

\$13.50

DATE: September 30, 1997

TO: ~~LEGISLATIVE RULE-MAKING REVIEW COMMITTEE~~
LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

FROM: West Virginia State Treasurer's Office

LEGISLATIVE RULE TITLE: Rules for the WV Prepaid Tuition Trust Fund

1. Authorizing statute(s) citation WV Code §18-30-1

2. a. Date filed in State Register with Notice of ~~Hearing~~ August 15, 1997 ~~Public Comment Period~~

b. What other notice, including advertising, did you give of the hearing?

Mailing of rules and public comment period to state libraries.

Legislators, college presidents, WV Bankers Assoc., elected

officials in state government, Higher Education

c. Date of ~~Hearing(s)~~ August 15, 1997 - September 15, 1997
~~Public Comment Period~~

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 30, 1997

f. Name and phone number(s) of agency person(s) to contact for additional information:

Mr. Anoop K. Bhasin, General Counsel

WV State Treasurer's Office

1900 Kanawha Blvd E

Phone: 304-558-5000

Bldg 1, Rm E122

Charleston, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: N/A

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

SUMMARY OF PROPOSED RULE

TITLE 118

LEGISLATIVE RULE

PREPAID TUITION TRUST FUND BOARD OF TRUSTEES

SERIES 1

RULES FOR THE WEST VIRGINIA PREPAID TUITION TRUST FUND

This rule implements the provisions of W. Va. Code §18-30-1 et seq., wherein the Office of the State Treasurer establishes the Prepaid Tuition Trust Fund which is responsible for the advancement of education in the state of West Virginia by assisting qualified students to pay in advance the tuition costs of attending fully accredited higher education institutions and encourage students to attend higher education institutions and programs in the state of West Virginia.

STATEMENT OF CIRCUMSTANCES OF PROPOSED RULE

TITLE 118

LEGISLATIVE RULE

PREPAID TUITION TRUST FUND BOARD OF TRUSTEES

SERIES 1

RULES FOR THE WEST VIRGINIA PREPAID TUITION TRUST FUND

This agency approved rule is needed to comply with provisions of W. Va. Code embodied in Senate Bill 70, passed during the 1997 Regular Legislative Session, effective ninety days from passage on April 12, 1997. Senate Bill 70 determined that the advancement and improvement of higher education in the state of West Virginia is a proper governmental function and purpose of the state.

This rule carries out the legislative intent, as stated in W. Va. Code §18-30-1, to establish a higher education prepaid tuition trust fund to assist qualified students to pay in advance the tuition costs of attending fully accredited higher education institutions and programs and thereby to encourage such qualified students to attend higher education institutions and programs in the state of West Virginia.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for the West Virginia Prepaid Tuition Trust Fund (118CSR1)

Type of Rule: X **Legislative** **Interpretive** **Procedural**

Agency West Virginia Prepaid Tuition Trust Fund

Address 1900 Kanawha Boulevard East
Building 1, Room E122
Charleston, West Virginia 25305

Contact: Anoop K. Bhasin, General Counsel 304-558-5000

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THIRDAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 475,000	\$	\$ 475,000	\$ 843,000	\$ 843,000
PERSONAL SERVICES	141,900		141,900	240,000	240,000
CURRENT EXPENSE	333,100		333,100	603,000	603,000
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

For FY98-99, a general revenue appropriation will provide start-up funds for the Prepaid Tuition Trust Fund. For the second half of FY99 and beyond the Tuition Trust Fund will operate from fees and income generated by the Tuition Trust Fund.

3. Objectives of these rules:

To provide guidelines for the Treasurer's Office and the Prepaid Tuition Trust Fund Board of Trustees to follow while starting up and operating the Prepaid Tuition Trust Fund.

Rule Title: Rules for the West Virginia Prepaid Tuition Trust Fund (118CSR1)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Appropriation totaling some \$1.0 million for startup after which the program will be self sufficient.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Any purchase of a contract is voluntary.

C. Economic Impact on Citizens/Public at Large.

Plan purchases are voluntary.

Date: August 14, 1997

Signature of Agency Head or Authorized Representative

John D. Perdue

FILED

TITLE 118
LEGISLATIVE RULE
PREPAID TUITION TRUST FUND BOARD OF TRUSTEES

SEP 30 1 20 PM '97

SERIES 1
RULES FOR THE WEST VIRGINIA PREPAID TUITION TRUST FUND

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§118-1-1. General.

1.1. Scope. -- The scope of these rules affects purchasers and beneficiaries of advance payment contracts for college tuition and fees offered by the West Virginia Prepaid Tuition Trust Fund Board of Trustees through its West Virginia Prepaid College Plan.

1.2. Authority. -- West Virginia Prepaid Tuition Trust Act, West Virginia Code (1997) Chapter 18, Article 30, and any additional provisions enacted by the Legislature specifically regarding the Prepaid Tuition Trust Fund.

1.3. Filing Date. --

1.4. Effective Date. --

§118-1-2. Definitions.

For the purposes of these rules the following terms, which are in compliance with the federal law, have the meanings ascribed to them, unless the context clearly indicates otherwise:

2.1. "Actuarial assessment" means an additional contract amount assessed to ensure the actuarial soundness of the Trust Fund which may be applied in cases of contract changes requested by the purchaser.

2.2. "Administrative fees" means amounts assessed to cover or to defray the administrative costs of program operation, as set by the Board.

2.3. "Application" means a request for acceptance into the Plan made on a form, or a duplicate of the form, prepared by the Plan and called the West Virginia Prepaid College Plan Application.

2.4. "Beneficiary" means an individual who meets all eligibility requirements stated in the Plan contract and who is designated by the purchaser on the Plan contract application to be the recipient of Plan contract benefits.

2.5. "Benefits" means the tuition and mandatory fees that are paid to an eligible postsecondary institution on behalf of the beneficiary as specified by the terms of the Plan contract.

2.6. "Board" means the Board of Trustees of the West Virginia Prepaid Tuition Trust Fund.

2.7. "Chairman" means the State Treasurer who serves as chairman of the Board.

2.8. "Contract" or "Plan contract" refers collectively to the application, the master covenant, the participation and payment schedule, and any additional documents not set out in the legislative rules relating to the Plan contract, issued or received by the State Treasurer, on behalf of the Board, and pursuant to the various terms and conditions described, and incorporated into the Plan contract.

2.9. "Current tuition value" means a figure determined by the Board annually which is based on the average, weighted by enrollment, of in-state tuition and mandatory fees for attendance as a full-time undergraduate student at four-year public postsecondary institutions in West Virginia. For the purposes of these rules the current tuition value is the equivalent of and also substitutes for the "outside tuition fee" defined in §18-30-3(d) of the West Virginia Code.

2.10. "Independent/private in-state postsecondary institution" means a fully accredited, independent or private, Associate of Arts or baccalaureate degree-granting college or university located and chartered in West Virginia and supported wholly or principally from sources other than State moneys.

2.11. "Mandatory fees" means those amounts required to be paid as a condition of enrollment for all undergraduate students attending the postsecondary institution in which the beneficiary wishes to enroll and to which the Trust Fund payments will be made on behalf of the beneficiary; however, the term "mandatory fees" as used herein does not include charges for books, supplies, room, or board even if the postsecondary institution to be attended by the beneficiary requires all students to pay such charges.

2.12. "Master covenant" means the document which specifies the terms and conditions of the Plan.

2.13. "Maximum plan benefit" means payment, on behalf of a single individual, of tuition for not more than 132 hours on a semester basis, or its equivalent on a quarter or other academic system, and payment for not more than eight registrations on a semester basis, or its equivalent on a quarter or other academic system; provided, however, that if the individual is also the beneficiary of a supplemental fifth-year contract, should the Plan choose to offer such an option, the maximum benefit for tuition would increase by 32 semester hours and registrations would increase by two semesters, or their equivalent on a quarter or other academic system.

2.14. "Out-of-state postsecondary institution" means a fully accredited Associate of Arts or baccalaureate degree-granting college or university located outside of the State of West Virginia but within the United States of America.

2.15. "Participation and payment schedule" means the document which defines the amount, frequency, duration and due date of Plan contract payments, based on information provided by the purchaser on the Plan application.

2.16. "Plan" or "Program" means the West Virginia Prepaid College Plan operated by the State Treasurer on behalf of the Board to offer advance payment contracts for tuition and mandatory fees at West Virginia postsecondary institutions.

2.17. "Projected college entrance date" means the academic school year immediately following the designated beneficiary's projected high school graduation and is the earliest date for utilization of Plan contract benefits without written approval. The projected college entrance date is calculated, based on information provided by the purchaser in the Plan Application.

2.18. "Public postsecondary institution" means any state-owned and operated West Virginia college or university offering undergraduate courses which is recognized as a "state college," "university" or "community college" as determined by §18B-1-2 of the West Virginia Code.

2.19. "Purchaser" means the individual, corporation or other entity that is obligated to make payments in accordance with a Plan contract entered into. There is only one purchaser per Plan contract. For the purposes of this definition and pursuant to West Virginia Code §18-30-5(j), the purchaser shall be the employee in the case of a Plan contract initiated by an employer on behalf of a beneficiary selected by the employee.

2.20. "Scholarship" means grants, gifts, or other financial aid awarded to a Plan contract beneficiary in an amount sufficient to pay a portion or all of the same benefits as are guaranteed under a Plan contract. A loan or work-study employment is not considered a scholarship.

2.21. "State Register" means the State Register published by the West Virginia Secretary of State.

2.22. "Substitute beneficiary" means an eligible individual designated by the Plan contract purchaser to receive, in place of the originally named beneficiary, the benefits guaranteed under the Plan contract. To be eligible, the substitute beneficiary must be a member of the family of the original purchaser, be a West Virginia resident and meet other eligibility requirements such as may be stated in the Plan contract.

2.23. "Tuition" means undergraduate semester or term charges for course work imposed by a postsecondary institution as a condition for a student's enrollment.

2.24. "Trust fund" means the West Virginia Prepaid Tuition Trust Fund.

§118-1-3. Program Description.

3.1. General description -- The West Virginia Prepaid Tuition Trust Act established a mechanism for the State of West Virginia to provide a program to assist qualified students and their families to pay in advance the many costs of attending a college or university in the State of West Virginia. A trust fund was created within the State Treasurer's Office to allow many of the costs associated with attending college to be paid in advance for a child at a rate

lower than the projected corresponding cost at the time of actual college enrollment of the child. The Trust Fund is administered by a nine-member Board, which is chaired by the State Treasurer.

