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For Department of State Use Only

Sequence Number: 04-16-14
Rule ID(s): 5699
File Date: 4/11/14
Effective Date: 9/28/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: Board of Trustees of the Baccalaureate Education System
Division:
Contact Person: LaKesha Page, Board Administrator
Address: 502 Deaderick Street, Andrew Jackson Building, 15th Floor, Nashville, Tennessee
Zip: 37243
Phone: (615) 532-5888
Email: LaKesha.Page@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1700-05-04	Educational Savings Plan
Rule Number	Rule Title
1700-05-04-.05	Account Maintenance
1700-05-04-.06	Withdrawals

Chapter Number	Chapter Title
Rule Number	Rule Title

Amendments

Chapter 1700-05-04

Educational Savings Plan

Paragraph (6) of Rule 1700-05-04-.05 Account Maintenance is amended by deleting the language "sixty-day" and replacing it with the language "twenty-one (21) day".

Authority: T.C.A. § 49-7-805.

Paragraph (1) of Rule 1700-05-04-.06 Withdrawals is amended by deleting the language "sixtieth-day" and replacing it with the language "twenty-first (21st) day".

Authority: T.C.A. § 49-7-805.

Subparagraph (4)(b) of Rule 1700-05-04-.06 Withdrawals is amended by deleting the language "sixty (60)" and replacing it with the language "twenty-one (21)".

Authority: T.C.A. § 49-7-805.

Subparagraph (4)(d) of Rule 1700-05-04-.06 Withdrawals is amended by deleting the language "sixty (60)" and replacing it with the language "twenty-one (21)".

Authority: T.C.A. § 49-7-805.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
David H. Lillard, Jr.	x				
Justin Wilson	x				
Tre Hargett	x				
Richard Rhoda	x				
Larry Martin	x				
John Morgan	x				
Joseph DiPietro	x				
Peter Abernathy	x				
Betty Sue McGarvey				x	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 12/19/2013 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: December 27, 2013

Signature: Alison D. Cleaves

Name of Officer: Alison Cleaves

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: 12.27.13

Notary Public Signature: Carl John

My commission expires on: 11.3.15

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Attorney General and Reporter

4-8-14
 Date

Department of State Use Only

Filed with the Department of State on: 4/11/14

Effective on: 9/28/14

Seal

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Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

It is not anticipated that the rule amendments will impact local governments.

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules 1700-05-04-.05 Account Maintenance and 1700-05-04-.06 Withdrawals are amended to change the waiting period for withdrawals from an eligible college savings plan account or an account established pursuant to § 529 of the Internal Revenue Code, codified at 26 U.S.C. § 529 ("§ 529 college savings account"). Current rules provide that before funds may be withdrawn for a new beneficiary or for a non-qualified higher education expense to an account purchaser, the funds must be on deposit in the account for at least sixty (60) calendar days in order to ensure that the money transfer from the purchaser to the § 529 college savings account is complete. The proposed rules shorten the period in which the funds must be on deposit in the account from sixty (60) days to twenty-one (21) days, resulting in purchasers being able to withdraw funds within a shorter period of time.

Current rules also provide that a purchaser may withdraw funds from his or her § 529 college savings account in the event that the redemption value of the account is one hundred dollars (\$100.00) or less and contributions have not been deposited into the beneficiary's account for a period of at least sixty (60) consecutive days. The proposed rules change the sixty (60) day period to twenty-one (21) days.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. § 49-7-805. This statutory section contains the Board of Trustees of the Baccalaureate Education System Trust Fund Program's ("Board") general rulemaking authority to promulgate rules to implement the Board's purpose and authority.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons most directly affected by this rule are those who currently have an eligible educational savings plan account or § 529 college savings account with the Board.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

To the best of the Board's knowledge, there are no Attorney General opinions or any judicial ruling that directly relates to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The proposed rules will not result in an increase or decrease in state and local government revenues and expenditures.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

LaKesha Page; Board Administrator, Board of Trustees of the Baccalaureate Education System Trust Fund Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Assistant General Counsel; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

LaKesha Page; Board Administrator, Board of Trustees of the Baccalaureate Education System Trust Fund Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Assistant General Counsel; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

LaKesha Page; Board Administrator, Board of Trustees of the Baccalaureate Education System Trust Fund Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Assistant General Counsel; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Any additional information requested by committee relevant to the proposed rules will be submitted promptly upon request.

**RULES
OF
THE TREASURY DEPARTMENT
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST BOARD**

**CHAPTER 1700-05-04
EDUCATIONAL SAVINGS PLAN**

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1700-05-04-.01 IN GENERAL.

