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312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

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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:	Tennessee Department of Treasury
Division:	Tennessee Baccalaureate Education System Trust Board
Contact Person:	Mary Roberts-Krause
Address:	10 th Floor, Andrew Jackson State Office Building; Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-3855
Email:	mary.roberts-krause@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
1700-05-03	College Savings Incentive Plan
Rule Number	Rule Title
1700-05-03-.01	In General
1700-05-03-.02	Eligibility Requirements
1700-05-03-.03	Application for Matching Contribution
1700-05-03-.04	Rejection of Application or Forfeiture of Matching Contribution
1700-05-03-.05	Ineligible Individuals
1700-05-03-.06	Single Beneficiaries with Multiple Accounts
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1700-05-03-.08	Deposit and Ownership of Matching Contributions
1700-05-03-.09	No Guarantee of a Matching Contribution
1700-05-03-.10	Extent of Available Funds

Chapter Number	Chapter Title
Rule Number	Rule Title

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

New Rules

Rules of The Treasury Department Tennessee Baccalaureate Education System Trust Board

Chapter 1700-05-03 College Savings Incentive Plan

Table of Contents

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1700-05-03-.01 In General.

- (1) Purpose. Chapter 884 of the Tennessee Public Acts of 2010 authorized the Board of Trustees of the Baccalaureate Education System Trust Program to establish, or contract for the establishment of, an incentive plan or plans to encourage Tennessee residents to participate in any college savings program established pursuant to § 529 of the Internal Revenue Code with which the Board has contracted to provide similar benefits for Tennessee residents, or in any § 529 college savings program established by the state of Tennessee. The purpose of these rules is to establish the amount, terms and conditions of the incentive plan, including the requirements for participation and administration of the plan, as required by and consistent with the Act.
- (2) Definitions. For purposes of these rules:
 - (a) "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.
 - (b) "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 Tuition and Other educational costs as such terms are defined in Rules 1700-5-1-.01(2)(v) and 1700-5-1-.01(2)(m), respectively, of the Official Compilation of the Rules and Regulations of the State of Tennessee.
 - (c) "Board" has the same meaning as given in T.C.A. § 49-7-802(2).
 - (d) "Contract" means an Educational savings plan tuition contract entered into by a Purchaser with an Eligible college Savings Program to provide for the payment of Tuition and Other educational costs.
 - (e) "Educational savings plan" means a plan which permits individuals to make contributions to an account that is established by a Purchaser for a designated Beneficiary that entitles the Beneficiary to apply such contributions and earnings thereon to the payment of that Beneficiary's Tuition and Other educational costs.

- (f) "Eligible college savings program" means any college savings program established pursuant to § 529 of the Internal Revenue Code with which the Board has contracted to provide similar benefits for Tennessee residents, or in any § 529 college savings program established by the State of Tennessee, except for the educational services plan established in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (g) "Fiscal year" means the period beginning on July 1 of each year and ending on June 30 next following.
- (h) "Matching contribution" means the amount that is deposited by the Board into an Account of a Beneficiary as determined in Rule 1700-05-03-.07 below who satisfies the requirements specified in Rule 1700-05-03-.02.
- (i) "Member of the family" means the mother, father or ancestor of either, stepmother, stepfather, siblings of either the mother or father of the Beneficiary, or such other person as may be defined as a "member of the family" of the Beneficiary under the sections of the Internal Revenue Code which are applicable to the Eligible college savings program.
- (j) "Minimum contribution" means the amount that must have been contributed to the Account of a Beneficiary during the Qualifying period as determined pursuant to Rule 1700-05-03-.07 below in order to be eligible for the Matching contribution;
- (k) "Purchaser" means an individual who enters into a Contract for the creation and deposit of contributions to a savings account on behalf of a Beneficiary, or in the case of the Purchaser's death or legal incompetence, the Purchaser's appointee.
- (l) "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.
- (m) "Qualifying period" means the time period as set by the Board each year during which a Purchaser must meet the conditions set forth in these Rules to be eligible for a Matching contribution, including the time period during which a Purchaser must file an application for the Matching contribution.
- (n) "Tennessee resident" means a person who has a continuous physical presence and maintenance of a dwelling place within the State of Tennessee for at least twelve (12) months immediately prior to entering into a Contract, provided that absence from the State for short periods of time shall not affect the establishment of a residence. A minor child shall be deemed a Tennessee resident if the child's legal guardian, or noncustodial parent is a resident of Tennessee. Military or diplomatic personnel whose home of record is Tennessee shall also be deemed Tennessee residents for purposes of these Rules.