3.1.a. The prepayment program within the State Treasurer's Office is known as the West Virginia Prepaid College Plan ("Plan"). Through the Plan an individual, corporation or other entity may purchase prepaid tuition contracts. The Plan contract provides for the payment by the Trust Fund of in-state undergraduate tuition and mandatory fees at a public postsecondary institution for a specified number of academic terms, as determined by the Plan contract, on behalf of the beneficiary for whom the Plan contract is purchased. The cost of a Plan contract is based on the average current and projected tuition and mandatory fee rates at public postsecondary institutions in West Virginia, on the number of years expected to elapse between the purchase of a contract and the exercise of the benefits to be provided for in the contract to the beneficiary, and based on the assumed rate of return. The cost of Plan contracts is established in accordance with actuarial assumptions recommended by the Plan actuary and adopted by the Board.

3.1.b. Payments by Plan contract purchasers are placed in the Trust Fund and are combined and invested on behalf of the Board, with the goal of yielding, at a minimum, sufficient income to generate the difference between the prepaid amount and the cost of in-state tuition and mandatory fees at the time of actual enrollment of the beneficiary. The Plan contract purchaser receives periodic statements summarizing amounts paid into and the financial condition of the Trust Fund. The Plan contract shall set the exact plan that is purchased by the purchaser.

3.2. Location of office -- The Trust Fund and Plan headquarters are located in the Office of the State Treasurer, State Capitol Building, 1900 Kanawha Boulevard East, Building 1, Room E122, Charleston, West Virginia 25305-0860. Office hours are 8:30 A.M. through 4:30 P.M., Monday through Friday, except legal holidays. Persons may obtain forms, publications, and documents by writing to, visiting, or calling the office at (304)-558-5000 or 1-800-422-7498.

3.3. Program administration -- The West Virginia Prepaid College Plan is administered by the State Treasurer's Office under the direction of the Board. The State Treasurer's Office, on behalf of the Board and in conjunction with a qualified actuarial firm, constructs the prices of Plan contracts and develops payment schedules for Plan contract purchasers, in accordance with the actuarial assumptions recommended by the actuary and adopted by the Board.

3.3.a. The fiscal year of the Trust Fund and its programs is July 1st through June 30th. Each fiscal year, the Board will cause to be evaluated by a nationally recognized actuarial firm, the actuarial soundness of the Trust Fund and will cause to be prepared an audit of all accounts of the Board including the Trust Fund accounts, by a nationally recognized accounting firm. An annual report will be prepared setting forth an accounting of the Trust Fund and a description of the financial condition of the Trust Fund and distributed as required by the West Virginia Code.

3.3.b. The State Treasurer's Office, on behalf of the Board, develops and recommends program rules, regulations, policies and procedures for Board approval; contracts for necessary goods and services; employs necessary personnel; engages the services of private persons or firms for administrative and technical assistance; maintains accounts and administer funds; makes arrangements with colleges and universities to transfer moneys from the Trust Fund on behalf of qualified beneficiaries; solicits and accepts gifts, including those made by will, grants, and other sources for purposes of carrying out the Trust Fund programs; and encourages participation, in the Plan, of individuals, other entities and of employers on behalf of employees and their immediate families. Charges against the fees collected and interest earned on trust fund accounts may be made in order for the State Treasurer's Office to fund the administrative costs of maintaining the trust fund accounts and in accordance with the budget appropriated by the Legislature.

3.4. The administrative fund -- An administrative account, separate from the Trust Fund and known as the Prepaid Tuition Trust Fund Administrative Account, has been established within the State Treasurer's Office to provide for the administrative costs of the program. In general, administrative fees paid by contract purchasers, along with certain other payments, reimbursements and appropriations, are designated to the administrative account and are used to defray the administrative costs of the program.

3.5. The Trust Fund -- The Prepaid Tuition Trust Fund account has been created within the State Treasurer's Office to accept moneys remitted by purchasers in accordance with the Plan contracts and moneys acquired from other private or governmental sources that are dedicated to the prepayment of college expenses.

3.5.a. All moneys deposited into the Trust Fund are invested in accordance with the Comprehensive Investment Policy of the Trust Fund, which shall be adopted by the Board. This investment policy may be amended from time to time as is deemed necessary by the Board. Contributors to the fund, contract purchasers, or beneficiaries may not in any way direct the investment of any contribution to the Trust Fund or the earnings.

§118-1-4. Application, Contract, Pricing and Payments.

4.1. Enrollment period and application -- The Plan enrollment period shall commence and terminate on dates set annually by the Board and published in the State Register. To purchase a Plan contract, the purchaser must submit, during an enrollment period, all required information on the Plan application and must also submit the application-processing fee. By completing the application and submitting the application-processing fee, the purchaser is making application to enter into a Plan contract.

4.2. Designating the beneficiary -- Unless specifically exempted, the purchaser must designate in the application one individual as the beneficiary of the contract. To be eligible for designation as a Plan contract beneficiary, an individual must have been born and must not have completed the ninth grade at the beginning of the enrollment period in which the application was received. The purchaser must certify that the beneficiary is a resident of the state of West Virginia. For purposes of these rules, a beneficiary may also qualify as a resident if that individual is the child of a non-custodial parent who resides in the state or is the designated beneficiary of a purchaser who is a resident of the state at the time of contract

purchase. The Board may require proof of residency in such form as is specified in the Plan contract.

4.2.a. An individual may be designated as the beneficiary of contracts totaling no more than the maximum plan benefit. If an individual is designated as the beneficiary of contracts totaling more than the maximum plan benefit, the Board will use the date on which the applications were received as the determining factor and will terminate the later contract(s) which place the beneficiary over the maximum benefit limit, unless a substitute beneficiary is designated by the contract purchaser.

4.3. Contract and acceptance into the Plan -- The contract shall specify the obligations, responsibilities, and liabilities of the purchaser and the Plan. The Board shall review and revise the general contract documents and cause them to be published in the State Register prior to each enrollment period.

4.3.a. The Board shall maintain the Plan contract in such form required to maintain the Plan as a "qualified state tuition program" in accordance with the provisions of U.S.C.A. §529 (1997), as amended.

4.3.b. Once a purchaser's application is accepted by the Board, other contract documents, including a participation and payment schedule and master covenant, shall be mailed to the purchaser.

4.4. Contract prices and options -- Based upon the findings of an annual actuarial and pricing study, the Board shall evaluate and set contract prices and plan options prior to each enrollment period. All contract prices and plan options shall be published in the State Register prior to each enrollment period.

4.5. Payment requirements -- Payments shall be made by the purchaser in accordance with the schedule and form described in the Plan contract. Purchasers may make payments by electronic funds transfer or cash equivalents as limited by the contract. Any public or private organizations may apply to establish payroll deduction plans. A separate accounting will be established and maintained for each contract for each beneficiary.

4.6. Default -- Pursuant to the terms of a Plan contract, failure to make timely payment of contract payments, administrative fees or actuarial assessments will result in default by the purchaser and suspension of the beneficiary's rights under the plan.

4.7. Involuntary termination -- The Board may terminate a Plan contract:

4.7.a. following a default for failure of the purchaser to reinstate a contract to good standing within the time frames established in the Plan contract, or

4.7.b. upon a finding of factual misrepresentation of information submitted to the Board on the Plan application or in any other form concerning the Plan contract, or

4.7.c. if the contract would place the beneficiary over the maximum plan benefit.

4.7.d. In the event of an involuntary termination of a Plan contract, the purchaser may be due a refund, less administrative fees, expenses and penalties.

4.8. Voluntary termination -- At any time prior to the projected college entrance date of the beneficiary, voluntary termination shall occur within thirty days of receiving written notice of a purchaser's desire to terminate a contract.

4.8.a. Following the college entrance date of the beneficiary, contracts may only be voluntarily terminated with approval.

4.8.b. Only the purchaser has the right to voluntarily terminate a contract. Requests for the voluntary termination of a Plan contract must be received from the purchaser in writing prior to the exhaustion of benefits.

4.9. Refunds -- Refunds shall be made only to the purchaser and are limited by the terms of the Plan contract. Except in cases of scholarship or the death or disability of the beneficiary, cases which are described later in this subsection, refunds shall not exceed the amount of payments made to the Trust Fund and shall be reduced by administrative fees, expenses, penalties, and actuarial assessments charged to the account and further reduced by any benefits paid by the Trust Fund on behalf of the designated beneficiary. The contract shall specify the terms of refunds in the cases of a beneficiary who dies before the contract benefits have been exhausted or of a beneficiary who becomes disabled to such an extent that the beneficiary is unable attend a postsecondary institution. The contract shall also specify the terms of refunds in the event of scholarship and of any additional categories of refunds, which may be available to purchasers. All requests for refunds must be received in writing from the purchaser prior to the exhaustion of benefits.

4.10. Contract benefits -- Plan benefits shall be specifically limited by the terms and conditions provided in the purchaser's Plan contract. In general, the Plan will pay, on the behalf of the beneficiary, the tuition and mandatory fees, at the in-state student rate, for course work at a public postsecondary institution. On the behalf of any one individual the Plan will pay no more than the maximum plan benefit. Plan benefits shall be paid directly to the postsecondary institution on behalf of the beneficiary. With advance permission, a beneficiary may begin receiving benefits up to two years in advance of the projected college entrance date pursuant to the terms and conditions listed in the Plan contract. Any difference between the actual tuition and mandatory fees of the institution at which the beneficiary enrolls and the Plan benefits paid to the institution by the Trust Fund is the responsibility of the beneficiary and is due and payable to that institution upon enrollment.

4.11. Transferability of benefits -- The Plan is designed to be flexible in order to allow beneficiaries to attend an eligible postsecondary institution of their choice. In addition to their use at public postsecondary institutions, contract benefits may only be transferred to fully accredited independent/private in-state postsecondary institutions and to fully accredited out-of-state postsecondary institutions. The Plan contract shall set the terms, conditions and methods for the transfer of benefits. The benefits transferred shall be equal to the lesser of the current tuition value or the tuition and mandatory fees at the independent/private in-state or out-of-state postsecondary institution attended by the beneficiary.

4.12. Substitution of beneficiary -- The purchaser may request a transfer of Plan contract benefits to an eligible substitute beneficiary. To qualify as eligible, the substitute beneficiary must meet the following requirements:

- (1) be a resident of West Virginia, and
- (2) be a member of the family of the original beneficiary, as further defined and limited in the Plan contract.

