

TITLE 33
EDUCATION

CHAPTER 54
COLLEGE SAVINGS PROGRAM

33-5401. DEFINITIONS. As used in this chapter, the following terms have the following meanings unless the context clearly denotes otherwise:

(1) "Account" means an individual trust account or savings account established as prescribed in this chapter.

(2) "Account owner" means the person or state or local government organization designated in the agreement governing the account as having the right to withdraw moneys from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the state college savings program board created in section [33-5402](#), Idaho Code.

(4) "Designated beneficiary," except as provided in section [33-5404](#), Idaho Code, means, with respect to an account, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section [33-5404](#), Idaho Code, the replacement beneficiary.

(5) "Eligible educational institution" shall have the meaning provided in 26 U.S.C. 529.

(6) "Financial institution" means any state bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm, trust company, mutual fund, investment firm or other similar entity that is authorized to do business in this state.

(7) "Member of the family" shall have the meaning as provided in 26 U.S.C. 529.

(8) "Nonqualified withdrawal" means a withdrawal from an account that is subject to additional tax arising from the withdrawal under the Internal Revenue Code, as defined in section [63-3004](#), Idaho Code. For the purpose of section [63-3022](#)(o), Idaho Code, the amount of a nonqualified withdrawal from an account means the entire amount of the withdrawal, less any portion of the withdrawal that is a qualified withdrawal.

(9) "Person" means an individual, a trust, an estate, a partnership, an association, a foundation, a guardianship, a corporation, or a custodian under the Idaho uniform transfers to minors act.

(10) "Program" means one (1) or more college savings programs established under this chapter.

(11) "Qualified higher education expenses" shall have the meaning provided in 26 U.S.C. 529.

(12) "Qualified withdrawal" means a withdrawal from an account used for qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this chapter.

[33-5401, added 2000, ch. 213, sec. 1, p. 573; am. 2002, ch. 50, sec. 1, p. 113; am. 2003, ch. 5, sec. 1, p. 10; am. 2008, ch. 275, sec. 1, p. 783; am. 2013, ch. 110, sec. 1, p. 260; am. 2018, ch. 46, sec. 7, p. 117; am. 2020, ch. 245, sec. 1, p. 716.]

33-5402. STATE COLLEGE SAVINGS PROGRAM BOARD -- COLLEGE SAVINGS PROGRAM -- POWERS AND DUTIES. There is hereby created the state college sav-

ings program board. The board shall consist of the state treasurer or his designee who shall serve as chair, the governor or designee, the state controller or designee, the attorney general or designee, the superintendent of public instruction or designee, and the secretary of state or designee. A quorum shall be necessary to transact business. Members of the board shall be compensated by their appointing entity. The state college savings program board shall:

- (1) Develop and implement the program in a manner consistent with this chapter through the adoption of rules, guidelines and procedures;
- (2) Retain professional services, if necessary, including accountants, auditors, consultants and other experts;
- (3) Seek rulings and other guidance from the United States department of the treasury, the internal revenue service and the state tax commission relating to the program;
- (4) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended;
- (5) Interpret, in rules, policies, guidelines and procedures, the provisions of this chapter broadly in light of its purpose and objectives;
- (6) Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;
- (7) Select the depositories and act as or select managers of the program in accordance with this chapter;
- (8) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of the program. As a board comprised of elected officials, the board shall be exempt from the provisions of the procurement statutes and shall not be an agency as defined in section [67-9203](#), Idaho Code;
- (9) Establish, in its discretion, a trust or other method of segregating the funds of participants in the program from the general funds of the state, the funds of the board and the funds of the members of the board;
- (10) Administer the program and any trust established by the board as instrumentalities of the state under section 529 of the Internal Revenue Code of 1986, as amended, and the federal securities law, including the securities act of 1933, as amended, the trust indenture act of 1939, as amended, and the investment company act of 1940, as amended;
- (11) Employ and at its pleasure discharge an executive director and such other employees necessary in the administration of the program. Employees of the board shall be nonclassified exempt employees pursuant to the provisions of [chapter 53, title 67](#), Idaho Code.

[33-5402, added 2000, ch. 213, sec. 1, p. 574; am. 2008, ch. 275, sec. 2, p. 784; am. 2013, ch. 110, sec. 2, p. 260; am. 2016, ch. 289, sec. 9, p. 810.]

