneficiary per account. Subject to the maximum contribution level, any number of accounts may be opened for a single designated beneficiary.

Treas 1.08 Change of designated beneficiary. (1) Only an account owner may change the designated beneficiary of an account. The designated beneficiary may only be changed to a member of the family of that designated beneficiary.

(2) To change a designated beneficiary, the account owner must submit a written request to the program manager containing all the information required by the program manager and the board.

(3) Upon receipt of the written request, the program manager shall register the information regarding the newly designated beneficiary in the records of the program. The change of the designated beneficiary shall be effective upon registration.

Treas 1.09 Contributions. Any person may make a contribution to an account of a designated beneficiary. Contributions shall be made only in cash.

(1) **MAXIMUM CONTRIBUTION LIMIT.** Contributions to the accounts established for a designated beneficiary shall not, in the aggregate, exceed that amount necessary to provide for the qualified higher education expenses of the designated beneficiary. The board shall establish from time to time the maximum amount that may be contributed in the aggregate to the accounts of an individual designated beneficiary. Contributions in excess of that limit shall not be accepted and shall be returned to the contributor.

(2) **MINIMUM CONTRIBUTION LIMIT.** The minimum amount contributed at the time an account is opened under Treas 1.04, and the minimum amount of any additional contribution to be made to an account shall be established from time to time by the board.

(3) **ROLLOVER CONTRIBUTIONS.** If rollover distributions are allowed by another state's qualified tuition program, an account owner may deposit all or part of the funds from an account in that state's qualified tuition program to a new account in the program as provided under section 529 of the internal revenue code, and any regulations issued thereunder. When making a rollover contribution, the account owner shall complete the forms and make such disclosures of financial information as required by the program manager and the board. If the rollover distribution deposited in the program account would cause the total account balance of all accounts for that designated beneficiary to exceed the maximum contribution limit, the excess funds shall be refused.

(4) **INVESTMENT DIRECTION PROHIBITION.** Except as permitted under section 529 of the internal revenue code and any regulations issued thereunder, no person contributing to an account may direct the investment or investment earnings of any contribution of an account.

rule making rule
must be same beneficiary or family member?

verify that was beneficiary or a member of the family?

2
verify
and periodically review and revise as necessary

14-64(3)
(c)

the program manager shall

Treas 1.10 Separate Accounting. Separate records and accounting shall be maintained for each account established under the program. Reports shall be issued to each account owner at least annually.

The program manager shall ...

Treas 1.11 General Distributions. (1) **CALCULATING EARNINGS ON MULTIPLE ACCOUNTS.** If an individual is a designated beneficiary of more than one account, contributions and earnings with respect to those accounts shall be treated as directed under section 529 of the internal revenue code for purposes of calculating the earnings portions of any distribution with respect to that designated beneficiary.

the (5)

a proper record does request from (5)

(2) **DISTRIBUTION REQUESTS.** An account owner may request a distribution of funds by submitting to the program manager at least three business days prior to the date of the requested distribution a completed distribution request form and all other information as may be required by the program manager and the board. Upon receipt, the program manager shall commence processing properly completed distribution request forms as soon as practicable. Distributions shall be subject to any applicable state and federal tax withholdings.

Forms

(2) TITLE 2

1.01(2) A d.b. may not ... (2)

(3) A designated beneficiary shall not authorize distribution or withdrawal of account funds.

(4) **NONQUALIFIED DISTRIBUTION.** A distribution of funds from an account for any use other than qualified higher education expenses for the designated beneficiary constitutes a nonqualified distribution and may be subject to the additional tax imposed by section 529(c)(6) of the internal revenue code.

#

(2)

redundant - see def

redundant

(5) **QUALIFIED DISTRIBUTION.** A distribution of funds to pay for the qualified higher education expenses of a designated beneficiary constitutes a qualified distribution. An account owner may request a qualified distribution by submitting a properly completed distribution request form, and all documentary evidence necessary to verify the claimed qualified higher education expenses, as determined by the program manager and the board, to the program manager.