4.12.a. Requests for transfer of the Plan contract benefits to an eligible substitute beneficiary must be submitted in writing, be signed and notarized by the purchaser, and be submitted with documentation evidencing the eligibility of the substitute beneficiary.

4.12.b. An actuarial assessment may be charged to the purchaser when the projected college entrance date of the substitute beneficiary differs from the projected college entrance date of the original beneficiary. The actuarial assessment and any associated administrative fees must be paid in full before the substitution will be made.

4.13. Benefit limitations -- The specific terms of Plan benefits, the manner in which the beneficiary may receive benefits, and the limitations on those benefits shall be determined by the contract between the Plan and the purchaser. No contract benefits will be paid on behalf of the beneficiary before the total contract payments and administrative fees and actuarial assessments due have been paid in full. No payment of benefits will be made on behalf of a beneficiary unless the beneficiary's social security number has been submitted to the Plan. No benefits will be paid on behalf of the beneficiary following the exhaustion of benefits as defined in Section 4.14 below. In no case shall the Plan pay, on behalf of any one individual, more than the maximum plan benefit.

4.13.a. The Plan shall not in any way guarantee or imply that a beneficiary will meet the in-state residency requirement of a public postsecondary institution at the time of the beneficiary's matriculation. Any beneficiary matriculating at a public postsecondary institution who is determined by the institution to be ineligible for in-state tuition and mandatory fees is responsible for paying the difference between the contract benefit and the non-resident rates. The Plan shall not in any way guarantee or imply that a beneficiary will qualify for admission to a public postsecondary institution. No purchaser or beneficiary may pledge any portion of his interest in a Plan contract as security for a loan.

4.13.b. In any divorce proceeding, the court should consider a Plan contract purchased by either spouse in favor of the beneficiary in making any decisions regarding the continued payment of the plan contract by the purchaser. If the plan contract for the beneficiary is paid in full, then the divorce settlement or payment plan should allow the beneficiary to retain the benefit and a court order would prevent the purchaser from terminating the plan contract. The court may decide to change the specified purchaser, to the child support paying spouse, in order to make any divorce settlement or payment plans and in order to prevent any voluntary termination of the plan contract that would be detrimental to the beneficiary, a court order would prevent the purchaser from terminating the plan contract. The court should note, that the intent in buying the Plan contract by the purchaser was to benefit the beneficiary and this benefit and responsibility should not be altered by divorce.

4.13.c. The contractual obligations of the Trust Fund are backed only by the assets of the Trust Fund, and they in no way obligate the general funds of the State of West Virginia nor do they in any way obligate postsecondary institutions.

4.14. Exhaustion of benefits -- Plan benefits due the beneficiary are exhausted at such time as the Plan has provided the maximum Plan benefits allowed in the contract, or the beneficiary is awarded a baccalaureate degree, or ten (10) years has elapsed past the projected college entrance date, whichever comes first. Upon exhaustion of benefits, the contract purchaser and beneficiary cease to have any beneficial interest in the Trust Fund and all contract payments and unused benefits revert to the Trust Fund.

4.15. Limitations on Plan option changes -- A contract purchaser may request from the Plan a change to the payment schedule or other Plan option delineated on the contract only during an official contract change period, such dates to be established by the Board and published in advance in the State Register. No changes in enrollment or payment options will be allowed outside this change period except that contract purchasers may make a lump sum prepayment on an installment contract at any time with no prepayment penalty. As a condition for a change in a Plan contract to be effectuated, the purchaser may be required to pay an additional actuarial assessment, in an amount determined on a case-by-case basis by the State Treasurer's Office, to ensure the actuarial soundness of the Trust Fund.

§118-1-5. Contract Purchasers.

5.1. Contract purchasers -- Any individual, corporation or other entity may purchase a Plan contract for a beneficiary. The purchaser may designate co-purchasers, who will enjoy a right of survivorship in the event of the purchaser's death, but who will have no other contractual obligations or rights during the life of the purchaser. The purchaser may, without the consent or authorization of the co-purchaser, execute all contract changes, conversions, transfers, cancellations, and refund requests. Refunds shall be made payable to the order of the purchaser only. There is only one purchaser per Plan contract. The purchaser retains all rights regarding the contract except as limited by these rules.

5.1.a. If a purchaser terminates a contract pursuant to Section 4.8, the co-purchaser must be notified in writing. The purchaser may change the co-purchaser by applying to the Plan in writing.

5.2. Change of contract purchaser -- A purchaser may apply to the Plan to transfer ownership of a Plan contract to another purchaser provided the transfer is accomplished without consideration. All applications to change the purchaser designated on a Plan contract must be submitted in writing and signed by both the current purchaser and the new purchaser and the signatures must be notarized except in the event that the contract purchaser has died or become disabled and cannot furnish a signature. In the case of the purchaser's death or disability, the Board may allow another interested party to assume the purchaser's contractual obligation upon application of the purchaser's executor or legal representative and in accordance with appropriate provisions of the West Virginia Code.

§118-1-6. Administrative Fee Schedule.

6.1. Administrative fees and actuarial assessments -- Administrative fees are assessed to cover the associated administrative costs of program operation. Administrative fees may be assessed when the purchaser submits an application for a Plan contract and upon requests for alterations in contract information or in the ordinary services provided under the Plan, and to offset other costs associated with contract administration. All applicable administrative fees shall be defined in the contract. Administrative fees are nonrefundable. With the exception of account maintenance fees, the amount of an administrative fee is subject to change during the life of any Plan contract.

6.1.a. As is further defined in these rules and in a Plan contract, an actuarial assessment to ensure the soundness of the Trust Fund may be assessed to the purchaser to effectuate certain requested contract changes or to reinstate a contract, which is in default, to good standing. The amount of an actuarial assessment shall be determined on a case-to-case basis.

6.1.b. All outstanding fees and actuarial assessments must be paid by May 1 of the year of the projected college entrance date in order for the beneficiary to receive the contract benefits that year. Outstanding fees that have not been paid in a timely manner, as defined in the Plan contract, will place the contract in default.

6.2. Administrative fee schedule -- The Board shall annually adopt a schedule of administrative fees specifying the amount of each fee and defining the conditions of its application and cause the administrative fee schedule to be published in the State Register and to be mailed to each contract purchaser.

6.3. Waiving of administrative fees -- The Board may waive or reduce any administrative fee.

§118-1-7. Grievance Petitions.

7.1. Special petition --

7.1.a. Any person desiring to petition the Board for relief from the procedures and policies within these rules may do so by filing a petition with the Chairman.

7.1.b. The petition shall contain the name and address of the person requesting relief; the specific nature of the relief requested; the name and address of any purchaser or beneficiary on any disputed contract (if applicable); the prepaid college contract account numbers of the contract in question; the rule or policy from which the petitioner is requesting relief; the date of request; and the signature of the petitioner.

7.1.c. The Chairman has the authority to respond on behalf of the Board. The response must be in writing and must be made within 90 days of receipt of the petition from the person requesting relief.

7.1.d. Any of the Chairman's decisions may be appealed to the Board, with the Board's decision to follow at the next scheduled Board meeting. All appeals must be made in writing.

7.2. Financial hardship -- In response to a demonstrated financial hardship, any contract purchaser may file a petition with the Chairman seeking to obtain the waiver of any late fees assessed against that purchaser, or seeking to avoid the involuntary termination of a contract, or seeking to avoid the imposition of other administrative fees.

7.2.a. The Board will also entertain petitions to temporarily suspend a purchaser's participation in a Plan contract due to a demonstrated financial hardship, when such a petition is filed in order to avoid default as defined in Section 4.6 of these rules. However, in no event will the Board permit any contract purchaser to suspend payments on any contract for a period of longer than 180 days. At the end of any period of suspension authorized by the Board pursuant to a demonstrated financial hardship, the contract purchaser must bring his account into good standing within a period of thirty (30) days.

7.2.b. For purposes of this Section, the term "financial hardship" shall be defined to include any loss of employment or income by a contract purchaser or the spouse of a contract purchaser which limits or otherwise impairs the ability of the contract purchaser to make timely payments on a contract. A financial hardship will also be found to exist whenever a contract purchaser can demonstrate to the Board that medical circumstances, such as hospitalization of the purchaser or the spouse of the purchaser, that limit or otherwise impair the contract purchaser's ability to make timely payments on a contract. Proof of loss of employment or income or proof of medical circumstances cited in any petition may be required by the Board.

UNITED STATES CODE ANNOTATED
TITLE 26. INTERNAL REVENUE CODE
SUBTITLE A--INCOME TAXES
CHAPTER 1--NORMAL TAXES AND SURTAXES
SUBCHAPTER F--EXEMPT ORGANIZATIONS
PART VIII--QUALIFIED STATE TUITION PROGRAMS

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Current through P.L. 105-15, approved 5-15-97

§ 529. Qualified State tuition programs

(a) **General rule.**--A qualified State tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) **Qualified State tuition program.**--For purposes of this section--

(1) **In general.**--The term "qualified State tuition program" means a program established and maintained by a State or agency or instrumentality thereof--

(A) under which a person--

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

(2) **Cash contributions.**--A program shall not be treated as a qualified State tuition program unless it provides that purchases or contributions may only be made in cash.

(3) **Refunds.**--A program shall not be treated as a qualified State tuition program unless it imposes a more than de minimis penalty on any refund of earnings from the account which are not--

(A) used for qualified higher education expenses of the designated beneficiary,

(B) made on account of the death or disability of the designated beneficiary, or

(C) made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C)) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment.

(4) **Separate accounting.**--A program shall not be treated as a qualified State tuition program unless it provides separate accounting for each designated beneficiary.

(5) **No investment direction.**--A program shall not be treated as a qualified State tuition program unless it provides that any contributor to, or designated beneficiary under, such program may not direct the investment of any contributions to the program (or any earnings thereon).

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(6) No pledging of interest as security.--A program shall not be treated as a qualified State tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(7) Prohibition on excess contributions.--A program shall not be treated as a qualified State tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) Tax treatment of designated beneficiaries and contributors.--

(1) In general.--Except as otherwise provided in this subsection, no amount shall be includible in gross income of--

(A) a designated beneficiary under a qualified State tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary,

with respect to any distribution or earnings under such program.