- (1) Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for the tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: the Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Savings Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) Definitions. For purposes of these rules:
 - (a) "Academic Term" means the school segment consisting of a single semester, quarter, term or equivalent.
 - (b) "Account" means the record that contains the amount of contributions maintained on behalf of a Beneficiary under a Contract, plus the earnings or losses incurred thereon, including any Withdrawals made from the Account.
 - (c) "Beneficiary" means an individual designated under a Contract as the individual entitled to apply contributions and earnings accrued under the Contract to the payment of that individual's undergraduate, graduate and professional Qualified Higher Education Expenses as defined in 1700-05-04-.01(2)(p) below.
 - (d) "Board" has the same meaning as given in T.C.A. § 49-7-802(2), which is comprised of the members described in T.C.A. § 49-7-804(a).
 - (e) "Contract" means an Educational Savings Plan tuition contract entered into under T.C.A. § 49-7-808 by the Board and a Purchaser to provide for the payment of Qualified Higher Education Expenses, as such term is defined in Rule 1700-05-04-.01(2)(p), below.
 - (f) "Educational Savings Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an Account that is established by a Purchaser for a designated Beneficiary.
 - (g) "Educational Services Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units

(Rule 1700-05-04-.01, continued)

under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's tuition and other educational costs as set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

- (h) "Institution of Higher Education" has the same meaning as "eligible educational institution" under Section 529 of the Internal Revenue Code.
- (i) "Legally Incompetent" means that an individual has been declared incompetent by a court of law. An individual shall not be considered to be Legally Incompetent unless proof thereof is furnished in such form and manner as the Board may require.
- (j) "Member of the Family" has the same meaning as "member of the family" under the sections of the Internal Revenue Code which are applicable to the Program.
- (k) "New Beneficiary" means an individual to whom rights under the Contract have been transferred pursuant to Rule 1700-05-04-.05.
- (l) "Permanent Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a Permanent Disability unless proof is furnished of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent Disability.
- (m) "Program" means the two (2) types of tuition plans authorized under the Act (the Educational Savings Plan and the Educational Services Plan), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.
- (n) "Purchaser" means an individual, association, corporation, trust or other organized entity who enters into a Contract for the creation and deposit of contributions to an Account on behalf of a Beneficiary and who controls all aspects of the Account, or in the case of the Purchaser's death or Legal Incompetence, the Purchaser's Appointee. Only one (1) individual, association, corporation, trust or other organized entity may be named as the Contract Purchaser.
- (o) "Purchaser's Appointee" means the person who is named in the Contract by the Purchaser to exercise the rights of the Purchaser under the Contract if the Purchaser dies or becomes Legally Incompetent. The Purchaser's Appointee may be the Beneficiary. The Purchaser may change the designation at any time in writing to the Board. If the Purchaser dies or becomes Legally Incompetent, the Purchaser's Appointee shall automatically become the Purchaser for purposes of these Rules and the Contract, including, but not limited to, Rule 1700-05-04-.01(2)(r).
- (p) "Qualified Higher Education Expenses" has the same meaning as given under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.
- (q) "Redemption Value" means the current cash value of an Account attributable to the sum of the principal invested, and the earnings or losses incurred thereon.

(Rule 1700-05-04-.01, continued)

- (r) "Refund Recipient" means the person entitled to terminate the Contract and to receive refunds arising out of the Contract. The Refund Recipient may only be the Purchaser.
- (s) "Termination" means a discontinuance of the right to receive tuition payments or other benefits under a Contract.
- (t) "Withdrawal" means a disbursement of funds from the Account that is directed by the Purchaser to be paid to the Purchaser, an Institution of Higher Education, or the Beneficiary.

Authority: T.C.A. §§ 49-7-805, 49-7-802, 49-7-803, 49-7-807, 49-7-808, 49-7-809, 49-7-811, and 49-7-812. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.02 BOARD OPERATIONS.

(1) Meetings.

- (a) **How Called.** The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.
- (b) **Telephone Conference.** The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.
- (c) **Quorum.** Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.

(2) Board Officers.

- (a) **Chair.** The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair shall designate another member of the Board to preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.

(Rule 1700-05-04-.02, continued)

- (b) **Secretary.** The Manager of the Tennessee Baccalaureate Education System Trust Division of the Treasury Department shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members.
- (3) **Delegation to State Treasurer.** The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the Educational Savings Plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.

Authority: T.C.A. §§ 49-7-805 and 49-7-804. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.03 ENROLLMENT.

