

**MONTANA BOARD OF REGENTS OF HIGHER EDUCATION**  
**Policy and Procedures Manual**

SUBJECT: FINANCIAL AFFAIRS

Policy 950.2 - Montana Family Education Savings Program

*Proposed revisions September 2005*

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**I. Board Policy:**

The Family Education Savings Program is established in recognition that the general welfare and well-being of the State of Montana are directly related to the educational levels and skills of its citizens. The Family Education Savings Program is intended to encourage and make possible the attainment of an accessible, affordable postsecondary education by the greatest number of citizens through a savings program.

**II. Definitions:**

A. The following definitions apply for purposes of this policy:

1. "Account" means an interest in a trust or fund, a brokerage or savings account, or any other account for which separate records are maintained.
2. "Account owner" means the person who enters into a participating trust agreement and who is designated at the time a program 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. The account owner may be an individual serving as a qualified custodian under a Uniform Transfers or Gifts to Minors Act, in which case the minor must be the designated beneficiary and the designated beneficiary will be treated as the account owner upon termination of the custodianship.
3. "Act" means the "Family Education Savings Act," Ch. 540, L. 1997 as amended by Ch. 468, L. 2001, and Ch. 549, L. 2005.
4. "Application fee" means the application fee charged pursuant to section III(A)(1) of this policy.
5. "Board" means the Board of Regents of Higher Education established by Article X, section 9, subsection (2) of the Montana constitution and 2-15-1505, MCA. References to the Board may be to the Board in its capacity as administrator of the program, in its capacity as trustee, or in both capacities.
6. "Cash" means currency, bills and coins in circulation. Cash deposits may be made in cash or by an automatic transfer from a bank account; a personal, cashier's or traveler's check; money order; payroll deposit; wire transfer; credit card or other similar method acceptable to the manager.
7. "Code" means the federal Internal Revenue Code of 1986 (Title 26 of the United States Code), as amended from time to time. References to Code sections are to sections as they may be amended from time to time, or if section numbers are changed, the corresponding provisions of the relevant

section. Definitions cross referenced to definitions in the Internal Revenue Code shall be deemed to include any regulations and rulings issued by the Internal Revenue Service interpreting such definitions.

8. "Committee" means the Family Education Savings Program Oversight Committee described in 20-25-901, MCA.

9. "Designated beneficiary" means with respect to a program account, the individual designated at the time the account is opened as the individual whose qualified higher education expenses are expected to be paid from the account or, if the designated beneficiary is replaced in accordance with 15-62-202, MCA, the replacement beneficiary. The designated beneficiary of a scholarship account may be selected at any time after the account is opened.

10. "Disclosure statement" means the disclosure document prepared by a manager or investment manager in accordance with section III(H) of this policy.

11. "Higher education institution" means an eligible educational institution as defined in section 529(e)(5) of the Code.

12. "Investment account" means an account with an investment manager in which or through which a program account is invested.

13. "Investment products" means financial products held for investment including, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

14. "Investment manager" means an investment adviser, trustee, transfer agent, mutual fund, or other person responsible for administering investments in one or more classes of investments as provided in section III(J) of this policy. Such term includes where the context requires agents and affiliates of an investment manager.

15. "Manager" means a program manager selected pursuant to 15-62-203, MCA, including any affiliate of the manager approved to fulfill some of the functions of a manager.

16. "Member of the family" means a person with a relationship to another person that is described in section 529(e)(2) of the Code.

17. "Nonqualified withdrawal" means a change in designated beneficiary of a program account other than as permitted by section III(G) of this policy or any distribution from an account other than one of the following:

- a. a qualified withdrawal;
- b. a withdrawal made on account of the death or disability of the designated beneficiary; or
- c. a withdrawal made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C) of the Code) received by a designated beneficiary, but only to the extent of the amount of the scholarship.

18. "Participating trust agreement" means an agreement between the Board, as trustee and administrator of the program, and the account owner that creates a trust interest in the trust and provides for participation in the program.

19. "Penalty" means a penalty on all earnings in each account distributed as part of any nonqualified withdrawal. Such penalty shall be ten percent (10%) of the earnings withdrawn unless subsequent regulations or pronouncements by the Internal Revenue Service require a higher penalty for the program to qualify as a qualified state tuition program under section 529 of the Code. The portion of any distribution treated as distributed earnings shall be determined in accordance with the requirements of section 529 of the Code.

20. "Program" means the Family Education Savings Program established pursuant to the Act.

21. "Program account" means an individual participating trust account established pursuant to the program.