(2) Contributions.--In no event shall a contribution to a qualified State tuition program on behalf of a designated beneficiary be treated as a taxable gift for purposes of chapter 12.

(3) Distributions.--

(A) In general.--Any distribution under a qualified State tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) In-kind distributions.--Any benefit furnished to a designated beneficiary under a qualified State tuition program shall be treated as a distribution to the beneficiary.

(C) Change in beneficiaries.--

(i) Rollovers.--Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred to the credit of another designated beneficiary under a qualified State tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

(ii) Change in designated beneficiaries.--Any change in the designated beneficiary of an interest in a qualified State tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is a member of the family of the old beneficiary.

(D) Operating rules.--For purposes of applying section 72--

(i) to the extent provided by the Secretary, all qualified State tuition programs of which an individual is a designated beneficiary shall be treated as one program,

(ii) all distributions during a taxable year shall be treated as one distribution, and

(iii) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(4) Estate tax inclusion.--The value of any interest in any qualified State tuition program which is attributable to contributions made by an individual to such program on behalf of any designated beneficiary

shall be includible in the gross estate of the contributor for purposes of chapter 11.

(5) Special rule for applying section 2503(e).--For purposes of section 2503(e), the waiver (or payment to an educational institution) of qualified higher education expenses of a designated beneficiary under a qualified State tuition program shall be treated as a qualified transfer.

(d) Reporting requirements.--

(1) In general.--If there is a distribution to any individual with respect to an interest in a qualified State tuition program during any calendar year, each officer or employee having control of the qualified State tuition program or their designee shall make such reports as the Secretary may require regarding such distribution to the Secretary and to the designated beneficiary or the individual to whom the distribution was made. Any such report shall include such information as the Secretary may prescribe.

(2) Timing of reports.--Any report required by this subsection--

(A) shall be filed at such time and in such matter [FN1] as the Secretary prescribes, and

(B) shall be furnished to individuals not later than January 31 of the calendar year following the calendar year to which such report relates.

(e) Other definitions and special rules.--For purposes of this section--

(1) Designated beneficiary.--The term "designated beneficiary" means--

(A) the individual designated at the commencement of participation in the qualified State tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(2)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified State tuition program purchased by a State or local government or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) Member of family.--The term "member of the family" has the same meaning given such term as section 2032A(e)(2).

(3) Qualified higher education expenses.--The term "qualified higher education expenses" means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution (as defined in section 135(c)(3)).

(4) Application of section 514.--An interest in a qualified State tuition program shall not be treated as debt for purposes of section 514.

CREDIT(S)

1997 Electronic Update

(Added Pub.L. 104-188, Title I, § 1806(a), Aug. 20, 1996, 110 Stat. 1895.)

[FN1] So in original.

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. Senate Report No. 104-281 and House Conference Report No. 104-737, see 1996 U.S. Code Cong. and Adm. News, p. 1474.

Effective Dates

1996 Acts. Section 1806(c) of Pub.L. 104-188 provided that:

"(1) In general.--The amendments made by this section [enacting this section and amending section 135 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

"(2) Transition rule.--If--

"(A) a State or agency or instrumentality thereof maintains, on the date of the enactment of this Act [Aug. 20, 1996], a program under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, a designated beneficiary, and

"(B) such program meets the requirements of a qualified State tuition program before the later of--

"(i) the date which is 1 year after such date of enactment [Aug. 20, 1996], or

"(ii) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after such date of enactment [Aug. 20, 1996],

the amendments made by this section [enacting this section and amending section 135 of this title] shall apply to contributions (and earnings allocable thereto) made before the date such program meets the requirements of such amendments without regard to whether any requirements of such amendments are met with respect to such contributions and earnings.

For purposes of subparagraph (B)(ii), if a State has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

26 U.S.C.A. § 529

26 USCA § 529

END OF DOCUMENT

1997 and 105th Congress and Public Law 105-34.

Subtitle B--Expanded Education Investment Savings Opportunities

PART I--QUALIFIED TUITION PROGRAMS

SEC. 211. MODIFICATIONS OF QUALIFIED STATE TUITION PROGRAMS.

(a) Qualified Higher Education Expenses To Include Room and Board.--Paragraph (3) of section 529(e) (defining qualified higher education expenses) is amended to read as follows:

“(3) Qualified higher education expenses.--

“(A) In general.--The term ‘qualified higher education expenses’ means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.

“(B) Room and board included for students under guaranteed plans who are at least half-time.--

“(i) In general.--In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified State tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(7), a designated beneficiary shall be treated as meeting the requirements of this clause.

“(ii) Limitation.--The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period.”.

(b) Additional Modifications.--

(1) Member of family.--Paragraph (2) of section 529(e) (relating to other definitions and special rules) is amended to read as follows:

“(2) Member of family.--The term ‘member of the family’ means--

“(A) an individual who bears a relationship to another individual which is a relationship described in paragraphs (1) through (8) of section 152(a), and

“(B) the spouse of any individual described in subparagraph (A).”.

(2) Eligible educational institution.--Section 529(e) is amended by adding at the end the following:

“(5) Eligible educational institution.--The term ‘eligible educational institution’ means an institution--

“(A) which is described in section 481 of the

Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

“(B) which is eligible to participate in a program under title IV of such Act.”.

(3) Estate and gift tax treatment.--

(A) Gift tax treatment.--

(i) Paragraph (2) of section 529(c) is amended to read as follows:

“(2) Gift tax treatment of contributions.--For purposes of chapters 12 and 13--

“(A) In general.--Any contribution to a qualified tuition program on behalf of any designated beneficiary--

“(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

“(ii) shall not be treated as a qualified transfer under section 2503(e).

“(B) Treatment of excess contributions.--If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.”.

(ii) Paragraph (5) of section 529(c) is amended to read as follows:

“(5) Other gift tax rules.--For purposes of chapters 12 and 13--

“(A) Treatment of distributions.--Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

“(B) Treatment of designation of new beneficiary.--The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).”.

(B) Estate tax treatment.--Paragraph (4) of section 529(c) is amended to read as follows:

“(4) Estate tax treatment.--

“(A) In general.--No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

“(B) Amounts includible in estate of designated beneficiary in certain cases.--Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

“(C) Amounts includible in estate of donor making

excess contributions.--In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor."

(3) Prohibition against investment direction.--Section 529(b)(5) is amended by inserting "directly or indirectly" after "may not".

(b) Coordination With Education Savings Bond.--Section 135(c)(2) (defining qualified higher education expenses) is amended by adding at the end the following:

“(C) Contributions to qualified state tuition program.--Such term shall include any contribution to a qualified State tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section) who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 529(c)(3)(A) by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph."

(d) Clarification of Taxation of Distributions.--Subparagraph (A) of section 529(c)(3) is amended by striking "section 72" and inserting "section 72(b)".

(e) Technical Amendments.--

(1)(A) The heading for part VIII of subchapter F of chapter 1 is amended to read as follows:

“PART VIII--HIGHER EDUCATION SAVINGS ENTITIES".

(B) The table of parts for subchapter F of chapter 1 is amended by striking the item relating to part VIII and inserting:

“Part VIII. Higher education savings entities."

(2)(A) Section 529(d) is amended to read as follows:

“(d) Reports.--Each officer or employee having control of the qualified State tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary."

(B) Paragraph (2) of section 6693(a) (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting "and", and by adding at the end the following new subparagraph:“(C) Section 529(d) (relating to qualified State tuition programs)".

(C) The section heading for section 6693 is amended by striking "individual retirement" and inserting "certain tax-favored".

(D) The item relating to section 6693 in the table of sections for part I of subchapter B of chapter 68 is amended by striking "individual retirement" and inserting "certain tax-favored".

(f) <<NOTE: 26 USC 529 note.>> Effective Dates.--

(1) In general.--Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1998.

(2) Expenses to include room and board.--The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1806 of the Small Business Job Protection Act of 1996.

(3) Eligible educational institution.--The amendment made by subsection (b)(2) shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

(4) Coordination with education savings bonds.--The amendment made by subsection (c) shall apply to taxable years beginning after December 31, 1997.

(5) Estate and gift tax changes.--

(A) Gift tax changes.--Paragraphs (2) and (5) of section 529(c) of the Internal Revenue Code of 1986, as amended by this section, shall apply to transfers (including designations of new beneficiaries) made after the date of the enactment of this Act.

(B) Estate tax changes.--Paragraph (4) of such section 529(c) shall apply to estates of decedents dying after June 8, 1997.

(5) Transition rule for pre-august 20, 1996 contracts.--In the case of any contract issued prior to August 20, 1996, section 529(c)(3)(C) of the Internal Revenue Code of 1986 shall be applied for taxable years ending after August 20, 1996, without regard to the requirement that a distribution be transferred to a member of the family or the requirement that a change in beneficiaries may be made only to a member of the family

**MINUTES
WEST VIRGINIA PREPAID TUITION TRUST FUND
BOARD MEETING
SEPTEMBER 18, 1997**

The West Virginia Prepaid Tuition Trust Fund Board of Trustees met Thursday, September 18, 1997, at 9:00 a.m. in the Auditor's Office Conference Room, Capitol Complex; Charleston, West Virginia. Ms. Thais Blatnik, Mr. Marty Gargano, Ms. Peggy Hawse, Ms. Twila Kirkpatrick, Mr. David Ice, Mr. William McLaughlin, members of the Board, and Treasurer John Perdue, Chairman were present. The following observers were present:

Charles Bockway, State Treasurer's Office
Brenda Jones, State Treasurer's Office
Anoop Bhasin, State Treasurer's Office
Nelson Sorah, State Treasurer's Office
Jonathan Adler, State Treasurer's Office
Steve Wilkerson, House Education Committee
John Thralls, Higher Education
Rick Kaye, Coopers & Lybrand

The agenda for the meeting consisted of the following:

Call to Order

Introductions

Approval of Minutes

Staff Reports

Nelson Sorah, Deputy Treasurer over Communications –
Public Information Activities
Anoop Bhasin, General Counsel – Patent Issue
Charles Bockway, Deputy Treasurer, over Prepaid College Plan –
Public Involvement, Federal Tax Issue, General Operational Issues

Consideration of Proposed Legislative Rule

Review public comment and act on final approval of proposed Legislative rule.

Consideration of Proposed Procedural Rule

Review public comment and act on final approval of procedural rule.

Other Business

Adjournment

Treasurer Perdue, Chairman, called the meeting to order at 9:10 a.m.