(5) making

Treas 1.12 Distributions due to Death, Disability or Scholarship of Beneficiary. (1) Prior to a distribution from an account due to the death or disability of the designated beneficiary, or because the beneficiary has received a scholarship to be applied toward attendance at an eligible education institution, the program manager may require either of the following:

(5)

(a) Certification by the account owner that the distribution is due to the death or disability of the designated beneficiary or because the designated beneficiary has received a scholarship. The program manager may withhold and reserve as a penalty a portion of the distribution made as a result of such distribution request until the program manager receives written confirmation from an appropriate authority.

unclear what owner must provide.

(b) Written confirmation from an appropriate authority that the designated beneficiary has died, become disabled, or received a scholarship in the amount of the requested distribution.

(2) A penalty-free distribution due to the death or disability of a beneficiary may be for an amount up to the total account balance for all accounts for that designated beneficiary. A penalty-free distribution due to a scholarship awarded to a designated beneficiary may be for an amount up to the total scholarship award.

de minimum?
529(b)(3)

or for any other reason (S)

Treas 1.13 Refund of qualified distribution payment. An eligible educational institution that owes a full or partial refund of a qualified distribution due to an overpayment of educational expenses shall pay the refund directly to the program manager for credit to the applicable designated beneficiary's account. A refund may not be paid directly to the designated beneficiary or account owner.

Treas 1.14 Account termination. (1) The board shall determine the conditions under which an account may be terminated, including but not limited to the following:

(a) the account balance is below an established minimum. set in rule

(b) The account is inactive for an established amount of time. has been (S)

(c) Any portion of the account remains unused 10 years after the anticipated academic year of the designated beneficiary's initial enrollment in an eligible educational institution.

(d) The account owner or the designated beneficiary provides false or misleading information to the board, the program manager, or an eligible educational institution.

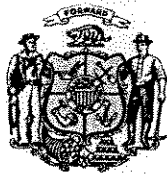
(2) Prior to termination, the program manager shall give reasonable notice to the account owner of the proposed termination. The notice shall provide a reasonable period of time, as determined by the board, in which to prevent termination by either making an additional contribution or a qualified distribution as necessary. Upon termination, the account balance shall be paid to the account owner as a nonqualified distribution, subject to applicable federal or state taxes, and any additional fees as determined by the board.

Treas 1.15 Fees. The board may charge account owners a fee for the administrative expenses of the program. Fees shall be clearly identified in the program description that accompanies the participation agreement.

Treas 1.16 Penalties. The board may impose penalties as necessary to maintain eligibility as a qualified tuition program under section 529 of the internal revenue code. } put in rule

Treas 1.17 Investment Policies. The board shall establish all investment guidelines for the program.

EDVEST
COLLEGE SAVINGS PROGRAM



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June 18, 2002

Honorable Fred Risser, President
Wisconsin State Senate
220 South, State Capitol
Madison, WI 53702

Honorable Scott Jensen, Speaker
Wisconsin State Assembly
211 West, State Capitol
Madison, WI 53702

RE: Rules Clearinghouse No. 02-009

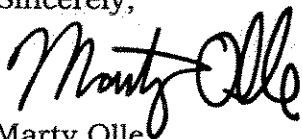
Dear Senator Risser and Representative Jensen:

Enclosed, in final form, is Chapter Treas1, Wis. Adm. Code, relating to the College Savings Program [popularly known as "EDVEST"].

A copy of the Legislative Council Rules Clearinghouse report is enclosed. All of the comments of the Clearinghouse have been addressed or incorporated into the rule. A public hearing was held on the proposed rule in Madison on March 5, 2002.

We respectfully request submittal of the rule to the appropriate standing committees for review.

Sincerely,


Marty Olle
EDVEST Program Manager

Cc: Revisor of Statutes
Joint Committee on Review of Administrative Rules

EDVEST


PROPOSED ORDER

The Wisconsin Office of State Treasurer proposes an order to create Treas 1 of the Wisconsin Administrative Code, relating to the college savings program.