22. "Qualified higher education expenses" means qualified higher education expenses as defined in section 529(e)(3) of the Code, which term includes the cost of tuition and fees required for enrollment or attendance of a designated beneficiary at a higher education institution, reasonable costs of room and board (to the extent described in Section 529(e)(3) of the Code) incurred by a designated beneficiary who is an eligible student (as defined in section 25A(b)(3) of the Code) while attending such institution, and the costs of books, supplies and equipment required for attendance of a designated beneficiary at a higher education institution. The term as applied to any program account shall not include with respect to the account any expenses incurred before the date on which the account is opened.

23. "Qualified state tuition program" means a "qualified State tuition program" as defined in section 529 of the Code as in effect before the effective date of amendments made by the Economic Growth and Tax Relief Reconciliation Act of 2001 or a "qualified tuition program" as defined in section 529 of the Code as in effect after such effective date.

24. "Qualified withdrawal" means a distribution from a program account to pay the qualified higher education expenses of the designated beneficiary of the account incurred in the calendar year of distribution, but only if the distribution is made in accordance with this policy.

25. "Scholarship" has such meaning as given to such term for purposes of section 529(b)(3)(C) of the Code (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001). Scholarship includes any allowance or payment described in section 135(d)(1)(B) or (C) of the Code.

26. "Scholarship account" means a program account opened by a state or local government or an organization exempt from federal income tax under section 501(c)(3) of the Code without a designated beneficiary as permitted by 15-62-201(15), MCA.

27. "Section 529 accounts" means with respect to a designated beneficiary all accounts under a qualified state tuition program of which the designated beneficiary is a designated beneficiary and all tuition credits or certificates of which the designated beneficiary is a designated beneficiary under a qualified state tuition program.

28. "Trust" means the family education savings trust established by Ch. 549, L. 2005.

29. "Trustee" means the Board in its capacity as trustee of the trust.

30. "Trust interest" means an account owner's interest in the trust created by a participating trust agreement and held for the benefit of a designated beneficiary.

31. "Withdrawal" means a withdrawal or distribution from a program account. The terms "withdrawal" and "distribution" are used interchangeably in this policy.

**III. Procedures:****A. Fees**

1. Application Fee. There shall be no application fee for opening a new program account.
2. Change in Designated Beneficiary. The first change of the designated beneficiary of an account shall be without charge. A manager or investment manager may impose a fee of up to \$50 on a subsequent change of a designated beneficiary of an account. The fee shall be waived in the case of the change of designated beneficiary by reason of the death of the designated beneficiary.
3. Change of Account Owner. The first change of account owner shall be without charge. A manager or investment manager may impose a fee of up to \$50 on a subsequent change of the account owner.
4. Annual Fees. The manager or an investment manager may impose annual account maintenance fees of up to \$25 for some or all accounts.
5. Use of Fees. Any fees collected under these provisions and remitted to the Board shall be placed in a state special revenue account and shall only be used for costs of program administration, scholarships, and other uses as specifically directed by the Board.

**B. Duties of Manager**

1. Each manager shall do the following:
  - a. Generally administer and carry out the program according to the directions and policies of the Board, the Act and this policy.
  - b. Keep adequate records of each investment account that is under its direction and each program account that corresponds to an investment account under its direction, keep each such account segregated from each other account and post contributions to accounts within no later than the business day that it receives verification that such contributions consist of fully collected funds.
  - c. Provide the Board and all appropriate governmental and regulatory agencies all reports and information as may be required or deemed necessary to obtain tax advantages available under state or federal laws.
  - d. Provide regular statements at least annually, within 31 days of the annual period to which they apply, to each account owner showing all contributions, withdrawals, and earnings posted to each program account (and corresponding investment account) during the previous reporting period.
  - e. Upon request, provide a copy of its annual audited statement of financial condition to an account owner.
  - f. Comply with the terms and conditions of its contract with the Board.
  - g. Take all action required to keep the program in compliance with the requirements of the Act and all reasonable action not contrary to the

Act, these rules or the depository or manager's contract to manage the program so that it is treated as a qualified State tuition program under section 529 of the Code.

h. Comply with all other laws and regulations applicable to the manager.

i. Retain or provide copies to the Board of all applications and certifications received pursuant to these rules.

### **C. Opening of Accounts; Qualifications**

1. Procedures for Opening an Account. An account owner may open a program account by entering into a participating trust agreement and making an initial deposit.

2. Eligible Owners. An account owner may be a resident of any state. A program account may be opened as a custodianship account under the Uniform Transfer to Minors Act. Spouses may jointly own a program account. The account owner need not be an individual. Subject to statutory provisions relating to accounts held in the name of minors, the owner may also be the designated beneficiary.

3. Designated Beneficiary. A designated beneficiary may be a resident of any state. There shall be no restrictions based upon the age of the designated beneficiary, or any required relationship between the account owner and the designated beneficiary.

4. Multiple Accounts. There is no limit on the number of program accounts that may be opened for a designated beneficiary by different account owners.