Mr. Gargano moved that the minutes of the August 8, 1997, Board of Trustees meeting be approved. Ms. Hawse seconded the motion. The motion was passed unanimously. A copy of the minutes are made a part of these minutes as Attachment No. 1.

Staff Reports

Nelson Sorah, Deputy Treasurer over Communications, reported on the upcoming locations of the Treasurer's Office display, which includes information on the Prepaid College Plan. Those who are interested in the Plan may pick up a postcard from the display and mail it to the Treasurer's Office for additional information. Mr. Sorah also distributed newspaper articles from around the state to the Board of Trustees to show the wide spread interest that the Prepaid College Plan has generated. A copy these articles are made a part of these minutes as Attachment No. 2.

Anoop Bhasin, General Counsel at the Treasurer's Office, updated the Board on the court case between College Savings Bank and the state of Florida. Mr. Bhasin reported that the case has been put on hold pending appeals. A copy of the Florida case update is made a part of these minutes as Attachment No. 3.

Charles Bockway, Deputy Treasurer over the Prepaid College Plan, reported on his public information trips, meeting with the Legislative rulemaking committee, marketing research and planning, College Savings Plan Network and other miscellaneous information. Mr. Bockway reported that he had traveled to various counties to meet with some news media and a few school superintendent offices to talk about the Prepaid College Plan. On September 14, 1997, Mr. Bockway met with the Legislative Oversight Commission On Education Accountability (LOCEA) and on September 16, 1997, he met with a marketing research consultant regarding the marketing of the Prepaid College Plan. Mr. Bockway has accepted an invitation to speak at the Public Accountants Association Conference in Charleston on October 21, 1997, and a table will be set up at the State Library Conference in Flatwoods, October 16-18, 1997. The College Savings Plan Network is following federal Legislative proposals that may

impact the tax status of prepaid college plans and is working on a position statement regarding the IRS rules and regulations. A copy of the *Director's Report* is made a part of these minutes as Attachment No. 4.

Consideration of Proposed Legislative Rule

A copy of the proposed Legislative rule, public comments and staff responses are made a part of these minutes as Attachment No. 5. Responses and actions to the comments are listed below.

Oral Comment No. 1 – Mr. McLaughlin moved to amend the Legislative rule to state in section 4.2 the following: "For the purposes of these rules, a beneficiary may also qualify as a resident if that individual is the child of a non-custodial parent who resides in the state or is the designated beneficiary of a purchaser who is a resident of the state at the time of contract purchase." Ms. Blatnik seconded the motion. The motion passed unanimously.

Oral Comment No. 2 – The Board acknowledges this comment. No action is necessary.

Oral Comment No. 3 – The Board acknowledges this comment. No action is necessary.

Oral Comment No. 4 – This comment is addressed in the response to *Written Comment No. 3*. No action is necessary.

Oral Comment No. 5 – The Board acknowledges this comment. The language of the Legislative rule already protects the beneficiary. Without objection the Board decided no action is necessary.

Oral Comment No. 6 – The Board acknowledges this comment. No action is necessary.

Written Comment No. 1 – The Board acknowledges this comment. The issue addressed in this comment will be reconsidered once the Fund is established. Without objection the Board decided no action is necessary.

Written Comment No. 2 – The Board acknowledges this comment. Investment activity is adequately discussed in section 3.1.b. and 3.5.a. Without objection the Board decided no action is necessary.

Written Comment No. 3 – Mr. McLaughlin moved to amend the Legislative rule to state in section 4.10 the following: "Any difference between the actual tuition and mandatory fees of the institution at which the beneficiary enrolls and the Plan benefits paid to the institution by the Trust Fund is the responsibility of the beneficiary and is due and payable to that institution upon enrollment." Also, add section 4.13.c. to state the following: "The contractual obligations of the Trust Fund are backed only by the assets of the Trust Fund, and they in no way obligate the general funds of the State of West Virginia nor do they in any way obligate postsecondary institutions." Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 4 – The Board acknowledges this comment. Payments to colleges will need to be worked out at a later date. The Board will work with the colleges in developing a payment system that is fair and equitable to both parties and will have this system in place prior to the time benefit payments must begin. Without objection, the Board agreed that no action is necessary.

Written Comment No. 5 – Mr. Gargano moved that the Board's response to this comment state that the Board is aware of the concern for part-time students and that the Board's intent is to research this issue. No change to the proposed rule is warranted at this time. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 6 – Mr. McLaughlin moved that the "only one purchaser" rule is adequately dealt with in section 4.13.b. No change will be made. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 7 – Ms. Hawse moved that no change is necessary to exclude "work-study employment" in the definition of "scholarship" in section 2.20. Mr. McLaughlin seconded the motion. The motion passed unanimously. (See reconsideration of this issue below.)

Written Comment No. 8 – Mr. Gargano moved that no change is necessary. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 9 – Mr. Gargano moved that the answer to this question is “Yes,” the rule take into account common market situations, and that the price is actuarially determined. No change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 10 – A purchaser may apply to the Board for an appeal from the rules, but it is not the Board’s practice to pay benefits before fees and assessments are paid in full. Ms. Kirkpatrick moved that no change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 11 – It should be the responsibility of the purchaser, not of the Plan, to remind the beneficiary of the availability of the benefits. Ms. Hawse moved that no change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 12 – Ms. Kirkpatrick moved that no change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comments Nos. 13 – 16 – Ms. Kirkpatrick moved that the Board heard and acknowledged all miscellaneous questions and that the questions are adequately explained in the rule. Mr. Gargano seconded the motion. The motion passed unanimously.

Mr. Gargano moved that the Board reconsider its action on *Written Comment No. 7*. Mr. Ice seconded the motion. The motion passed unanimously.

With regard to *Written Comment No. 7*, Mr. Gargano moved to amend the rule in section 2.20 to state “A loan or work-study employment is not considered a scholarship.” Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 17 – Ms. Kirkpatrick moved that the response to this comment is the same as the response to *Written Comment No. 3*. Mr. McLaughlin seconded the motion. The motion passed unanimously.

Written Comment No. 18 – Ms. Kirkpatrick moved that no change is necessary. Mr. McLaughlin seconded the motion. The motion passed unanimously.

Written Comment No. 19 – The Board acknowledges this comment. Ms. Kirkpatrick moved that no change is necessary. Mr. Ice seconded the motion. The motion passed unanimously.

Ms. Kirkpatrick expressed the Board's appreciation for the public comments and concerns. Mr. Gargano moved that the proposed Legislative rule be amended as discussed and agreed upon and submitted to LOCEA. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Consideration of Proposed Procedural Rule

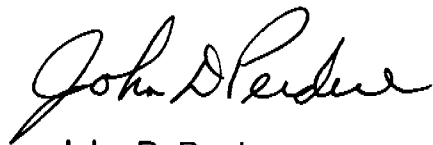
There were no public comments submitted regarding the proposed procedural rule. Mr. Gargano moved that the procedural rule be filed as proposed and that the rule be effective upon filing. Mr. Ice seconded the motion. The motion passed unanimously. A copy of the proposed procedural rule are made a part of these minutes as Attachment No. 6.

Other Business

A resolution was presented to the Board for approval regarding the investment policy of the Board in the event of the failure of Amendment 1. Ms. Blatnik moved the adoption of the resolution. Ms. Hawse seconded the motion. The motion passed unanimously. The resolution is made a part of these minutes as Attachment No. 7.

Mr. McLaughlin moved that the meeting be adjourned. Mr. Ice seconded the motion. The motion passed unanimously.

There being no further business, the meeting was adjourned at 11:50 a.m.



John D. Perdue
Chairman
WV Prepaid Tuition Trust Fund

**STATEMENT CONCERNING THE PUBLIC COMMENT PERIOD
CONDUCTED AUGUST 15, 1997 THROUGH SEPTEMBER 15, 1997
CONCERNING PROPOSED LEGISLATIVE RULE
DESIGNATED TITLE 118, SERIES 1
FOR THE STATE TREASURER'S OFFICE**

This statement addresses the following topics concerning the above titled public comment period:

1. **Copy of approved minutes of the Board of Trustees meeting held on September 18, 1997.**
2. **Oral comments received and responses to oral comments.**
3. **Written comments received and responses to written comments.**
4. **Amendments made/recorded and reasons.**

1. **A copy of the approved minutes of the Board of Trustees meeting held on September 18, 1997, is attached.**

2. **Oral comments received and responses to oral comments.**

Oral Comment #1.

Refer to Oral Comment #1 from Mr. John C. Richards attached.

Response to Oral Comment #1.

Action: Amend the rule per the proposed language.

Reason: The proposed legislative rule requires that a beneficiary must, at the time of contract purchase, be a state resident or be the child of a non-custodial parent who is a state resident. There are no similar residency restrictions on purchasers. The Board agrees with the point of the comment and feels that an amendment to the proposed rule is warranted.

Accommodating a beneficiary who is an out-of-state resident at the time of contract purchase would not materially alter any key premise of the Plan. The current rule language makes it perfectly clear that a beneficiary, who is determined to be an out-of-state resident at the time of his matriculation at a state college, must pay the difference between the Plan benefit and the out-of-state tuition. Current rule language makes it very clear that the guarantee only applies to tuition and fees at the in-state rate. This

being the case, what would be the harm in allowing beneficiaries to be out-of-state residents at the time of contract purchase? The Board, however, still feels there should be a connection between the Plan and a state resident at the time of contract purchase, but this could be taken care of by requiring that either the beneficiary or the purchaser be a resident at the time of contract purchase.

Furthermore, legislative findings in the statute clearly state that one of the purposes of the law is to increase the number of students seeking to attend higher education institutions in the state. By having more liberal residency requirements, the Plan would be open to many more potential participants. Resident grandparents should be allowed to purchase a contract for a non-resident grandchild in hopes that the child would one day attend college in West Virginia.

Amend section 4.2. as follows: "For the purpose of these rules, a beneficiary may also qualify as a resident if that individual is the child of a non-custodial parent who resides in the state or is the designated beneficiary of a purchaser who is a resident of the state at the time of contract purchase."

Oral Comment #2.

Refer to Oral Comment #2 from Mr. John C. Richards attached.

Response to Oral Comment #2.

Action: No change.

Reason: This comment did not require action.

Oral Comment #3.

Refer to Oral Comment #3 from Mr. Brian Bigelow attached.

Response to Oral Comment #3.