- (1) **Requirements.** The Purchaser must fully complete the Contract, including all required signatures, and return the signed Contract to the Board to open an Account in the Educational Savings Plan. A Contract shall not become binding upon the Board and the Purchaser unless it is complete and until all of the following occur:
 - (a) **Investment Selection.** The Purchaser must select at least one investment option. If more than one investment option is chosen, the Purchaser must allocate the contribution among the chosen investment options. The Board may limit the number of investment options that a Purchaser may choose under any one single Contract;
 - (b) **Initial Contribution.** Receipt by the Board of an initial contribution of at least twenty-five dollars (\$25.00) for each investment option chosen by the Purchaser. All contributions to an Account hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, cashiers checks, starter checks and credit card convenience checks), and payments made through payroll deductions or other similar methods acceptable to the Board;
 - (c) **Board Acceptance.** Acceptance of the signed Contract by the Board; and
 - (d) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the Contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board will accept the Contract conditionally for thirty (30) calendar days of receipt of the proposed Contract.
- (2) **Confirmation.** Upon acceptance of the Contract, the Board will send a confirmation of acceptance to the Purchaser and will credit the Account of the named Beneficiary with the amount of the initial contribution made.
- (3) **Rejection.** If a Purchaser fails to provide all the information required in Paragraph (1) of this Rule within thirty (30) calendar days of the Board's receipt of the proposed Contract, the Board may reject the proposed Contract and refund to the Purchaser all amounts paid

(Rule 1700-05-04-.03, continued)

thereunder, less any applicable fees. Rejection of a Contract shall not preclude the Purchaser from enrolling in the Program in the future.

- (4) **Fraud.** The Board may, at its sole discretion, terminate the Contract if the Beneficiary, the Purchaser, or the Purchaser's Appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the Program. The amount of the refund to which the Purchaser is entitled under this Paragraph (4) shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board.
- (5) **Inactivity.** If a period of ten (10) consecutive years passes with no contributions having been made to the Beneficiary's Account or with no correspondence from the Beneficiary, Purchaser or the Purchaser's Appointee, the Board shall report and deliver the amount of any refund payable under the Contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the Purchaser, Beneficiary, and the Purchaser's Appointee. The refund shall be equal to the Redemption Value of the Account at the time the refund is delivered, minus any applicable fee charged by the Board. The ten-year period shall not commence any earlier than the year the Beneficiary becomes eighteen (18) years of age, or the year the Account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the Contract shall cease.
- (6) **Fees.** The Board may charge fees to the Purchaser and/or collect fees from each Account for administration of the Program or for transactions under the Educational Savings Plan.
- (7) **Separate Accounting.** The Board will maintain a separate individual account for each Contract, showing the name of the Beneficiary and the Redemption Value of the Account, including any Withdrawals made from the Account.

Authority: T.C.A. §§ 49-7-805, 49-7-802, 49-7-806, 49-7-808, 49-7-809 and 49-7-812. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.04 CONTRIBUTIONS.

- (1) **Who May Make Contributions.** Contributions may be made for an existing Account by individuals or sources other than the Purchaser thereof as provided under Section 529 of the Internal Revenue Code. However, all contributions once made to an individual Account are pooled and are subject to the terms and conditions of the applicable Contract.
- (2) **How Contributions May be Made.** Contributions may be made only in cash and not in property. For purposes of these Rules, "cash" has the meaning given in Rule 1700-05-04-.03(1)(b) above. Contributions may also be made by rollover of funds from another qualified tuition program established under Section 529 of the Internal Revenue Code by making a written rollover request to the Board on such forms as may be prescribed by the Board.
- (3) **Limit on Amount of Contributions.** Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may have both an Educational Savings Plan tuition contract as described in these Rules and an Educational Services Plan tuition contract as described in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same Beneficiary. In addition, more than one individual may have an Educational Savings Plan tuition contract, an Educational Services Plan tuition contract, or both, on behalf of the same Beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same Beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same Beneficiary total a certain dollar amount as determined by

(Rule 1700-05-04-.04, continued)

majority vote of the Board pursuant to Rule 1700-05-04-.02(1)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay Qualified Higher Education Expenses for seven (7) years of undergraduate enrollment at the highest cost Institution of Higher Education.

- (4) No Guarantee of Acceptance nor Residency Status. Contributions to an Account hereunder do not guarantee that the Beneficiary will be accepted into an Institution of Higher Education, that the Beneficiary will graduate from an Institution of Higher Education, nor do contributions to an Account guarantee status as a resident for determining the rate of tuition charged by an Institution of Higher Education.

Authority: T.C.A. §§ 49-7-805, 49-7-806, 49-7-808, 49-7-809, and 49-7-810. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.05 ACCOUNT MAINTENANCE.