5. Application -- General Requirements. The participating trust agreement, or a program account application that accompanies a participating trust agreement, will require the applicant, who must be the account owner, to:

a. provide the name, address, telephone number and social security number (or taxpayer identification number) of the account owner and, if different, the initial contributor;

b. except as provided in 15-62-201(15), MCA (relating to scholarship accounts), designate a beneficiary whose qualified higher education expenses are expected to be paid with the account;

c. provide the address, date of birth, and social security number of the designated beneficiary;

d. certify that the applicant intends to use the program account solely to save to pay the qualified higher education expenses of the designated beneficiary and that to the best of the applicant's knowledge the initial contribution to the account when added to the value of all other section 529 accounts of the designated beneficiary will not exceed the lesser of the account balance limit described in section III(E)(4) of this policy or the cost in current dollars of qualified higher education expenses that the owner reasonably anticipates the designated beneficiary will incur;

e. certify that if at any time the account balance when added to the value of all other section 529 accounts of the designated beneficiary of

which the account owner has knowledge exceeds the qualified higher education expenses that the account owner reasonably anticipates the designated beneficiary may incur, the account owner will promptly withdraw the excess from one of the accounts;

f. if more than one type of investment account is offered, designate the investment manager and type of investment account in which the funds of the program account should be invested (unless the investment manager and/or the type of investment account are pre-designated on the form used).

g. sign the application.

6. Application -- Supplementary. A manager or investment manager of an investment account into which or through which the funds of a program account will be invested may require an applicant to include in an application for opening an account such additional information as the manager or investment manager may reasonably need to invest and manage the program account or investment account.

7. Disclosure. Each account owner shall be sent a copy of the disclosure statement before the account owner makes a first deposit or within 10 business days of the receipt of the first deposit. The manager or investment manager should make the disclosure statement readily available to prospective account owners.

#### **D. Status of Accounts; Investment Direction**

1. Trust. All program accounts established under the program shall be held in a revocable trust by the trustee. Each program account shall be a separate participating trust. Program accounts shall not be commingled. The assets of one program account shall not be available to meet liabilities associated with another program account.

2. Investment Accounts. Investment accounts shall be designated in the books and records of the manager or investment manager as owned by the trust for the benefit of the account owner. The designated beneficiary shall also be reflected in the records for each investment account.

3. No Investment Direction. In accordance with 15-62-201(10), MCA, no contributor to, owner of, or designated beneficiary of a program account may directly or indirectly direct the investment of any contributions to the account or any earnings thereon. The limitations in the preceding sentence shall be interpreted in a manner consistent with the Internal Revenue Service's interpretation of the corresponding provision in section 529 of the Code. One or more types of investment accounts may be opened with respect to a designated beneficiary. Amounts deposited in a program account may be invested in or through an investment account of a particular type only in accordance with the disclosure statement prepared by the manager or investment manager and applicable to the program accounts of that type. A manager or investment manager shall not permit an owner to move funds, once deposited, that in any way would result in investment direction under section 529(b)(5) of the Code (section 529(b)(6) of the Code after the amendments made by the Economic Growth and Tax Relief Reconciliation Act of 2001 become effective).

4. Pledge, Security for a Loan. Neither an account owner nor a designated beneficiary may pledge his or her interest in a program account as security for a loan or for any other purpose. Any pledge if so made shall be void and ineffective and shall not be honored by a manager, investment manager, or any trustee or subtrustee of an account.

5. Interest in Account Subject to Program Rules. The interest of any account owner or designated beneficiary in a program account is subject to the Act and these rules, including, without limitation, the authority of the Board to require that a penalty for a nonqualified withdrawal be paid from the program account and the authority of the Board to change depositories.

#### **E. Contributions and Limits**

1. Who May Contribute. Subject to the limitations of this section, any person, including a nonresident of Montana and an individual who is not the account owner, may make a contribution to a program account.

2. Contributions in Cash; Checks. All contributions to program accounts must be in cash. A manager or investment manager, as agent of the trustee, may accept checks payable to the order of the manager or investment manager (or to an agent of the manager or investment manager) if accompanied by appropriate information about the deposit or checks payable to the order of the account owner if endorsed over to the manager or investment manager (or to an agent of the manager or investment manager) for deposit into a program account.

3. Payroll Deduction Plans. Contributions may be made pursuant to payroll deduction plans to which the account owner and his or her employer are parties. In such case, the employer (on behalf of the account owner) will send the contribution to the manager or investment manager (or to an agent of the manager or investment manager), as agent for trustee.