Action: No change.

Reason: This comment simply endorses the concept in the proposed rule.

Oral Comment #4.

Refer to Oral Comment #4 from Mr. Roland Berry Ann attached.

Response to Oral Comment #4.

Action: See *Response to Written Comment #3*.

Reason: This comment is essentially the same as and is grouped for response with the one from the State College and University System.

Oral Comment #5.

Refer to Oral Comment #5 from Mr. Roland Berry Ann attached.

Response to Oral Comment #5.

Action: No change.

Reason: The comment suggests further protection of a beneficiary's rights when the contract was purchased by a business for a dependent of one of its employees. The contract is an agreement between the purchaser and the Trust Fund. When a contract is purchased by a business on behalf of a beneficiary designated by one of its employees, the purchaser on record is the employee, and not the business, even though the business might pay for all the costs. (See section 2.19.) This is because we consider that purchase as an employee benefit. One of the legal and operational foundations of the Plan is that the purchaser owns the contract and that purchasers retain the right to change beneficiaries. A beneficiary in this case would have all the same rights as other Plan beneficiaries and is deserving of no additional protection.

Oral Comment #6.

Refer to Oral Comment #6 from Mr. Roland Berry Ann attached.

Response to Oral Comment #6.

Action: No change.

Response: This comment is an endorsement of the rule section 4.11 on the transferability of benefits.

3. Written comments received and responses to written comments.

Written Comment #1.

Refer to letter from Mr. Barry R. Pritts dated August 26, 1997, attached.

Response to Written Comment #1.

Action: No change.

Reason: The Plan described in the proposed rule purposely limits tuition savings to the amount required at state public colleges and universities. This decision was made because the similarity of state college tuition rates makes structuring a prepaid tuition plan more manageable in a financial sense. The Board believes this limitation is very important to the initial start-up of the Trust Fund. However, the Board will work with the state's independent colleges and universities to explore the possibilities of developing an appropriate savings vehicle that would meet the needs of the private schools.

Written Comment #2.

Refer to letter from Mr. Barry R. Pritts dated August 26, 1997, attached.

Response to Written Comment #2.

Action: No change.

Reason: Investment activity is adequately discussed in sections 3.1.b. and 3.5.a.

Written Comment #3.

Refer to letter from Mr. Charles W. Manning and Mr. Clifford M. Trump dated September 8, 1997, attached.

Response to Written Comment #3.

Action: Amend the rule per the proposed language.

Reason: The Board agrees that a further clarification of the responsibility of the various parties would improve the proposed rule. It is also anticipated that this subject would be dealt with clearly in the contract and disclosure documents.

Amend section 4.10. as follows: "Any difference between the actual tuition and mandatory fees of the institution at which the beneficiary enrolls and the Plan benefits paid to the institution by the Trust Fund is the responsibility of the beneficiary and is due and payable to that institution upon enrollment." Also, add section 4.13.c. to state the following: "The contractual obligations of the Trust Fund are backed only by the assets of the Trust Fund, and they in no way obligate the general funds of the State of West

Virginia nor do they in any way obligate postsecondary institutions."

Written Comment #4.

Refer to letter from Mr. Charles W. Manning and Mr. Clifford M. Trump dated September 8, 1997, attached.

Response to Written Comment #4.

Action: No change.

Reason: Specific language on this issue was purposely left out of the proposed rule. The Board has at least two years before having to make any tuition payments to schools. The Board will use this time to work with the college and university system in developing a complete tuition payment policy that is fair and equitable to both parties, and will have this system in place prior to the time benefit payments must begin.

Written Comment #5.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #5.

Action: No change.

Reason: The rule as currently written purposely limits enrollments to encourage full-time attendance because it is the intent of the Plan to encourage students to complete their degrees in an expeditious and most cost-effective manner. Plan pricing would also be based actuarially anticipating benefits being paid to full-time students. Allowing additional registrations, beyond what is proposed, could increase program costs and seriously undermine the financial soundness of our program model. The Board, however, is sympathetic with the position expressed in the comment and will commit to research further how the Plan may better accommodate part-time students.

Written Comment #6.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #6.

Action: No change.

Reason: The Board does not agree that the "only one purchaser" rule would create problems for some purchasers in divorce settlements. This issue is adequately dealt with in rule section 4.13.b.

Written Comment #7.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #7.

Action: Amend the rule per the proposed language.

Reason: The suggestion that "work-study employment" should be included in the definition of scholarship is a good suggestion. It does appear that it could protect the plan from the contention that school-provided employment is a scholarship.

Amend section 2.20. as follows: "A loan or work-study employment is not considered a scholarship."

Written Comment #8.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #8.

Action: No change.

Reason: Because the Legislature made it clear in the legislative findings section of the Prepaid Tuition Trust Act that the establishment of a prepaid tuition program is very much in the state's interest, it is wholly appropriate to expect that the Legislature might appropriate funds to underwrite administrative start-up costs.

Written Comment #9.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #9.

Action: No change.

Reason: It is unclear how common market situations, as described in the comment, would apply here. The language of this section states that the dollar amount of benefits available for transfer to a private or out-of-state institution shall be equal to the lesser of the current tuition value (a dollar amount set annually by the Plan which is the weighted average tuition found at public postsecondary institutions) or the tuition and mandatory fees at the private or out-of-state postsecondary institution. This rule section protects the financial integrity of the Trust Fund in the area of transferring benefits to a non-public postsecondary institution. The Board stated that the rule takes into account common market situations, since contract pricing is actuarially determined.

Written Comment #10.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #10.

Action: No change.

Reason: In the case of the substitution of a beneficiary, this rule does not intend to allow the reduction of Plan contract benefits by the amount of any fees or actuarial assessment due to effect the transfer. Fees and assessments due must be paid in full before the substitution of beneficiary will be made.

Written Comment #11.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #11.

Action: No change.

Reason: The contract will clearly state all terms and conditions including the exhaustion of benefits and the 10-year limitation on the use of benefits. Adding a clause requiring that the Plan make a "reasonable attempt" to contact the beneficiary prior to the exhaustion of benefits may seem fairly simple but it is unnecessary and could easily become an administrative and legal problem in determining what constitutes a "reasonable attempt." It is also

considered unlikely that a beneficiary would not know that he or she is the beneficiary of a Plan contract. It is the responsibility of the purchaser, and not of the Plan, to inform the beneficiary of the benefits purchased on his or her behalf.

Written Comment #12.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #12.

Action: No change.

Reason: This rule section does not allow a Plan administrator to abuse the levying of actuarial assessments on a contract purchaser. If a contract purchaser feels wronged, he or she has clear rights under section 7.1 to appeal decisions and to seek relief from procedures and policies within these rules. For the Plan to prosper and survive it must be known as customer friendly. There is really no likelihood that purchasers would be abused in the manner suggested by the comment.

Written Comments #13 through #16 appear to be questions, not specific comments or suggestions for rule changes, and do not necessarily require consideration or a direct answer. However, the following responses are provided.

Written Comment #13.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #13.

Action: No change.

Reason: The proposed rule does not limit the participation of families who move out of state following contract purchase. If later the beneficiary were to enroll in a state college and have to pay out-of-state tuition, the Plan would only pay an amount equal to in-state tuition and the student would be responsible for paying the difference.

Written Comment #14.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #14.

Action: No change.

Reason: The Board would want the flexibility to deal with this situation on a case-by-case basis. In no case would payments to the schools amount to more than the current tuition benefit available for that term.

Written Comment #15.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #15.

Action: No change.

Reason: The details of the administrative responsibilities of postsecondary institutions in relation to the Plan have not been determined but the Board expects they would be limited to verification of enrollment so that an appropriate payment could be forwarded. The Board expects to work with state colleges and universities through the appropriate channels to negotiate a policy fair and reasonable to both parties. Since the Plan will not pay out any benefits for the next couple of years, the Board will begin working with the colleges on a payment system once the Plan is up and running. The Board anticipates that the colleges would have no responsibility to track and report a student's academic progress to the Plan.

Written Comment #16.

Refer to memorandum from Mr. Ken Kelly to Ms. Janet Dudley-Eshbach dated September 10, 1997, attached.

Response to Written Comment #16.

Action: No change.

Reason: Administrative costs will be determined by program operational needs and will be based on sound business practices including an annual actuarial review and an annual financial audit. Like any state agency, an annual budget will be drafted and submitted to the Legislature. All budget and expense records of the Plan and Trust Fund are public documents. Since one of our objectives is to keep our Plan contracts affordable, the Board is committed to maintaining an efficient administrative operation appropriate to a

prepaid tuition program. Our Plan will not be forced upon any purchaser, but will be offered as one option that people should consider when deciding how to save for college expense needs.

Written Comment #17.

Refer to memorandum from Mr. Fred Schaupp to Ms. Janet Dudley-Eshbach dated September 11, 1997, attached.

Response to Written Comment #17.

Action: See *Response to Written Comment #3.*

Reason: The statute specifically prohibits us from committing general revenue funds of the state. To protect the state and postsecondary institutions, the contract will specify that the Plan is not backed by the state general revenue funds or the public colleges and universities. The contract, in the disclosure statement, will explain the risk that would be taken on by the purchaser. This rule comment is essentially the same as and should be grouped with the one made by the State College and University System and is addressed by the amendments to the rule sections 4.10 Contract Benefits and 4.13.c. Contract Limitations.

Written Comment #18.

Refer to memorandum from Mr. Fred Schaupp to Ms. Janet Dudley-Eshbach dated September 11, 1997, attached.

Response to Written Comment #18.

Action: No change.

Reason: This comment appears more of an endorsement of proposed constitutional Amendment #1 than a specific rule comment. By stating in the statute that the corpus, assets and income of the Trust Fund do not constitute public funds of the state, the Legislature carefully drafted the statute to prepare the Trust Fund to clear the constitutional prohibition concerning investment of public funds in corporate stocks. If Amendment #1 were to fail, the Board would allow only private funds to be deposited in the Prepaid Tuition Trust Fund account. In the event Amendment #1 fails, the Board also plans to seek a court opinion on our investment policy prior to any contracts being sold. If the Board were prohibited by the court from investing these private funds in the stock market, a complete reassessment of the Plan would have to take place before any prepayment contract were offered to the public.

Written Comment #19.

Refer to memorandum from Mr. Fred Schaupp to Ms. Janet Dudley-Eshbach dated September 11, 1997, attached.

Response to Written Comment #19.

