

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: FINANCIAL AFFAIRS

Policy 950.2 – Montana Family Education Savings Program

Adopted: September 23, 2005, Revised: November 19, 2021

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. In addition, in 2021, the following were added as qualified expenses under Montana law:

1. Elementary and secondary tuition expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school;
2. Expenses for fees, books, supplies, and equipment required for the participation of a Beneficiary in an apprenticeship program registered and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act (29 U.S.C. 50); and
3. Amounts paid as principal or interest on a loan to pay certain higher education expenses as defined in Section 221(d) of the Code, of a Beneficiary or a sibling of a Beneficiary (up to a lifetime \$10,000 limit per individual).

The Board serves as the state administrator of the Program and shall administer the Program consistent with its authority granted pursuant to 20-25-902, MCA. The Board has designated the Committee to assist in its oversight of the Program. In addition, the Board designates the Commissioner of Higher Education as its agent for the purpose of the day-to-day oversight of the Program. The Commissioner of Higher Education may further delegate its authority to other officials or employees in the office of the Commissioner of Higher Education.

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 opens an Account in the Program. 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 Beneficiary and the Beneficiary will become 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. **Beneficiary** means the individual designated by an Account Owner for whom the Account is intended to provide benefits.
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.

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: FINANCIAL AFFAIRS

Policy 950.2 – Montana Family Education Savings Program

Adopted: September 23, 2005, Revised: November 19, 2021

6. **Code** means the federal Internal Revenue Code of 1986 (Title 26 of the United States Code), as amended from time to time.
7. **Committee** means the Family Education Savings Program Oversight Committee described in 20-25-901, MCA.
8. **Program Description** means all documents identified by the Board as intended to provide substantive disclosure of the terms and conditions of an investment in the Program, each as may be supplemented or updated.
9. **Program Manager** means the program manager selected pursuant to 15-62-203, MCA, including any affiliate of the Program Manager approved to fulfill some of the functions of the Program Manager.
10. **Program** or **Achieve Montana** means the Family Education Savings Program established pursuant to the Act.
11. **Program Management Agreement** means agreement by and between the Board and the Program Manager specifying the duties and obligations of each with regard to administration of the Program. The parties to the Program Management Agreement shall agree to administer the Program in compliance with Act and the Code.
12. **Qualified Tuition Program** means an education savings plan generally set up by a state government pursuant to Section 529 of the Code to allow a person to contribute to an account established for paying a student's qualified expenses.
13. **Trust** means the family education savings trust established by Ch. 549, L. 2005.

III. Procedures

A. Fees

Fees shall be charged to Account Owners as set forth in the Program Description. Any fees collected from Account Owners and remitted to the Board shall be utilized to support the cost of administration of the Program, as specifically directed by the Board.

B. Duties of Program Manager

The Program Manager shall provide investment management, account administration, customer service, and/or marketing services as set forth in the Program Management Agreement. The Program Manager shall take all action required to keep the Program in compliance with the requirements of the Act, this policy statement, and Section 529 of the Code.

C. Accounts

1. **Procedures for Opening and Maintaining an Account.** Accounts shall be opened and maintained in accordance with the terms and conditions set forth in the Program Description, including the participation agreement included therein.

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: FINANCIAL AFFAIRS

Policy 950.2 – Montana Family Education Savings Program

Adopted: September 23, 2005, Revised: November 19, 2021

2. **Trust.** All assets of the Program shall be held in the statutory trust established under 15-62-301, MCA. The Board serves as trustee of the Trust.
3. **Limited Investment Direction.** In accordance with Section 529 of the Code, an Account Owner may change the investment strategy for each Beneficiary—i.e., make an exchange—up to two times per calendar year.
4. **Contributors.** 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 an Account.
5. **Maximum Contribution Limit.** In accordance with Section 529(b)(6) of the Code, the Board shall set a maximum contribution limit for Accounts. All Accounts for the same Beneficiary under all Qualified Tuition Programs sponsored by the State of Montana are counted toward the Maximum Contribution Limit regardless of the Account Owner. If a contribution is made to an Account that would cause the aggregate balance of all accounts to exceed the Maximum Contribution Limit, all or a portion of the contribution amount will be returned to the Account Owner or the contributor. Accounts (either alone or combined with other Accounts) that have reached the Maximum Contribution Limit (whether through contributions or market fluctuation) may continue to accrue earnings, although future contributions may not be made to the Accounts. The Maximum Contribution Limit in effect at any given time shall be set forth in the Program Description together with additional information on the calculation of the Maximum Contribution Limit.
6. **Withdrawal of Funds; Rollovers.** Withdrawals from Accounts and rollovers into and out of an Account shall be governed by the terms and conditions of the Program Description.
7. **Recapture of Montana Tax Deduction.** In accordance with 15-62-208, MCA, in the case of certain nonqualified withdrawals (as defined in 15-62-103, MCA) and withdrawals made within one year of the date the Account was opened, a recapture tax shall be imposed. The Board may require the Program Manager to withhold recapturable withdrawals from an Account that was at one time owned by a Montana resident if the Account Owner is not a Montana resident at the time of the withdrawal.
8. **Procedure for Change in Beneficiaries.** An Account Owner may change a Beneficiary as described in the Program Description.

D. Program Description

The Program Description shall be prepared in accordance with applicable law, including but not limited to the Act and the Code. The Program Description shall be designed to comply with the College Savings Plans Network Disclosure Principles as may be amended or restated from time to time. In addition, the Program Description shall include language to the effect that an Account is not insured by Montana and neither the principal invested nor the investment return is guaranteed by the State of Montana.

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), September 23, 2004 (ITEM 124-109-R0904), September 23, 2005 (ITEM 128-112-R0905, Memo, Policy), November 19, 2021 (ITEM 197-109-R1121).