#### 4. Contribution Limits

a. No person shall make a contribution to a program account for a designated beneficiary if the contribution would cause the sum of the value of all section 529 accounts of which the designated beneficiary is a designated beneficiary to exceed the account balance limit described in section III(E)(4)(c) of this policy.

b. No manager or investment manager, as agent of the trustee, shall accept for deposit in any program account a deposit if the contribution would cause the sum of the value of all corresponding investment accounts being managed by the manager or the investment manager for which the designated beneficiary is a designated beneficiary to exceed the contribution limit described in section III(E)(4)(c) of this policy.

c. The account balance limit shall be equal to the lesser of:

i. the amount, if any, prescribed by the Internal Revenue Service as the account balance limit for a program to qualify as a qualified state tuition program under section 529 of the Code,

ii. the product (rounded down to the nearest multiple of \$1,000) of 7 and the enrollment weighted average 1 year's undergraduate tuition, fees, room and board at the ten independent 4-year higher education institutions included in the College Board's Independent College 500 Index which have the largest total direct charges (with total direct charges determined for each institution by multiplying the school's undergraduate enrollment by

the reported tuition, fees, room and board for an on-campus student at such institution).

d. If the Board determines that the program account balance limits described in section III(E)(4)(c) of this policy have been exceeded with respect to any designated beneficiary by reason of contributions to section 529 accounts, it shall notify the designated beneficiary and the account owners of all program accounts of which the designated beneficiary is the designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of section 529 accounts for the designated beneficiary through distributions and/or changes in beneficiaries. If no such action is taken, the Board will disqualify such accounts in reverse order of their opening until the balance limit ceases to be exceeded.

#### **F. Distributions from Program Accounts, Penalties**

1. Authority to Withdraw Funds. An account owner may seek to withdraw funds from a program account at any time. All withdrawals shall be deemed to be nonqualified withdrawals unless the account owner complies with section III(F)(2) of this policy. The designated beneficiary of a program account shall not have any authority to withdraw funds from an account unless (i) the designated beneficiary is also the account owner or (ii) the account is a trust and the trust instrument gives the designated beneficiary such right upon matriculation or upon incurring qualified higher education expenses.

2. Role of Managers and Investment Managers. Managers and investment managers, as agents of the trustee and subject to the direction of the trustee, shall handle and process requests for withdrawals from program accounts for which the corresponding investment accounts are invested by or through the manager or investment manager.

3. Advanced Notice. A manager or investment manager shall not be required to distribute funds that an account owner seeks to withdraw until the 60th day following receipt of a written request for a distribution. The provision shall not prohibit the manager or an investment manager from allowing a more rapid distribution that is not in violation of the next sentence. If the Board by notice to a manager has required the manager to send request for qualified withdrawals to the Board for verification, the Board will verify (or reject) the request within 30 days of receipt of the request and no distribution shall be made until verification (or rejection) is received by the manager.

4. Requirements for Qualified Withdrawals.

a. To make a qualified withdrawal from a program account, the account owner (or the legal representative of the account owner or, if the account is a revocable trust and the trust instrument gives the designated beneficiary such right, the designated beneficiary) must complete a certification on a form approved by the Board declaring that the funds (i) are being withdrawn to reimburse the account owner or designated beneficiary for qualified higher education expenses incurred during the taxable year or (ii) are being withdrawn to pay qualified higher education expenses of the designated beneficiary that are payable to a higher education institution and the amount withdrawn is paid directly to such institution or to the institution for the account of the designated beneficiary. The original signed version of the certification shall be sent to the manager or applicable investment manager.



b. The qualified withdrawal form shall require that some form of verification (such as a document from a higher education institution confirming attendance or a tuition bill) be attached to the form. Requests for withdrawals to cover room, board, books, supplies, and equipment in excess of \$500 per calendar year must be accompanied by (i) a statement from the designated beneficiary stating where the designated beneficiary will reside while attending the higher education institution (at home, in the institution's housing, or off campus) and whether the designated beneficiary has any dependents and (ii) a statement from the higher education institution attended by the designated beneficiary (or relevant pages from the most recent catalog of such institution) showing, as the case may be, the cost of room and board for on-campus students at such institution or a description of the books, supplies, and equipment necessary for attendance at the institution.

c. The qualified withdrawal form may require other forms of verification of use of funds if (i) the manager or investment manager determines that such verification is necessary for the program to meet any safe-harbor provisions for qualifying as a qualified state tuition program under any temporary or final regulations or other guidelines proposed or promulgated by the United States Department of the Treasury and/or the Internal Revenue Service and (ii) the Board approves such other forms of verification.

d. If an individual provides a certification described in section III(F)(4)(a) of this policy and the verification described in section III(F)(4)(b) of this policy but not all of the verification described in section III(F)(4)(c) of this policy, the individual shall be required to leave on deposit in the account an amount equal to the penalty that would apply if such withdrawal (and all other prior withdrawals to which this section III(F)(4)(d) applies and for which full verification has not been provided or a penalty has not been paid) were treated as a nonqualified withdrawal. If the manager or applicable investment manager does not receive the required verification within 30 days of such withdrawal (or such longer period as may be permitted under any applicable or potentially applicable safe harbor provisions under proposed, temporary or final Treasury Regulations or other guidance from the Internal Revenue Service), such withdrawal shall be treated as a nonqualified withdrawal and the penalty shall be paid from the account balance to the Board.

e. A withdrawal for a qualified withdrawal must be made by check or wire transfer payable to the designated beneficiary or to a higher education institution. The Board may approve qualified withdrawal forms that require that withdrawals for tuition and for room or board provided by a higher education institution be made payable to the higher education institution for the account of the designated beneficiary.