Analysis prepared by the Office of the State Treasurer.

Statutory authority: s. 14.64 (2) (e), Stats., and section 15, 2001 Wisconsin Act 7.

Statutes interpreted: ss. 14.64, 16.255, and 25.17(2)(f), Stats.

The Wisconsin College Savings Program Board ("Board") establishes a rule for the operation of the College Savings Program. The purpose of the Wisconsin College Savings Program is to allow individuals to invest funds in investment accounts for eventual use by individual beneficiaries to pay the cost of attending an institution of higher education. Because the state does not have the necessary expertise to develop and administer a complex investment program of this nature, the Legislature required a partnership with the private-sector (utilizing a competitive procurement process) to develop and maintain the program. The program manager (the private-sector partner) has to have the necessary human and financial resources and the expertise to be able to offer diverse investment vehicles as well as diverse means for participants (i.e. investors) to contribute to their investment accounts. This rule is designed to grant maximum flexibility to the program managers to accomplish these goals.

Therefore, Treas 1 provides a broad, core structure under which the program manager must operate when offering its services to program participants. This ensures that the program manager operates within the strictures of federal and state laws and regulations, in order to maintain the eligibility of the Wisconsin College Savings Program as a "qualified tuition program" under Internal Revenue Code. On the other hand, it provides for the flexibility needed to offer diverse investment opportunities to account for peoples' investment patterns—from conservative to higher risk.

The detail often included in administrative rules is instead found in the State's contract with the program manager and the Program Description and Participation Agreement. The contract is actually a series of four contracts covering administrative services, professional services, investment management, and distribution of funds. It details the basic relationship between the program manager and the state. On the other hand, the relationship between the program manager and the individual program participant (e.g. investor) is set forth in the Program Description and Participation Agreement. This document is essentially a contract between the participant and the program manager, and it also acts as the program application form. Treas. 1 provides the basic framework under which both the contract and the Program Description and Participation Agreement are to be developed and administered.

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to go about it. Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account, while sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to “roll over” an account balance to another section 529 program. IRS requirements relating to investment direction are also included. Treas 1.10 requires separate records and accounting for each individual account.

Treas 1.11 describe account distributions to beneficiaries. Treas 1.12 addresses when refunds of distribution payments are required, while Treas 1.13 sets forth some conditions under which the Board may terminate an account, such as the death or disability of the beneficiary or receipt of a scholarship. Sections Treas 1.14 and 1.15 allow the Board to assess fees and penalties.

Final Regulatory Flexibility Analysis:

Pursuant to section 227.114, Stats., this rule is not expected to negatively impact small businesses.

TEXT OF RULE:

SECTION 1: Treas 1 is created to read as follows:

Treas 1.01 Purpose and Analysis. This chapter establishes the procedures, standards and eligibility requirements for investment in accounts under the Wisconsin college savings program, into which a participant may invest funds to be used by individual beneficiaries to pay the cost of attendance at an institution of higher education. The Wisconsin college savings program is established as a qualified tuition program pursuant to section 529 of the internal revenue code [26 USC 529], and is administered by the Office of State Treasurer.

Note: The application form referenced in s. Treas 1.04(1) and the distribution request form referenced in s. Treas 1.11(2) are available on the Wisconsin College Savings Program website at: www.edvest.com, or by writing to: EDVEST, P.O. Box 7871, Madison, WI 53707-7871.

Treas 1.02 Definitions. In this chapter:

- (1) “Account” means a formal record of transactions maintained for a particular designated beneficiary to meet qualified higher education expenses under the program.
- (2) “Account owner” has the meaning set forth in s.14.64 (1)(a), Stats.
- (3) “Board” means the Wisconsin college savings program board.