33-5403. ADMINISTRATION OF THE PROGRAM. (1) The board shall implement the program through its staff, agreements with one (1) or more financial institutions engaged to act as the program's depositories and managers, or through agreements with any public entity or agency, including depository, investment or management relationships with other 529 plans or entities.

(2) The board shall implement the program and manage any trust established by the board consistent with sound financial principles and to obtain

the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended.

(3) Any financial institution engaged by the board shall hold each account in trust for the benefit of this state and the account owner.

(4) The board may delegate to the office of a board member any of its administrative powers and duties, if the board determines that such delegation is necessary for the efficient and effective administration of the program and the board member accepts the delegation. Administrative powers and duties include payroll processing, routine public contacts and public records maintenance. The board member shall be compensated for administrative activities pursuant to section [33-5409](#), Idaho Code.

[33-5403, added 2000, ch. 213, sec. 1, p. 575; am. 2007, ch. 170, sec. 1, p. 501; am. 2013, ch. 110, sec. 3, p. 261.]

33-5404. PROGRAM REQUIREMENTS. (1) The program shall be operated through the use of individual accounts. Each account may be opened by any person who desires to save for the qualified higher education expenses of a person. If approved by the board, minors may open an account that cannot be disaffirmed pursuant to section [32-103](#), Idaho Code. A person may open an account by satisfying each of the following requirements:

(a) Completing an application in the form prescribed by the board. The application shall include the following information:

(i) The name, address and social security number or employer identification number of the contributor;

(ii) The name, address and social security number of the account owner if the account owner is not the contributor;

(iii) The name, address and social security number of the designated beneficiary;

(iv) The certification relating to no excess contributions required by subsection (13) of this section; and

(v) Any other information that the board may require;

(b) Paying the onetime application fee established by the board;

(c) Making the minimum contribution required by the board or by opening an account; and

(d) Designating the type of account to be opened if more than one (1) type of account is offered.

(2) Any person may make contributions to an account after the account is opened.

(3) Contributions to accounts may be made only in cash.

(4) Account owners may withdraw all or part of the balance from an account on sixty (60) days' notice, or a shorter period as may be authorized by the board and as described in the securities disclosure or offering document approved by the board and provided to account owners and potential account owners.

(5) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(6) On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(7) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate the provi-

sions of this section relating to excess contributions or to direction of investments.

(8) Each account shall be maintained separately from each other account under the program.

(9) Separate records and accounting shall be maintained for each account for each designated beneficiary.

(10) No contributor to, account owner of or designated beneficiary of any account may direct the investment of any contributions to an account or the earnings from the account.

(11) The board may transfer accounts held by a depository or manager to a successor depository or manager; provided, however, that the transfer to a successor depository or manager does not cause the plan to cease to be a qualified tuition program or subject individual accounts to taxes or penalties.

(12) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(13) The board shall prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The board's rules, policies, guidelines, or procedures shall address the following:

(a) Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(b) The establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(c) The board shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified tuition programs, as defined in section 529 of the Internal Revenue Code, of which that person is the designated beneficiary does not exceed the lesser of:

(i) A maximum college savings amount established by the board from time to time; or

(ii) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur; and

(d) Requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.

(14) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(15) The program shall provide statements to each account owner at least once each year within thirty-one (31) days after the twelve (12) month period to which they relate. The statement shall identify the contributions made during a preceding twelve (12) month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the board requires be reported to the account owner.

(16) Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

(17) A state or local government or organization described in section 501(c)(3) of the Internal Revenue Code may open and become the account owner

of an account to fund scholarships for persons whose identity will be determined after an account is opened.

(18) In the case of any account described in subsection (17) of this section, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

(19) Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the board are confidential, are not public records and shall not be released by the board.

[33-5404, added 2000, ch. 213, sec. 1, p. 577; am. 2002, ch. 50, sec. 2, p. 114; am. 2008, ch. 275, sec. 3, p. 784; am. 2013, ch. 110, sec. 4, p. 263; am. 2020, ch. 245, sec. 2, p. 717.]

33-5405. TAXATION TO BENEFICIARY. The designated beneficiary, as defined in section 529(e) (1) of the Internal Revenue Code, from an individual trust account or savings account established under this chapter is liable for taxes that may accrue under [chapter 30, title 63](#), Idaho Code, when a non-qualified withdrawal is received by the designated beneficiary.

[33-5405, added 2000, ch. 213, sec. 1, p. 580; am. 2020, ch. 245, sec. 3, p. 719.]