##### 5. Special Withdrawal Requests.

a. A request for a withdrawal on account of the death or disability of the designated beneficiary must be accompanied by a certificate signed by the account owner or legal representative of the account owner stating that the designated beneficiary has died or is disabled. The certificate must be accompanied by a death certificate, other third-party confirmation of death, or in the case of a disability, by evidence that the

Social Security Administration or other government agency has determined that the designated beneficiary is disabled or a certification from a licensed physician that the designated beneficiary is permanently disabled. Funds deposited after a designated beneficiary died or became disabled, and earnings thereon, may not be withdrawn pursuant to this section III(F)(5)(a).

b. A request for withdrawal on account of a scholarship must be accompanied by a certificate signed by the account owner or designated beneficiary stating that the designated beneficiary has received a scholarship (or the equivalent, such as admission to a military academy), the amount of the scholarship, and the amount of other withdrawals from section 529 accounts on account of such scholarship. The certificate must be accompanied by a copy of the formal notification of the scholarship or the scholarship check. Funds deposited after the designated beneficiary applied for the scholarship (and earnings thereon) or after the designated beneficiary learned that he or she would be awarded the scholarship may not be withdrawn "on account of scholarship."

6. Nondesignated Withdrawal Requests. If a manager or an investment manager receives a request for a withdrawal that is not designated on the withdrawal slip or form as a request for a nonqualified withdrawal and is not accompanied by a properly completed certification described in section III(F)(4) or (5) of this policy, the manager or investment manager shall promptly send the account owner a notice requesting that the account owner designate the withdrawal as a nonqualified withdrawal or provide the required certification for a qualified withdrawal or a special withdrawal described in section III(F)(5). The manager or investment manager shall not act on the withdrawal request until a designation or certification is received. A nonqualified withdrawal shall be made by check payable to the account owner or at the account owner's direction to the designated beneficiary.

7. Penalty on Nonqualified Withdrawal. If an account owner has designated a withdrawal as a nonqualified withdrawal, the manager or applicable investment manager shall calculate the amount of the penalty and the manager or applicable investment manager shall withhold the penalty from the withdrawal.

8. Improper Certification. If a manager or investment manager has reason to believe that any withdrawal that an account owner certified was a qualified withdrawal was not a qualified withdrawal, the manager shall report that fact to the Board and the account owner, and the manager or investment manager shall report that fact to the designated beneficiary within 30 days of receipt of the information creating such belief. The notice shall be in writing and include the name of the account owner, the designated beneficiary, the date of the withdrawal, the amount of the withdrawal and a brief description as to why the manager or investment manager believes the withdrawal to be a nonqualified withdrawal.

9. Obligation of Account Owner. An account owner who withdraws funds from a program account in a withdrawal that the account owner certifies was a qualified withdrawal shall have an obligation to determine that such withdrawal was a qualified withdrawal. If the account owner determines that a withdrawal that it certified as a qualified withdrawal was in whole or part a nonqualified withdrawal, it shall advise the Board in writing and pay any penalties required as the result of such withdrawal by April 15 of the year following the year of the withdrawal. Penalties for perjury may apply to a certification under section III(F) that an individual knew was false when made.

10. Assessment of Penalty by Manager. If the manager or an investment manager determines that a withdrawal is in whole or part a nonqualified withdrawal and a penalty was not withheld, the manager or investment manager shall give written notice to the account owner and the designated beneficiary that the withdrawal has been determined to be in whole or part a nonqualified withdrawal, the

amount of the nonqualified withdrawal and that a penalty will be assessed on the earnings withdrawn as part of the nonqualified withdrawal. The account owner may dispute the manager's or investment manager's determination by submitting written notice in accordance with Board of Regents Policy # 203.5.2. (Any penalty finally assessed pursuant to this subsection shall be paid within 30 days of notice of final decision.) If such amount is not paid by the account owner on a timely basis, the Board may direct that the penalty be paid out of the remaining balance in the account, if any.

11. Termination of Accounts by Board. The Board may terminate a program account at any time if it determines after due inquiry and notice that (i) the adult (age 18 or over) designated beneficiary of the account does not intend to attend an eligible institution or (ii) the account owner has changed designated beneficiaries of a program account primarily to avoid or significantly defer federal or state income tax. Upon termination of a program account, the manager or investment manager shall liquidate the investments in the corresponding investment account and distribute the balance of the program account to the account owner (after withholding any applicable penalty) in a nonqualified withdrawal.