- (4) "Cash" includes checks, money orders, wire transfers, or electronic funds transfers through payroll deduction, automatic contribution plans or similar methods, but does not include currency.
- (5) "Contribution" means any payment directly allocated to an account for the benefit of a designated beneficiary or that is used to pay administrative or other fees associated with the account.
- (6) "Department" means the Wisconsin department of administration.
- (7) "Designated beneficiary" has the meaning found in section 529(e)(1) of the internal revenue code.
- (8) "Eligible educational institution" has the meaning found in section 529(e)(5) of the internal revenue code.
- (9) "Maximum contribution limit" is the sum total market value amount established by the board that may be accumulated in the accounts of a designated beneficiary to meet qualified higher education expenses.
- (10) "Member of the family" has the meaning found in section 529(e)(2) of the internal revenue code.
- (11) "Non-qualified distribution" means any distribution of funds from an account that is not a qualified distribution.
- (12) "Person" includes an individual, a trust, or a body corporate or politic.
- (13) "Program" means the qualified tuition program established under s.14.64, Stats.
- (14) "Program description and participation agreement" means the contract between an account owner and the board setting forth the terms and conditions under which the account owner participates in the program.
- (15) "Program manager" means the entity under contract with the department to serve as the program administrator, marketing agent and investment manager of the program.
- (16) "Qualified distribution" means any distribution of funds, as defined in section 529 of the internal revenue code, for qualified higher education expenses from an account pursuant to a distribution request from the account owner.
- (17) "Qualified higher education expenses" has the meaning found in section 529(e)(3) of the internal revenue code.
- (18) "Qualified tuition program" means a savings program to help defray the cost of college expenses under section 529 of the internal revenue code.

(19) "Rollover contribution" means the transfer of all or part of an account from one qualified tuition program account to another qualified tuition program account.

Treas 1.03 Account owner eligibility. Any person legally able to contract under applicable state law is eligible to establish an account for the benefit of a designated individual. There shall be only one account owner per account.

Treas 1.04 Opening an account. (1) To open an account, an applicant shall submit a properly completed and signed application, which incorporates the program description and participation agreement, to the program manager. A contribution may be made as provided in s. Treas 1.09 or by any alternate method established by the board or the program manager.

(2) An applicant shall select an available investment option in which all contributions to the account shall be invested. After an account has been opened, the investment option selected may only be changed as permitted under section 529 of the internal revenue code and any regulations issued thereunder.

(3) The participation agreement shall be accompanied by a program description supplied by the program manager disclosing the program characteristics, including the investment options, investment risks, program fees, and other information as determined by the board and the program manager.

(4) Acceptance by the program manager of application materials, the initial contribution, or selection of contribution method for processing shall not be deemed an agreement to open an account.

(5) The program manager shall accept applications to open accounts and accept subsequent contributions for a designated beneficiary in the order they are received, up to the maximum contribution limit.

(6) Upon determining that an application has met all the requirements for opening an account, the program manager shall notify the applicant in writing that an account has been established.

Treas 1.05 Refusal to open an account. The program manager or the board may refuse to open an account for any of the following reasons:

(1) The applicant is not an eligible account owner.

(2) The applicant has not provided all of the information required in the application.

(3) The maximum contribution level for the proposed designated beneficiary has already been met.

- (4) The execution of a participation agreement violates any federal or state law.
- (5) The board determines that the number of accounts in the program should be limited.

Treas 1.06 Change of account ownership. (1) An account owner may designate a successor who shall become the new account owner automatically upon the death of the account owner. This designation may be made at any time by submitting a written designation of the successor to the program manager containing the information set forth in the account change request form.. Designation of a successor shall be effective upon registration in the records of the program manager.

(2) If a change in the ownership of an account is required by a court order directing such change, or by an affidavit or declaration that is recognized under applicable law as requiring transfer of ownership upon death without a court order, such change shall be effective upon receipt by the program manager of such information unless otherwise required by law.

(3) Any other request to transfer ownership to a new account owner shall be made by submitting to the program manager a written designation of a new account owner containing the information set forth in the program description and participation agreement. Transfer of ownership shall not be effective until registered in the records of the program manager.