Authority: T.C.A. §§ 49-7-805(16), and 49-7-805(4).

1700-05-03-.02 Eligibility Requirements. To be eligible for a Matching contribution, the following requirements must be met:

- (1) The Purchaser must file an application for the Matching contribution in accordance with Rule 1700-05-03-.03 below during the applicable Qualifying period, as such term is defined in Rule 1700-05-03-.01(2)(m);
- (2) The Purchaser must have an Account with the Eligible college savings program for the Beneficiary listed on the application on the date the application is filed with the Board and on the date the Matching contribution is deposited into the Account;
- (3) An amount equal to or greater than the Minimum contribution established in Rule 1700-05-03-.07 below must have been contributed to the Account during the Qualifying period;

- (4) The Purchaser and the Beneficiary of the Account must be Tennessee residents, as defined in Rule 1700-05-03-.01(2)(n) above, at the time the application is filed with the Board;
- (5) The Beneficiary must be less than age twenty-five (25) at the time the application is filed with the Board; and
- (6) The Purchaser must be a Member of the family of the Beneficiary as defined in Rule 1700-05-03-.01(2)(i) above.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.03 Application for Matching Contribution.

- (1) A Purchaser must file an application for the Matching contribution on a form as prescribed by the Board. The application must include the following information:
 - (a) The name and address of the Beneficiary;
 - (b) The name and address of the Purchaser;
 - (c) The relationship of the Purchaser to the Beneficiary;
 - (d) The sex and date of birth of the Beneficiary;
 - (e) The income of the Purchaser. Although such information is required, an income test is not a qualification for the Matching contribution;
 - (f) Authorization from the Purchaser for the Board to verify with the Eligible college savings program that all the requirements set forth in these Rules have been met for purposes of qualifying for the Matching contribution; and
 - (g) Such other information as the Board may require.
- (2) The application must be filed with the Board during the applicable Qualifying period as defined in Rule 1700-05-03-.01(2)(m) above.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.04 Rejection of Application or Forfeiture of Matching Contribution.

- (1) Rejection of Application. An application for a Matching contribution will be rejected by the Board if any of the following occurs:
 - (a) The Purchaser fails to provide all the information required in Rule 1700-05-03-.03;
 - (b) The requirements for the Matching contribution as set forth in these Rules have not been met;
 - (c) The Purchaser makes a misrepresentation in the application for the Matching contributions; or
 - (d) The requisite Minimum contribution was not made to the Account during the Qualifying period.
- (2) Forfeiture of Matching Contribution. If, at any time, the Board determines that a Purchaser made a misrepresentation in an application for a Matching contribution that resulted in a Matching contribution being made to an Account, the Matching contribution will be forfeited and returned to the Board.
- (3) Applications Made in Subsequent Qualifying Periods. Rejection of an application for a Matching contribution shall not preclude the Purchaser from reapplying for a Matching contribution in subsequent Qualifying periods, provided the Purchaser completes a new application and files the same with the Board during the applicable Qualifying period. Notwithstanding this Rule, the Board

may, at its discretion, reject any application made by a Purchaser who was found to have made a misrepresentation on an application submitted by the Purchaser in a previous year.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.05 Ineligible Individuals.

- (1) For Fiscal year 2011, an employee of the Tennessee Treasury Department, an employee of the Eligible college savings program, a member of the Board, a member of the Eligible college savings program's board or an immediate family member of any of the foregoing shall not be eligible for matching contributions pursuant to these Rules as either a Purchaser or as a Beneficiary. For purposes of this Rule, an "immediate family member" means a spouse, child, or grandchild. For each subsequent Fiscal year, the Board shall determine whether the total amount of money available for that Fiscal year will be sufficient to pay the matching contribution to all potential qualified applicants. If the Board makes such a determination, then the provisions of this Rule shall not apply for that Fiscal year.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.06 Single Beneficiaries with Multiple Accounts.

- (1) A Beneficiary who has been designated as Beneficiary on multiple Accounts shall only be eligible for one Matching contribution during each Qualifying period.
- (2) Any application for a Matching contribution that is rejected due to this requirement or for the failure to meet any other requirement shall not be carried forward to subsequent Qualifying periods. A new application must be completed and filed with the Board during each Qualifying period.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.07 Amount of Minimum and Matching Contribution.