12. Verification of Withdrawal Requests. The Board may independently verify, on a regular or random basis, withdrawal documentation submitted by an account owner or designated beneficiary in accordance with section III(F)(4).

13. Termination of Provisions.

a. Section III(F)(7) shall not apply to, and no penalty shall be imposed under this section III(F) with respect to, any nonqualified withdrawal made after December 31, 2001.

b. Section III(F)(1), Section III(F)(3) through (6) and section III(F)(8) through (10) shall not apply to withdrawals or requests for withdrawals after December 31, 2001, except:

i. The first sentence of section III(F)(1) and the first sentence of section III(F)(3) shall continue to apply.

ii. Provisions of the deleted material shall continue to apply to the extent that the Board or manager determines that they should continue to apply to enable the Board and the manager to comply with section III(I)(1)(b).

iii. Provisions of the deleted material shall continue to apply to withdrawals from accounts owned by Montana taxpayers to the extent required by the department of revenue to facilitate payment of the recapture tax under Ch. 468, L. 2001.

c. Section III(F)(13)(a) and (b) shall not apply at any time at which section 529 requires a qualified state tuition program to impose more than a de minimis penalty on nonqualified withdrawals.

14. Termination of Accounts by Manager or Investment Manager.

a. A manager or investment manager may terminate an account if the balance or fair market value of the investment account is less than the amount of the minimum deposit (for a deposit by check) for

that type of account, as approved by the Board, and the balance or fair market value has been less such amount for a period of at least six months.

b. Before terminating an investment account pursuant to Section III(F)(14), the manager or investment manager shall give the account owner of the corresponding program account 30 days advance written notice of the intent to terminate. Such notice shall advise the account owner of the account owner's options, including options to rollover the account into another account for the same designated beneficiary under the program or another state's section 529 program, to increase the balance of the account, or to voluntarily terminate the account. The notice shall also advise the account owner of the possible adverse tax consequences of terminating the account.

### **G. Changes in Designated Beneficiaries and Account Owners**

1. Procedure for Change in Designated Beneficiaries. An account owner may change a designated beneficiary by submitting to the trustee (through the manager or investment manager) a request to change the beneficiary accompanied by a check for the fee for changing designated beneficiaries. The request to change a beneficiary shall be accompanied by the name, address, social security number, and date of birth of the new designated beneficiary and a statement describing the relationship between the new designated beneficiary and the old designated beneficiary. The trustee reserves the right to determine that the new designated beneficiary is not an eligible replacement designated beneficiary. If the trustee makes such determination, the trustee shall notify the manager or investment manager and the change back to the prior designated beneficiary shall be effective upon the manager's or investment manager's receipt of the preceding information. If a designated beneficiary dies and a new designated beneficiary is not designated within 60 days, the balance of the account will be distributed to the account owner.

2. Eligible Replacement Beneficiary. An eligible replacement beneficiary must be a member of the family of the old beneficiary in accordance with the Act.

3. Changes in Account Owners. An account owner may not transfer its ownership of a program account except as provided in this rule.

a. An account owner may transfer ownership of a program account to the designated beneficiary or custodian of the designated beneficiary of the account by giving written notice of such transfer to the manager or investment manager and paying any applicable fee.

b. An account owner, pursuant to a divorce, may transfer ownership of a program account to the ex-spouse by giving written notice to the manager or investment manager and paying any applicable fee.

c. An account owner may transfer ownership of a program account to joint ownership by the account owner and the account owner's spouse by giving written notice of such transfer to the manager or investment manager and paying any applicable fee.

d. If an account owner dies and the account was jointly owned by spouses, the surviving spouse shall be the account owner. In all other cases if an account owner dies, the terms of the trust (including any

designations made thereunder) will govern who becomes the account owner.

#### H. Offering Materials, Advertising, Forms

1. Preparation of Offering Materials. The applicable manager or investment manager shall prepare on behalf of the program and the trustee offering material for the program accounts the proceeds of which will be invested, through investment accounts, in investment product(s) for which it serves as manager or investment manager. At least one component of the offering material shall be a disclosure document that fully describes the investment product(s) being offered including applicable fees or penalties and performance history, the program, and the federal and state income tax consequences of participating in a qualified state tuition program. The disclosure document shall state that the Act does not:

- a. give any designated beneficiary any rights or legal interest with respect to a program account or investment account unless the designated beneficiary is the account owner;
- b. guarantee that a designated beneficiary will be admitted to a higher education institution or be allowed to continue enrollment at or graduate from a higher education institution located in Montana after admission;
- c. establish Montana residency for a person merely because the person is a designated beneficiary; or
- d. guarantee that the amount saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