33-5406. SCHOLARSHIPS AND FINANCIAL AID PROVISIONS. (1) Any student loan program, student grant program or other financial assistance program established or administered by this state shall treat the balance in an account of which the student is a designated beneficiary as if it were an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an asset of the student for determining a student's or parent's income, assets or financial need.

(2) Subsection (1) of this section applies to any financial assistance program administered by a state-supported college or university.

(3) Subsections (1) and (2) of this section do not apply if any of the following conditions exist:

(a) Federal law requires all or a portion of the amount in an account to be taken into account in a different manner;

(b) Federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner;

(c) A specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account.

[33-5406, added 2000, ch. 213, sec. 1, p. 580.]

33-5407. LIMITATIONS OF CHAPTER. (1) Nothing in this chapter shall be construed to:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) Guarantee that a designated beneficiary will be admitted to an eligible education institution or be allowed to continue enrollment at or

graduate from an eligible education institution located in this state after admission;

(c) Establish state residency for a person merely because the person is a designated beneficiary;

(d) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) Nothing in this chapter establishes any obligation of this state or any agency or instrumentality of this state to guarantee for the benefit of any account owner, contributor to an account or designated beneficiary any of the following:

(a) The return of any amounts contributed to an account;

(b) The rate of interest or other return on any account;

(c) The payment of interest or other return on any account;

(d) Tuition rates or the cost of related higher education expenditures.

(3) Under policies adopted by the board, every contract, application, deposit slip or other similar document that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by this state and neither the principal deposited nor the investment return is guaranteed by this state.

[33-5407, added 2000, ch. 213, sec. 1, p. 580; am. 2008, ch. 275, sec. 4, p. 787.]

33-5408. ANNUAL REPORT. The board shall submit an annual report to the speaker of the house of representatives and the president pro tempore of the senate by February 1 that summarizes the board's findings and recommendations concerning the program established by this chapter.

[33-5408, added 2000, ch. 213, sec. 1, p. 581.]

33-5409. COLLEGE SAVINGS FUND. (1) There is hereby created in the state treasury the "College Savings Fund" to which shall be credited:

(a) Administrative fees and service charges in connection with any agreement, contract or transaction related to the college savings program;

(b) Fees and charges collected to cover costs associated with the powers and duties of the board as required in section [33-5402](#), Idaho Code;

(c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and

(d) All other moneys as may be provided by law.

(2) Moneys in the fund shall be continuously appropriated to the board, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used to effect the purposes of this chapter, pursuant to the provisions as prescribed herein. The office of a board member is authorized to receive a portion of the moneys approved by the board to defray costs associated with the implementation, administration and oversight of the college savings program, including the administrative activities delegated pursuant to section [33-5403](#), Idaho Code.

[33-5409, added 2007, ch. 225, sec. 1, p. 678; am. 2013, ch. 110, sec. 5, p. 265.]

33-5410. UNCLAIMED ACCOUNTS. (1) Except as set forth in this section, unclaimed accounts shall be subject to the provisions of section [14-512\(1\)](#), Idaho Code.

(2) The date upon which the account owner is deemed to have last communicated that the owner is currently aware of his interest in the account shall not occur prior to the eighteenth birthday of the designated beneficiary.

(3) Upon receipt of a certificate of exemption from the state treasurer or his authorized agent or employee, the board may assume the responsibilities of the state treasurer under [chapter 5, title 14](#), Idaho Code. Under a certificate of exemption, the board:

(a) Shall locate unclaimed accounts and refund the same to its rightful owner according to the provisions of [chapter 5, title 14](#), Idaho Code, and the terms of the certificate of exemption.

(b) Shall retain the unclaimed account under the terms and provisions of the program.

(c) May maintain the investments selected by the account owner or establish an investment policy for all unclaimed accounts. The owner and designated beneficiary of an unclaimed account shall have no claim against the state or any agency or instrumentality of this state for retention of the account owner's investment selection or for compliance with an investment policy for unclaimed accounts.

(4) In the event the board fails to comply with the requirements of this section, the state treasurer may revoke the certificate of exemption, and the board shall transfer all unclaimed accounts and records to the state treasurer as required by [chapter 5, title 14](#), Idaho Code.

[33-5410, added 2008, ch. 275, sec. 5, p. 787; am. 2016, ch. 91, sec. 1, p. 281.]