Action: No change.

Reason: The statute has wisely placed the authority for the Plan's operation in the hands of a nine-member Board led by the State Treasurer. Surely this group of qualified individuals would not knowingly approve fees or operational policies which would be unfair to the public, jeopardize the safety of the Trust Fund or detract from the Plan's attractiveness as a college savings product.

**ORAL COMMENTS ON PROPOSED RULES FOR THE
WEST VIRGINIA PREPAID TUITION TRUST FUND**

John C. Richards, 837 McQueen Boulevard, St. Albans, WV 25177

#1

Mr. Richards would like to see a Grandparent Clause added that would allow grandparents, which are residents of West Virginia, to purchase a contract for a non-resident grandchild.

#2

The plan needs to invest in equities!

.....

Brian Bigelow, 1320 Eastern Avenue, Morgantown, WV 26505

#3

Mr. Bigelow is a former WVU student body president and is a strong supporter of the prepaid program. He is very interested in seeing it underway.

.....

Roland Berry Ann, Route 6, Box 297A, Morgantown, WV 26505

#4

In section 3.1.b. of the legislative rules, what would happen if the Trust Fund did not meet the goal of yielding, at a minimum, sufficient income to generate the difference between the prepaid amount and the cost of in-state tuition and mandatory fees at the time of actual enrollment of the beneficiary? Moral obligation by the State of West Virginia?

#5

Should be a safeguard added for beneficiaries when a corporation purchases a contract for its employees as a benefit.

#6

The transferability of benefits (in-state and out-of-state) is fantastic!

SALEM - TEIKYO UNIVERSITY

223 West Main Street
P.O. Box 500
Salem, West Virginia 26426-0500

OFFICE OF FISCAL AFFAIRS

August 26, 1997

Mr. Charles Bockway, Deputy Treasurer
Director of Prepaid Tuition Trust Fund
State of West Virginia
Office of the State Treasurer
Charleston, WV 25305

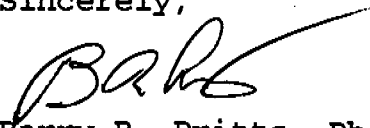
Dear Mr. Bockway:

I have reviewed the information about the Prepaid Tuition Trust Fund and wish to make the following comments:

- #1
- 1) Although I am pleased to see that the private, independent institutions have been included to participate in the West Virginia Prepaid Tuition Trust Fund, I would prefer that families interested in participating in the savings program be permitted to contribute larger sums of money in order to save sufficient funds to attend private institutions in West Virginia.
 - #2 2) There is nothing within the package that talks at all about the investment plan for these funds. In my research about the trust funds which have been set up in other states, one of the key elements to ensure success relates to the vehicles used for investing these funds.

I am enclosing a brief research paper that I put together last year which surveys current literature on the subject of prepaid tuition programs. This is a subject in which I am very interested and would be happy to be nominated to serve on the Trust Fund Board, if appropriate. I applaud your efforts in having developed the prepaid trust fund concept and I wish you every success in its implementation.

Sincerely,


Barry R. Pritts, Ph.D.
Vice President for Finance,
Admissions & Auxiliary Services

Enclosure

COLLEGE TUITION PREPAYMENT PROGRAMS:
AN INCENTIVE TO SAVE?

BARRY R. PRITTS
SALEM-TEIKYO UNIVERSITY
SALEM, WV
DECEMBER 3, 1996

INTRODUCTION

During the 1980's, tuitions and other college charges increased faster than the rate of inflation or family income, while the growth in state institutional support and student aid availability slowed down. Tuition at both private and public institutions increased almost twice as fast as inflation, at about 10 percent, compare to a 4 percent increase in the price of food and new cars and 7 percent increases in the median price of a new house. (Hauptman, 1990).

A Brookings Institution study demonstrated that federal funding for campus programs fell by almost 20 percent during the 1980's, while student aid support provided from their own funds increased rapidly, especially at private institutions. Student aid actually peaked at about 40 percent of total cost during the late 70's and declined to about 30 percent in the early 80's. (Hauptman, 1990).

Grant aid dropped substantially during the 1980's, while loan percentages more than doubled. Meanwhile, the maximum Pell Grant and maximum federally backed loan amounts have declined substantially as a percentage of the average total cost of attendance, in both public and private institutions. The Pell Grant dropped at private institutions from about 1/3 of the cost of 1975 down to 1/5 of the cost in 1987. Meanwhile a government loan covered more than 1/2 of the total cost of attendance in 1975, but less than 1/5 of the cost in 1987. (Hauptman, 1990).

According to a recent study by the University of Pennsylvania Institute for Research on Higher Education, the success of sustained tuition increases used by colleges and universities to fill the fiscal gap now promises to become self defeating, because of political resistances to these tuition hikes by middle income families who are afraid that colleges are being priced out of their reach. The study concludes that private colleges and universities have subsidized student financial aid by "recycling" tuition revenues, thus, redistributing the tuition burden by supporting students of fewer means with the tuition dollars of those who pay the full price. Some institutions have also mounted private fundraising campaigns to bring financial assistance.

The average tuition for private four year institutions in 1991 was \$9,391.00. It has risen since that time at a rate of between 5 to 7 percent per year, to a level of a \$11,709.00 in 1995. (University of Pennsylvania, 1996).

Tuition will likely triple in cost by the year 2010, if the 7.7% annual growth rate continues. Therefore, parents are advised to begin to save for college, before the student reaches the age of 14. (Gunn, 1995).

FAMILY NEED TO SAVE

Participation rates among traditional college-age youth have increased slightly over the last 10 years. Also, the number of non-traditional students has increased. However, the number of college age traditional students has actually declined during the 1990's. Meanwhile, federal student aid legislation is meant to increase the participation rates of economically disadvantaged students and minority groups. However, the percentage of minority students participating in higher education seems to be falling. Therefore, there is a major emphasis on middle income families. (Hauptman, 1990).

According to a recent U.S. News and World Report article, there is an emerging widening gap in enrollment between rich and poor students that the nation has struggled with for 3 decades. The rise in tuitions has more than doubled the rate of inflation, and the Department of Labor and Department of Education agree that sending a student to a private college in 1996, without any grants or loans, requires more than a third of a typical family's income and nearly two-thirds of the income of a working poor family.

According to Rothschild, (1992), college prepayment and savings plans can increase a family's resources and financing for college education, and reduce the need for more expensive forms of student aid. However, all types of plans have some drawbacks and might not be appropriate for all families. There appears to be some conflict between satisfying the interest of all the parties concerned.

The American Council on Education recently reported that fewer colleges in the 1990's reported increases among black and Hispanic students, who are less able to pay for college. Also, at least 40 percent of full-time students are forced to work while they go to college. (U.S. News, 1996).

Beddingfield (1996), advised families to try to be able to meet the high cost of higher education without applying for any aid. Through developing a realistic savings program that started early in a student's life, financial experts recommend growth oriented mutual funds. U.S. Treasury zero coupon bonds and U.S. Treasury EE bonds are good options for starting a college investment portfolio.

Kiesler (1994), suggested that parents today tend to think more of the college education expense as a budget item to be paid out of the current year's income, rather than as a financial investment on behalf of the child. He noted that many parents will maintain a variety of high cost assets including country club memberships and vacation homes, but save nothing for the child's college education. He recommended that parents consider that the cost of an education is normally no more than 25 to 30 dollars a day, for the 4 years. This equates to roughly the

price of a cheap hotel room, although the student receives room board, books, fees, spending money, travel home, membership in student organizations, free seats to athletic events, access to a library, concert tickets, popular entertainment, and a variety of unique friends along with a college degree. (Kiesler, 1994).

Financial aid increasingly means loans, not scholarships or grants. The shift from grants to loans is nationwide and has been going on for at least the last decade. Meanwhile, parents and students have become much more knowledgeable shoppers, and are looking for bigger discounts. (Morganthau and Nayyar, 1996).

In 1995, \$34.6 billion in federal, state, and institutional financial aid was awarded. This is 5 percent more than the year before. Unfortunately, the bulk of all aid takes the form of loans, and as tuition rates climb, student borrowing climbs even faster to meet the rising price of a degree. (Beddingfield, 1994).

Grant money is essential, in many cases, with schools competing fiercely for top-notch students. This means that even affluent families expect some type of discounting. (Beddingfield, 1994).

Carnegie Mellon University has developed a policy to let families know they welcome appeals to their student aid awards. They sent letters last spring to prospective students, telling them they want to be competitive, and asking them to send a copy of offers made by other schools. (Beddingfield, 1996).

Affluent families often will pay the sticker price for tuition. Less affluent families and families with more than one college bound child may receive a substantial price break. (Morganthau and Nayyar, 1996). The authors drew an analogy to this phenomenon with airline fares where a plane may be full of passengers, but none of them paid the same price for a ticket.

According to Brimelow (1994), Colleges deliberately gouge affluent families by setting tuitions as high as they can and then providing discounts. The author suggested that many families do not save, because assets and college savings have a negative impact on eligibility for financial aid.

Escalating college costs, combined with reduction in federal grant assistance, and inability of middle income families to save money, have brought about a variety of public and private sector plans to help parents prepay their children's postsecondary education. These financing mechanisms usually take the form of tuition prepayment plans, college saving plans, and combination guarantee and savings plans. (Rothschild, 1992).

THE FINANCING CHALLENGE

Fairley (1996) stated that there are two ways, aside from loans and financial aid, to pay for college. These included saving money through cash value life insurance and prepaid college tuition plans. The author described a prepaid college program in the state of Florida wherein the money is invested in equity stocks and bonds by a non-profit organization. The return on the investment is used to pay for increases in college tuition cost, during the term of the contract. Generally, the younger the child is at the time the contract is purchased, the less college will cost when that student becomes college age. The contracts are valid for ten years or until a student's expected enrollment date. The plan includes three payment options--lump sum payment, five monthly installments, or monthly installments for up to eighteen years, which can be as low as \$47 depending on the child's age. There is a \$10 per month late fee. In the case of hardships, the late fees can be forgiven.

Tax legislation enacted in 1986 permitted tax sheltered savings, through single premium life insurance policies. Under this program, a single premium pays for a life insurance policy and the cash value on that policy is allowed to accumulate tax free. Individuals can take loans against the cash value at little or no interest to be used for their children's education. (Hauptman, 1990).