Treas 1.07 Designated beneficiary. Any individual regardless of age or relationship to the account owner, including the account owner, may be a designated beneficiary under the program. There shall be only one designated beneficiary per account. Subject to the maximum contribution level, any number of accounts may be opened for a single designated beneficiary.

Treas 1.08 Change of designated beneficiary. (1) Only an account owner may change the designated beneficiary of an account. The designated beneficiary may only be changed to a member of the family of that designated beneficiary.

(2) To change a designated beneficiary, the account owner shall submit a written request to the program manager containing all the information set forth in the program description and participation agreement.

(3) Upon receipt of the written request, the program manager shall register the information regarding the newly designated beneficiary in the records of the program. The change of the designated beneficiary shall be effective upon registration.

Treas 1.09 Contributions. (1) CASH CONTRIBUTIONS. Any person may make a contribution to an account of a designated beneficiary. Contributions shall be made only in cash.

(2) **MAXIMUM CONTRIBUTION LIMIT.** Contributions to the accounts established for a designated beneficiary shall not, in the aggregate, exceed that amount necessary to provide for the qualified higher education expenses of the designated beneficiary. The board shall establish from time to time the maximum amount that may be contributed in the aggregate to the accounts of an individual designated beneficiary. Contributions in excess of that limit shall not be accepted and shall be returned to the contributor.

(3) **MINIMUM CONTRIBUTION LIMIT.** The minimum amount contributed at the time an account is opened under s. Treas 1.04, and the minimum amount of any additional contribution to be made to an account shall be established from time to time by the board and set forth in the program description and participation agreement.

(4) **ROLLOVER CONTRIBUTIONS.** If rollover distributions are allowed by another state's qualified tuition program, an account owner may deposit all or part of the funds from an account in that state's qualified tuition program to a new account in the program as provided under section 529 of the internal revenue code, and any regulations issued thereunder. When making a rollover contribution, the account owner shall complete the forms and make such disclosures of financial information as set forth in the program description and participation agreement. If the rollover distribution deposited in the program account would cause the total account balance of all accounts for that designated beneficiary to exceed the maximum contribution limit, the program manager shall refuse the excess funds.

(5) **INVESTMENT DIRECTION PROHIBITION.** Except as permitted under section 529 of the internal revenue code and any regulations issued thereunder, no person contributing to an account may direct the investment or investment earnings of any contribution of an account.

Treas 1.10 Separate Accounting. Separate records and accounting shall be maintained for each account established under the program. The program manager shall issue reports to each account owner at least annually.

Treas 1.11 General Distributions. (1) **CALCULATING EARNINGS ON MULTIPLE ACCOUNTS.** If an individual is the designated beneficiary of more than one account, all contributions and earnings with respect to those accounts shall be treated in a manner consistent with the requirements of section 529 of the internal revenue service for purposes of calculating the earnings portions of any distribution with respect to that designated beneficiary.

(2) **DISTRIBUTION REQUESTS.** An account owner may request a distribution of funds by submitting to the program manager at least three business days prior to the date of the requested distribution a completed distribution request form. Upon receipt, the program manager shall commence processing properly completed distribution request forms as soon as practicable.

(3) **DISTRIBUTION LIMITATION.** A designated beneficiary may not authorize distribution or withdrawal of account funds.

(4) **NONQUALIFIED DISTRIBUTION.** A distribution of funds from an account for any use other than qualified higher education expenses for the designated beneficiary constitutes a nonqualified distribution and may be subject to the additional tax imposed by section 529(c)(6) of the internal revenue code.

Treas 1.12 Refund of qualified distribution payment. An eligible educational institution that owes a full or partial refund of a qualified distribution due to an overpayment of educational expenses or for any other reason shall pay the refund directly to the program manager for credit to the applicable designated beneficiary's account. A refund may not be paid directly to the designated beneficiary or account owner.

Treas 1.13 Account termination. (1) The board shall determine the conditions under which an account may be terminated, including but not limited to the following:

- (a) The account balance is below an established minimum.
- (b) The account has been inactive for an established amount of time.
- (c) Any portion of the account remains unused 10 years after the anticipated academic year of the designated beneficiary's initial enrollment in an eligible educational institution.
- (d) The account owner or the designated beneficiary provides false or misleading information to the board, the program manager, or an eligible educational institution.