- (1) For Fiscal year 2011, the Minimum contribution and Matching contribution will each equal fifty dollars (\$50.00). For each subsequent Fiscal year, the Board shall set the Minimum contribution and Matching contribution. The Matching contribution amount shall be determined by the Board based upon the amount appropriated in that year's general appropriations act for the purposes set forth in these Rules.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.08 Deposit and Ownership of Matching Contributions.

- (1) The respective Matching contributions will be direct deposited by the Board into the Accounts of those Beneficiaries whose applications were approved. The Board will initially choose the investment product in which the Matching contributions will be invested. Except in the case of a forfeiture as provided in Rule 1700-05-03-.04(2) above, the Purchaser will thereafter have all ownership of the Matching contributions and the earnings thereon on behalf of the Beneficiary to the same extent as the other contributions credited to the Account. The decision to reallocate among investment options, rollover, disburse, and/or to make any transactions relative to the Matching contributions will be within the discretion of the Purchaser.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.09 No Guarantee of a Matching Contribution.

- (1) Notwithstanding any provision of these Rules to the contrary, neither the State, the Board, nor the Eligible college savings program guarantees that any Beneficiary will receive a Matching contribution. The availability or the amount of the Matching contributions authorized by these Rules are subject to the appropriation of funds in each year's general appropriations act for the purposes set forth in these Rules.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

1700-05-03-.10 Extent of Available Funds.

- (1) In the event the Board receives more eligible applications for the Matching contribution than the amount of money appropriated by the general assembly during a given Qualifying period, the Board will award the Matching contribution to the first eligible applicants to apply until the available funds have been exhausted.
- (2) In the event excess appropriations remain in any given fiscal year after providing the Matching contributions to all eligible applicants, the excess funds will be transferred to the educational services plan established in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee, unless the general assembly otherwise directs.

Authority: T.C.A. § § 49-7-805(16), and 49-7-805(4).

* 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)
Dave Goetz	✓				
Tre Hargett	✓				
David H. Lillard, Jr.	✓				
Dr. Charles Manning	✓				
Dr. Jan Simek	✓				
Dr. Betty Sue McGarvey	✓				
Dr. Richard Rhoda	✓				
Justin P. Wilson	✓				

John Morgan

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Baccalaureate Education System Trust Board on October 7, 2010, and is in compliance with the provisions of TCA 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: 10/7/2010

Signature: *David H. Lillard, Jr.*

Name of Officer: David H. Lillard, Jr.

Title of Officer: Chair of the Board and State Treasurer

Subscribed and sworn to before me on: 10-7-2010

Notary Public Signature: *Sandra Sewell*

My commission expires on: _____



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.

Robert E. Cooper, Jr.
Attorney General and Reporter

10-26-10

Date

Department of State Use Only

Filed with the Department of State on: _____

10/29/10

Effective on: _____

3/31/11

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

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.

(If applicable, insert Regulatory Flexibility Addendum here)

Impact on Local Governments

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)

(Insert statement here)

The proposed rules will not have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

BACKGROUND

Tennessee began a 529 College Savings Plan in 1997 with the implementation of the Baccalaureate Education System Trust (BEST), a prepaid college savings program. Under a prepaid plan, tuition units are purchased at the weighted average tuition of the nine four-year public institutions in Tennessee. The value of a purchased unit increases based on tuition inflation at these nine institutions.

In 2000, Tennessee added another 529 Plan, which was a savings plan. Under a savings plan, the participant's account increases and decreases in value based on the investment performance of the investment product selected. In 2008, the savings plan was replaced with the Path2College 529 plan, which Tennessee promotes through a partnership with the State of Georgia. Currently, there are seven investment products that participants may chose from. The investment choices range from aggressive to conservative.

College savings by Tennesseans as measured by the two plans is nominal. There are less than 10,000 participants in the prepaid plan and less than 2,500 in the savings plan.

It has been often quoted that a college degree increases the lifetime earnings for a graduate by as much as one million dollars over a lifetime. However, the cost of tuition, fees, books and materials, housing, and other living expenses can be a financial burden on a family absent proper financial planning. The financial burden is greater for those households with large families. While scholarships, grants and working while in college can offset some of the cost of college, most families will need additional financial resources. If there has not been any pre-planning for these college expenses, families would have to rely on loans to finance college courses. Unfortunately, loans leave the family or student with a debt burden at the beginning of one's career.