2. Disclaimer of State Liability. A Montana Family Education Savings Program account is not insured by Montana and neither the principal invested nor the investment return is guaranteed by the State of Montana. Any contract, application, offering or disclosure material, and published advertisement designed for the program shall include a statement substantially similar to the following: **"A Montana Family Education Savings Program account is not insured by Montana and neither the principal invested nor the investment return is guaranteed by the State of Montana."**

#### I. Reporting Requirements

1. Reports to Account Holders. On behalf of the trustee:

- a. Account Information. At least annually, within 31 days of the annual period to which they apply, a manager or investment manager shall provide to each account owner a statement of his or her program account and the corresponding investment account. The statement shall include the balance of the account at the beginning of the reporting period, all activity (including deposits, withdrawals, penalties paid, income earned) during the reporting period, and the balance at the end of the reporting period.
- b. Tax Information. A manager or investment manager shall prepare and provide to account owners and/or designated beneficiaries such information as the Internal Revenue Service or federal income tax law may require be provided to account owners or designated beneficiaries

by the deadlines required therefor. For these purposes, program accounts for the same designated beneficiary should be aggregated to the extent required by regulations or other binding guidance issued by the Internal Revenue Service.

c. **Verification of \$3,000 Deduction.** A manager or investment manager shall prepare and provide to the department of revenue such information as the director of revenue may request to permit the department of revenue to verify the income deduction permitted by 15-30-111(8), MCA.

2. **Reports to Board.** A manager upon the request of the Board shall provide to the Board copies of the reports that it and its investment managers provides to account owners pursuant to section III(I)(1) of this policy.

3. **Records on Termination of Manager Status.** If a manager or investment manager ceases to be a manager or investment manager and investment accounts are removed from such manager or investment manager in accordance with the Act, the manager or investment manager shall provide the Board with the following for each investment account (and corresponding program account):

- a. Name, address and social security number (or employer identification number) of the account owner;
- b. The date the program account was opened;
- c. Name, address, social security number and date of birth of the designated beneficiary and all prior designated beneficiaries of the account;
- d. The deposits to the program account, the qualified withdrawals from the account, the nonqualified withdrawals from the account, and the penalties paid from the account; and
- e. Other records necessary to facilitate efficient transfer of investment accounts and account records.
- f. Any other records held or maintained on behalf of the trustee.

#### **J. Use of Investment Managers.**

1. **Appointment of an Investment Manager.** To facilitate the offering of additional college savings investment products under the program, a manager may enter into arrangements with one or more investment advisers, financial institutions, or mutual funds pursuant to which such person or persons facilitate the offering of a class of investment products through the program. Relevant details of any such arrangement shall be disclosed to the Board in connection with a decision by the Board to expand or modify the college savings investment products to be offered under the program and shall be valid only if the Board approves the investment products and the arrangements.

2. **Role of an Investment Manager.** Except as provided in section III(J)(3) of this policy, an investment manager may assume obligations of the manager under this policy with respect to investment accounts invested in products under the direction of the investment manager. In such case, the investment manager shall have the rights of a manager under this policy solely in connection with the investment accounts under the direction of the investment manager.

3. Nondelegation of Certain Responsibilities. Nothing in this section III(J) or any delegation under it shall relieve the manager of its obligations under its contract with the Board or its responsibility to ensure that the program or portion of the program that the manager is managing complies with the Act and this policy.

#### **K. Termination of Manager or Investment Manager.**

1. Full Termination. The Board may terminate a contract with a manager, terminate the status of an investment manager (including any status established by section III(K)(2) of this policy), or prohibit the continued investment of funds through an investment manager and, in its capacity as trustee, take custody of investment accounts held through the investment manager in accordance with the procedures set forth in 15-62-203(10), MCA. The trustee may liquidate and convert to cash any investment products received in connection with any such termination before reinvesting funds in accordance with 15-62-203(10)(a), MCA. The manager and investment manager shall cooperate with the trustee.

2. Nonrenewal. If the Board does not renew the contract of a manager and does not terminate the manager pursuant to 15-62-203(10)(a), MCA, investment accounts previously established through the manager will not be terminated by the trustee or the Board and additional contributions to program accounts corresponding to such investment accounts may be added to those investment accounts. The continuing role of the manager with respect to the continuing investment accounts shall be governed by the Act, this policy and the terms of the contract that was not renewed (other than those provisions that the Board determines are not applicable) or by the Act, this policy and a special contract approved by the Board. In case of a nonrenewal, the manager may at any time after expiration of the contract, elect not to continue to any participation in the program, in which case section III(K)(1) shall apply.