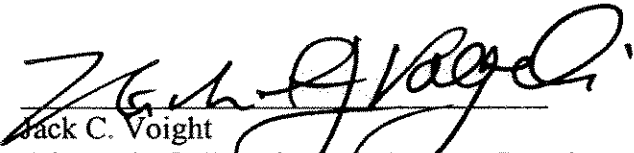
(2) Prior to termination, the program manager shall give reasonable notice to the account owner of the proposed termination. The notice shall provide a reasonable period of time, as determined by the board, in which to prevent termination by either making an additional contribution or a qualified distribution as necessary. Upon termination, the account balance shall be paid to the account owner as a nonqualified distribution, subject to applicable federal or state taxes, and any additional fees as determined by the board.

Treas 1.14 Fees. The board may charge account owners a fee for the administrative expenses of the program. Fees shall be clearly identified in the program description that accompanies the participation agreement.

Treas 1.15 Penalties. The board may impose penalties as necessary to maintain eligibility as a qualified tuition program under section 529 of the internal revenue code.

Treas 1.16 Investment Policies. The board shall establish all investment guidelines for the program.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s 227.22(2), Stats.



Jack C. Voight
Wisconsin College Savings Program Board
for the Treasurer

19 June 2012

Date

**Summary of rule revisions based on comments from the Legislative Rules Clearinghouse,
hearing testimony and written comments received by the Wisconsin College Savings
Program Board ("Board"):**

CLEARINGHOUSE RULE 01-009

CHAPTER Treas 1

BOARD RESPONSE TO RULES CLEARINGHOUSE RECOMMENDATIONS

1. STATUTORY AUTHORITY

Rules Clearinghouse comments 1 a. and b. have been addressed as suggested. The original Treas. 1.12 was deleted because it was no longer necessary due to recent changes in the tax code. The definition of the term "account owner" was changed to coincide with the definition found in section 14.64 (1)(a), Stats.

The other concern mentioned was that the rule appeared to avoid the rule-making process in numerous areas. Essentially, the Rules Clearinghouse noted that various standards and policies were to be established at some later point by the Wisconsin College Savings Program Board. This applied to such information as that required for changing account ownership or a beneficiary, the maximum contribution limits, disclosure of financial information, account termination, and fees and penalties. However, as discussed briefly in the analysis above, the State does not have the necessary human, administrative and financial resources and expertise to run such a complex investment account program. Accordingly, the State in effect privatized the program by partnering with the private sector. Because of the likelihood of changes promulgated in the federal laws and regulations involving "529" college tuition programs, and the inherent fluidity in the investment markets and investment options offered, coupled with the risks involved and need to maximize the ultimate distributions, the rules required flexibility. This was accomplished by creating a broad framework structuring the operational necessities required of the program manager, setting forth a framework for the relationship between that entity and the State.

The minutia of detail is in fact contained in the series of four contracts between the State and the program manager. The cover administrative services, professional services, investment management, and distribution of funds in great detail. Similarly, the Program Description and Participation Agreement in a straight-forward, detailed manner covers such items as the methods for opening an account and making contributions, the pertinent laws, rules and regulations involved, the investment options available, the Board's underlying investment policies, the various reporting requirements, the mechanics of designating and changing beneficiaries, the procedures and requirements regarding withdrawal and distribution of funds, the risk involved, and the program expenses and fees.

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE

All of the Rules Clearinghouse suggestions were addressed and implemented.

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS.

All of the Rules Clearinghouse suggestions were addressed and implemented.

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE

All of the Rules Clearinghouse suggestions were addressed and implemented with the following exceptions.

BOARD'S RESPONSE TO ISSUES RAISED AT PUBLIC HEARING

No persons appeared at the hearing

BOARD'S RESPONSE TO WRITTEN COMMENTS

The Board received no written comments.