- (1) Update Account Information. The Purchaser may make changes and updates to the Account information as needed. These changes include, but are not limited to, addresses, legal name changes, phone numbers, e-mail addresses, and changes to the designation of the Purchaser's Appointee. The changes must be provided in writing or via electronic means acceptable to the Board.
- (2) Change of Beneficiary. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to change the Beneficiary of the Account at any time provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must be paid to change the Beneficiary of the Account.
- (3) Reallocation of Funds Among Investment Options. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to reallocate funds among investment options under a Contract held for a single Beneficiary provided there is at least twenty-five dollars (\$25.00) in each surviving investment option at the conclusion of the reallocation.
- (4) Transfer of Account Funds. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to transfer all or a portion of the funds in the Beneficiary's Account to an Account for a different Beneficiary provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the transfer is for a portion of funds in the original Account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing Beneficiary and the new Beneficiary will each have at least twenty-five dollars (\$25.00) in their respective accounts. If the New Beneficiary does not have an existing Account and if the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must also be paid to open the new Account for the New Beneficiary. In addition and subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to transfer all or a portion of the funds in the Beneficiary's Account to another account held for the same Beneficiary. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-05-04-.03(6), then a transfer fee must be paid to transfer the funds.
- (5) Conditions. Any change of Beneficiary, reallocation of funds among investment options, or transfer of funds under this Rule is subject to the following conditions:
 - (a) The request must be made in writing, signed by the Purchaser and, if applicable, must state the name and Social Security number of the proposed New Beneficiary. If the

(Rule 1700-05-04-.05, continued)

request is for the reallocation of funds among investment options, the written request must specify the dollar amount to be reallocated and the selected investment option(s). If the request is for a transfer of funds to an existing Account, the written request must state the Account number to which the transfer is to be made;

- (b) Payment of any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6);
 - (c) The Purchaser certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for a change of beneficiary or transfer of funds; and
 - (d) Transfers or changes in Beneficiaries under this Rule shall not be permitted to the extent that they would constitute excess contributions under Rule 1700-05-04-.04(3).
- (6) Eligibility for Use. Any funds in the Account of a New Beneficiary may be used immediately, provided the funds have been on deposit in the original Beneficiary's Account for the sixty-daytwenty-one (21) day period prescribed in Rule 1700-05-04-.06(1) below.
- (7) Limit on Reallocation of Funds Among Investment Options. The Purchaser may reallocate funds among investment options once per calendar year or at such other times as permitted under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.

Authority: T.C.A. §§ 49-7-805, 49-7-808, and 49-7-809. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.06 WITHDRAWALS.

- (1) Eligibility. Once a Beneficiary has been accepted for enrollment in an Institution of Higher Education, the Purchaser may begin using funds on deposit in the Account for the payment of Qualified Higher Education Expenses of the Beneficiary. For purposes of these Rules, including for any payments or refunds provided for in Rule 1700-05-04-.06(4) below, funds shall not be deemed on deposit in the Account until the sixtieth-daytwenty-first (21st) day following receipt of the respective funds by the Board. If the Purchaser desires the Board to send payment directly to the Institution of Higher Education where the Beneficiary is enrolled, the notification must include the name and address of the Institution and the amount of funds needed to pay the Qualified Higher Education Expenses. Failure to provide sufficient notice prior to the start of the Academic Term in which the funds would be used may result in an untimely payment being made to the Institution.
- (2) Written Request. Any Withdrawal requests must be made in writing by the Purchaser or via other means acceptable to the Board, including electronic means.
- (3) Amount and Timing of Withdrawal. Subject to Rules 1700-05-04-.06(4) and 1700-05-04-.09 below, the Withdrawal amount will equal the amount requested, not to exceed the Redemption Value of the Beneficiary's Account at the time the Withdrawal is processed. The Withdrawal amount will be paid within sixty (60) calendar days of receipt by the Board of the request required in Subparagraph (2) of this Rule above.
- (4) Types of Withdrawals.
 - (a) Withdrawals for Qualified Higher Education Expenses. The Purchaser may direct payment to the Purchaser, the Beneficiary, or an Institution of Higher Education as an advance payment or as reimbursement for Qualified Higher Education Expenses.

(Rule 1700-05-04-.06, continued)

Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.