#### **L. Role of Trustee – Voting**

1. Voting Instructions. If the owner of an investment account shall be entitled to vote on any matter with respect to the investment products in the investment account, the investment manager shall solicit, on behalf of the trustee, voting instructions from each account owner whose program account is invested in any such investment account. The trustee, without any formal action of the Board, as legal owner of the accounts, shall vote shares or interests of each investment account on each matter subject to vote:

a. If timely instructions have been received from the account owner whose program account corresponds to the investment account, in accordance with voting instructions received by the investment manager from the applicable account owner; and

b. If timely instructions have not been received from the account owner whose program account corresponds to the investment account, in the same proportion as it votes the shares or interests of the investment accounts for which the investment manager has received voting instructions.

The shares or interests shall also be voted as present for purposes of determining a quorum.

2. Trustee Discretion. Notwithstanding section III(L)(1), the trustee by formal action of the Board, may exercise its voting rights in any manner that it concludes is consistent with its fiduciary duties.

#### **M. Transition and Effective Date.**

1. Effective Date for New Accounts. This version of this policy shall apply to all program accounts established on or after October 1, 2005.

2. Transition for Old Accounts.

a. The manager or applicable investment manager shall notify each account owner of a program account established before October 1, 2005 of the creation of the trust. The notice shall include a copy of the participating trust agreement and a statement explaining that the account owner may adopt the participating trust agreement by signing and returning the agreement, may withdraw the balance of the account, or, by taking no action, may have the account owner's program account transferred to the trust and the terms of the participating trust agreement automatically adopted on December 31, 2005.

b. If an account owner executes a participating trust agreement with respect to an account pursuant to this section III(M)(2) with an effective date prior to December 31, 2005, the account shall be transferred to the trust (and become an investment account of the trust) as of such date, the provisions of this policy shall apply to the program account, and the investment manager shall designate the account as required by section III(D)(2) of this policy.

c. On December 31, 2005, the trustee for all accounts established before October 1, 2005, shall transfer to the trust all accounts not previously transferred to the trust or terminated, and the trustee (as defined in this policy) shall become the trustee of such accounts and the owner of the corresponding investment accounts. This policy and the applicable participating trust agreement shall apply to all such program accounts.

d. In the case of transfers described in section III(M)(2)(c) of this policy, the manager and investment managers, not later than February 28, 2006, shall adjust their books and records to designate investment accounts as required by section III(D)(2) of this policy.

#### **IV. Approval of Documents:**

##### **A. Designation of Agent.**

1. Designation to the Commission of Higher Education. The Board on behalf of itself and in its capacity as trustee designates the Commissioner of Higher Education as its agent for the purpose of reviewing and approving the offering material described in section III(H)(1) of this policy and any forms or other documents that this policy requires the Board or the trustee to review or approve. The Commissioner of Higher Education may delegate approval authority to other officials or employees in the office of the Commissioner of Higher Education. The Commissioner or the Commissioner's delegee will ensure that any documents approved pursuant to this section IV(a)(1) comply with the requirements of State law and this policy.

2. Limitation on Delegation of Authority. The delegation of authority to the Commissioner of Higher Education pursuant to section IV(A)(1) of this policy relates only to the approval of documents to be used in connection with the program. In particular, the delegation does not apply to the selection of a program manager or an investment manager or a determination of the investment products to be offered under the program.

**B. Approved Documents.** The Board and the committee shall be provided with copies of all documents approved pursuant to section IV(A) of this policy.



**C. Final Authority.** The Board by resolution may reserve for itself the right to review and approve any document or form to be used in connection with the program. The Board may require that changes be made in any document or form that was previously approved pursuant to this policy.

**D. Approval Subject to Change.** When approving a document or form pursuant to this section IV, the Board or its agent may authorize the investment manager or program manager to revise the document or form without seeking approval to:

1. Make clerical and technical corrections of typographical, grammatical, syntax, cross-reference and other similar errors;
2. Update the form or document to reflect changes in federal and state law and new regulations, rulings or other formal guidance promulgated by federal or state agencies;
3. Update the form or documents to reflect changes in applicable amounts that change periodically (such as the maximum account balance and amounts that are adjusted for inflation under federal income tax law);
4. Reflect other changes that are made as a matter of course from time to time (such as changes in percentage mixes of portfolios) to the extent such changes are consistent with the description of the plan as presented to the Board; and/or
5. Make changes in styles and format that do not affect content.

History:

Item 98-006-R0398, Montana Family Education Savings Program (NEW), approved by the Board of Regents on May 21, 1998; revised September 24, 1999 ([ITEM 98-006-R0398](#)), September 28, 2001 (Item [112-108-R0901](#)), March 22, 2002 (Item [114-105-R0302](#)), January 16, 2003 ([ITEM 118-108-R01030](#)), September 25, 2003 ([ITEM 120-102-R0903](#)), and September 23, 2004 ([ITEM 124-109-R0904](#)).

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