Recognizing the inherent high cost of a college education, the potential debt burden placed on families, and that a myriad of qualified students are not going to college because of a lack of financial resources, the General Assembly enacted Chapter 884 of the Tennessee Public Acts of 2010. This Act authorized the Board of Trustees of the Baccalaureate Education System Trust Program (the "Board") to establish an incentive plan to encourage Tennessee residents to participate in any college savings program established pursuant to § 529 of the Internal Revenue Code with which the Board has contracted to provide similar benefits for Tennessee residents (which is currently the Path2College 529 plan). The amount allocated for such an incentive plan is established in the General Appropriations Act. In Section 35, Item 3 of the Appropriations Act for fiscal year 2010-2011, \$250,000 has been allocated for the educational incentive plan.

The purpose of these rules is to establish the amount, terms and conditions of the incentive plan, including the requirements for participation and administration of the plan, as required by and consistent with the Act.

The incentive would be to use the \$250,000 that was appropriated during the fiscal year 2010-2011 to provide a matching contribution of \$50.00 to an account held for a single beneficiary in the Path2College 529 College Savings Plan. Specifically, if a participant contributes at least \$50 to a Path2College 529 account during the eligibility period for a beneficiary, \$50 will be matched dollar for dollar. Contribution amounts of more than \$50 will be limited to \$50. For each subsequent fiscal year, the amount will be determined by the BEST Board based upon the amount, if any, appropriated in that year's general appropriations act for the purposes set forth in these rules.

To be eligible for the match:

(1) The purchaser of the account must file an application for the matching contribution during the applicable qualifying period, which means the time period as set by the Board each year during which a purchaser must file an application for the matching contribution;

(2) The purchaser of the account must have an account with the eligible college savings program (here Path2College 529 plan) for a beneficiary at the time the application is filed with the Board and on the date the

matching contribution is deposited into the account;

(3) An amount equal to or greater than a certain minimum contribution must have been contributed to the account of the beneficiary during the qualifying period. For fiscal year 2011, the minimum contribution will be \$50.00. For each subsequent fiscal year, the Board will set the minimum contribution.

(4) The purchaser and the beneficiary of the account must be Tennessee residents at the time the application is filed with the Board. A Tennessee resident is defined in the rules as a person who has a continuous physical presence and maintenance of a dwelling place within the State of Tennessee for at least twelve (12) months immediately prior to entering into a contract with the eligible college savings program (here Path2College 529 plan), provided that absence from the State for short periods of time will not affect the establishment of a residence. A minor child will be deemed a Tennessee resident if the child's legal guardian, or noncustodial parent is a resident of Tennessee. Military or diplomatic personnel whose home of record is Tennessee will also be deemed Tennessee residents for purposes of these rules;

(5) The beneficiary must be less than age twenty-five (25) at the time the application is filed with the Board; and

(6) The purchaser must be a member of the family of the beneficiary. The rules define a "member of the family" as the mother, father or ancestor of either, stepmother, stepfather, siblings of either the mother or father of the beneficiary, or such other person as may be defined as a "member of the family" of the beneficiary under the sections of the Internal Revenue Code which are applicable to the eligible college savings program.

(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;

Chapter 884 of the Tennessee Public Acts of 2010, which is codified in T.C.A. § 49-7-805(4), and Item 3, Section 35 of the Tennessee General Appropriations Act for fiscal year 2010-2011.

(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;

These rules affect residents of Tennessee who want to save for their children and grandchildren's higher education. It is expected that such individuals would urge adoption of these rules.

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

None.

(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;

Minimal. The amount allocated for the incentive for fiscal year 2010-2011 has already been appropriated in the amount of \$250,000. The availability or the amount of any future incentive is specifically subject to the appropriation of funds in each year's general appropriations act for the purposes set forth in these rules.

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

Steve Curry, Assistant to the Treasurer over Programs; LaKesha Page, BEST Manager; and Mary Roberts-Krause, General Counsel

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

Steve Curry, Assistant to the Treasurer over Programs

(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

Address: 9th Floor, Andrew Jackson State Office Building; Nashville, Tennessee 37243; Phone: (615) 532-8045; E-mail address: steve.curry@tn.gov

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

None.