- (b) **Withdrawals for Non-Qualified Higher Education Expenses.** The Purchaser may direct a Withdrawal from the Account for the payment of non-Qualified Higher Education Expenses provided the funds have been on deposit in the Account for at least sixty ~~(60)~~twenty-one (21) calendar days and provided there is at least one hundred dollars (\$100.00) in the Account once the Withdrawal is made. Such a Withdrawal may be made without causing termination of the Contract and without requiring the Refund Recipient to establish that the Withdrawal will be used for Qualified Higher Education Expenses. The earnings portion of Withdrawals made for non-Qualified Higher Education Expenses could be subject to federal taxation as prescribed under the sections of the Internal Revenue Code and the regulations promulgated thereunder which are applicable to the Program.
- (c) **Scholarship Refund.** If a Beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Purchaser may request a Withdrawal of all or a portion of the funds in the Account. The Purchaser must furnish information about the scholarship, allowance or payment to the Board. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic Term, the Purchaser may request a refund in advance of the scholarship payment. The amount of the refund payable to the Purchaser will be equal to the Redemption Value of the Beneficiary's Account that is not needed to cover the future Qualified Higher Education Expenses on account of the scholarship, allowance or payment minus any applicable fee(s) charged by the Board.
- (d) **Contract Termination and Refund.** Except as provided in Paragraph 4 (c) of this Rule above, a Contract may not be terminated for any reason except under one of the following circumstances: (i) the Beneficiary has died or suffers from a Permanent Disability; (ii) the Beneficiary is age eighteen (18) or older and has decided not to attend an Institution of Higher Education; (iii) the Beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an Institution of Higher Education and the Beneficiary does not plan to pursue further education; (iv) the Beneficiary has completed the bachelor's degree requirements at an Institution of Higher Education; or (v) the Redemption Value of the Account equals one hundred dollars (\$100.00) or less and no contributions have been deposited to the Beneficiary's Account for a period of at least ~~sixty (60)~~twenty-one (21) consecutive days. The Contract termination request must be accompanied with documentation acceptable to the Board to substantiate the reason for Contract termination. In the event a Contract is terminated due to the Permanent Disability or death of the Beneficiary, the amount of the refund paid to the Purchaser shall be equal to the Redemption Value of the Account at the time the refund is made. In the event a Contract is terminated under any of the conditions described in items (ii) – (v) above, the amount of the refund paid to the Refund Recipient shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board. The Actual termination of the Contract will not occur until all funds in the Beneficiary's Account have been refunded.
- (e) **Rollovers out of the Program.** The Purchaser may rollover all or a portion of the funds in the Beneficiary's Account to an account established for the same Beneficiary or another Beneficiary under another qualified tuition program established under Section 529 of the Internal Revenue Code by making a rollover request to the Board on such forms as may be prescribed by the Board. If the rollover is for the benefit of another Beneficiary, the Beneficiary to whose Account the funds are being transferred must be

(Rule 1700-05-04-.06, continued)

a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code. Any rollover made under this Paragraph shall be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's Account, minus any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6) above. The Redemption Value of the Account shall be determined as of the date the rollover is made.

Authority: T.C.A. §§ 49-7-805, 49-7-809, 49-7-811, and 49-7-812. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.07 REPORTING AND NOTICE.

- (1) Reporting. A statement listing the activity, selected investment options, and Redemption Value of the Account will be sent to the Purchaser periodically. The frequency of such statements will be set by the Board. If a payment has been made from an Account, the Board will report to the Beneficiary or the Purchaser, whichever is applicable, information about such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31st of the calendar year following the calendar year in which the payment was made. Disclosure documents will also be prepared by the Program and made available to the Purchaser prior to the Purchaser opening an Account.
- (2) Notice. Notice from the Program or Board, including but not limited to, Account statements, tax forms, and information about the Program, a Contract or an Account, may be in any form acceptable to the Board, which may include, but may not limited to, notice and reporting by electronic means.

Authority: T.C.A. §§ 49-7-805, and 49-7-809. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.

1700-05-04-.08 CONTRACT DESIGNATIONS MAY NOT BE DEFEATED BY WILL.

- (1) The right of a Beneficiary or Purchaser to receive benefits in accordance with a Contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.

Authority: T.C.A. § 49-7-805(16). **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 29, 2012.

1700-05-04-.09 PLAN TERMINATION.

- (1) If the Board determines that the Educational Savings Plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the Contracts. Subject to Paragraphs (2) and (3) of this Rule below, the amount of the refund to which the Purchaser is entitled shall be equal to the Redemption Value of the Account at the time the refund is made.
- (2) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a Contract shall be deemed to be due and payable only to the extent that moneys are available therefore to the credit of the Educational Savings Plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.
- (3) Should the Educational Savings Plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the Plan in full, the Board shall first defray all administrative expenses of the Plan. The Board shall then reduce

(Rule 1700-05-04-.09, continued)

payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the Educational Savings Plan within the amount of the remaining funds.

Authority: T.C.A. §§ 49-7-805, 49-7-823 and 49-7-824. **Administrative History:** Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.