Uniform transfers to minors accounts as well as trusts could be good ways to invest. There are other funds available for young investors, where the actual investments are in firms with which the child can relate, such as Coca-Cola or McDonalds. (Gunn, 1995).

Additional legislation has been proposed which would enable families to set up educational savings accounts similar to individual retirement accounts (IRA'S). Others have suggested that families should be permitted to withdraw, without penalty, funds accumulated in their IRA to pay for college expenses of children. An additional suggestion has been made that tax should not build up on US Savings Bonds if it is used to pay for college expenses. Senator Edward Kennedy of Massachusetts has taken the lead in the sponsorship of some of this legislation over the years. (Hauptman, 1990). However, some economists claim that tax incentives for saving money are not equitable for all since only the rich are the ones that can afford to save. (Hauptman, 1990).

According to Hauptman (1990), organizations interested in developing incentives for college savings are faced with the decision of whether to go with the straight savings approach, or to provide a guarantee against future tuition increases. The more popular method seems to be a combination of a savings plan with some form of a guarantee. One such plan is known as the College Sure CD, first offered in 1987, by the College Savings Bank of Princeton, New Jersey. This program bases the return on

the face value of the certificate in line with increase of college tuition while the certificate is held, as measured by an index of college tuition. However, in order for a family to become eligible, they must pay a premium or fee based on the projected time till the child is ready to enroll in college. (Hauptman, 1990). The Massachusetts plan is similar in nature to the College Sure CD program that is administered through the state, rather than through the private sector.

Olivas (1993), suggested that parents have a psychological need to invest in a college education for their children. This will increase the possibility of having families sign up for such a plan.

Tuition prepayment programs have been compared to commodities futures wherein parents guess at how much tuition will be when their children become college age. Analogies have also been made to a defined benefit plan. The future payment of tuition will be made irrespective of how well the fund performs. (Hauptman, 1990).

The idea of a tuition futures option permits parents to have a certain amount of insurance that they can pay for their children's education. However, there is always the risk that the student will not attend a covered college and, therefore, the family will forfeit some amount of earnings as a penalty. Some have suggested that prepaid tuition plans provide a means for preserving the historical tuition subsidies for the wealthy. In low tuition states as these subsidies have declined, because of scarce public resources.

One drawback to a prepaid tuition program is that it can significantly decrease eligibility for financial aid from other sources, since expected family contributions are derived from consideration of income and assets. The program is better suited to middle and upper middle income families. (Davis, 1995).

Olivas (1993), demonstrated that wealthier families tended to participate in established prepayment plans. In addition, lump sum investments were preferred over monthly installments.

According to Button and Koselka, (1994) tuition fee payment programs are thriving and represent an officially sanctioned raid on the federal treasury in the form of a disguised subsidy to higher income families.

(Hauptman, 1990), noted that non-participants in the a prepayment plan would end up paying more in the form of higher tuition, in order for institutions to make up for lost revenues.

Olivas (1993), suggested that the purchaser of the prepaid tuition contract for a prospective student, who was only 5 years

old, would not object to paying 5 percent more than today's tuition price. They would be motivated by the idea of the guarantee that the tuition would be paid, no matter what the actual price was at the time of college enrollment.

According to Olivas (1993), it is important to provide the opportunity for voluntary termination and the retrieval of all principal, by any contributing family. The author stated that participation would be discouraged by requiring long term investments without any possibilities of early withdrawal.

The gap between gross tuition and fees, and net tuition and fees, after removing unrestricted aid is quite small in the public sector, whereas the gap is noticeably larger in private institutions. This is especially true for institutions in the lower 2 quartiles. (Jenny and Minter, 1994).

CONSIDER NET TUITION

According to Kiesler (1994), if tuition were held constant for 5 years, need based aid still would rise by 50 percent, because institutions base total financial aid packages on the total cost of attendance, rather than direct cost.

Kiesler (1994), noted that the cost of certain items that make up the total operating budget of the institution are escalating much quicker than the rate of inflation especially the price of scientific journals and research products. Kiesler also noted that the quest for diversity and recruitment of lower income students from less affluent backgrounds, puts an additional burden on the institution. This is happening at the same time that federal investment in indirect cost is decreasing, while the cost of keeping up with technology and deferred maintenance continues to soar.

Some institutions, such as Harvard, Yale, and Princeton have made conscious efforts to hold tuition increases below 5 percent. Competitive professor salaries, scarce public dollars, and the high cost of technology are contributing causes. At the same time, some schools are attempting to reduce their expenditures in order to hold tuition levels even. In extreme cases some schools are even cutting their tuition, such as Muskingham College in Ohio and North Carolina Wesleyan College who reduced rates by 29 and 23 percent, respectively.

According to Thompson (1996), the schools really did not cut the tuition, but instead stopped the old practice of discounting. The college of New Jersey got on the annual list of Money Magazine's, best college values by slicing its excess programs and declaring that a quality education could be achieved for about \$10,000 a year. (Thompson, 1996).

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The college of New Jersey got on the annual list of Money Magazine's, best college values by slicing its excess programs and declaring that a quality education could be achieved for about \$10,000 a year. (Thompson, 1996).

The average cost per year at a private college or university is \$17,631.00. Only a relative handful of affluent families whose children attended prestigious schools actually pay the full cost. The total cost of going to college has nearly doubled in the past ten years. This is more than twice the rate of inflation. Although high, the tuition and fees listed by most elite colleges do not cover the full cost of educating undergraduates. (Morganthau and Nayyar, 1996).

According to Jenny and Minter, (1994) higher education managers need to study their own institution's long term picture and analyze its meaning in terms of the institution's financial health. The author suggested that an institution should develop ratios between revenues and costs, after taking out institutional aid.

Olivas (1993), urged college administrators to think of prepayment plans as a means for establishing a built-in constituency. It has been suggested that alumni and friends of a particular institution would be most inclined to participate with an institution.

From the college prepayment plan administrator standpoint, it is only important that the investments over the long term at least equal the rate of tuition inflation. It is important to remember that certain investments, especially in the stock and equity area, can be very risky. Some other investment instruments, such as real rate or real return instruments, including certificates of deposit, real return bonds, and real return mortgages should be considered (Olivas, 1993). Utilities and residential and commercial real estate are also possibilities. The diversified portfolio of long term inflation-adjusting data instruments will help hedge the inflation risk, (Olivas, 1993).

THE IRS

Tax free growth is a major and important factor in a prepayment plan. Any earnings are taxed to the child, at his or her low tax rate, and not to the contributor. This program has become available to families in West Virginia as a result of a legislation enacted as part of the Small Business Job Protection Act of 1996. The Qualified State Tuition Program is defined in 20 USCA, Section 1141. Salem-Teikyo University would be a qualified eligible education institution. (Belcher, 1996).

The IRS Private Letter Ruling 8825027, explains that receipt of educational services is income to the extent that the value of education received exceeds the original cash payment to the

institution. This has negative tax consequences in the case of a trust. Also, transfers paid on behalf of an individual as tuition are generally exempt from gift tax, but a college tuition prepayment program does not qualify for the exemption, because the payments have to be made directly to an educational institution. (Anderson and Doudna, 1996).

According to Olivas (1993), Wyoming actually sold the first prepayment contract in 1986. At that time the state of West Virginia also was working on making a program operational.

STATE PLANS

Prepaid tuition plans are currently available in Alabama, Alaska, Florida, Massachusetts, Michigan, Ohio, Pennsylvania, Texas, and Virginia. In other states some individuals are turning to cash value life insurance policies as a means to save money to pay for college. Permanent, whole-life, and universal life policies are forms of cash value life insurance. It is important that a participant not let the insurance policy lapse, because they will lose tax benefits, and access to earnings through a loan. Parents can access their tax deferred earnings and still allow the remaining balance to accumulate on a tax deferred basis. (Fairley, 1996).

Also, early State plans ran into problems with the IRS in determining the taxation on earnings. (Davis, 1995). Some State prepayment plans have done better than others. For example, the Florida State Plan has achieved an average annual return of 8 percent during the bull stock and bond markets of the past few years. This exceeds the average rate of tuition increase. Alabama had done even better at a rate of 9.3 percent compared to tuition increases averaging 7.1 percent. In some years it had reaped returns up to 11.2 percent. However, in 1994, it posted only very minimal returns, at only 1.4 percent during the first 9 months of 1994. (Button and Koselka, 1994).

The State of Florida prepaid college program allows the coverage of dormitory fees, in addition to tuition charges. The plan is guaranteed and backed by the State of Florida, and can be used in 9 State universities or 28 State community colleges, and can be transferred to over 30 participating private institutions. (Rothschild, 1992).

In Florida, the state guaranteed it would honor the contract of all students who are participating, and within 5 years of enrollment if the plan fails. Anyone who is not within the 5 year limit will get their money back at a rate at least equivalent to passport savings. (Button and Koselka, 1994).

State plans vary in participation, from less than 700 participants in Wyoming, up to more 325,000 contracts in Florida. The drawback to the Florida plan is that it is like taking out a car loan complete with a book of payment coupons. The only way

to stop paying is to drop out of the plan and withdraw the principle. Also, since the plan is designed to cover public university tuition costs. It only makes a small dent in the total cost for attending a private institution. Some other states including Massachusetts, Ohio, and Pennsylvania have structured their programs so that families may purchase tuition units, as many or as few as desired, and as frequently as the family wishes. This flexible plan seems to be working better. (Davis, 1995).

In the Florida plan, parents earn a return on a five year contract of about 7.2 percent, with a lump sum payment, and 7.1 percent with the installment plan. (Davis, 1995).

The Michigan program initially priced its prepaid tuition contracts at up to a 25% discount on current tuition rates, and made an assumption of a 9.75% projected income. The Michigan Plan, like the Duquesne University Plan, had overestimated its returns. (Button and Koselka, 1994).

In 1994, a federal panel of judges ruled that the Internal Revenue Service could not hold Michigan's prepaid program subject to federal income tax. It was anticipated that this discussion would spark the development of more prepaid programs in number of other states. (Connor, 1994).

A recent USA Today magazine article noted that the Michigan State Plan initially was ruled to not be a tax exempt organization by the Internal Revenue Service. The Court of Appeals ruled that the IRS could not tax the plans earnings. However, the student could be taxed on the difference between the amount the family paid into the plan and its later value when the student uses it to pay the tuition. Another possible disadvantage is that the program only covers tuition, and not room and board or other fees. Also, it is best to determine whether beneficiaries can be substituted.

In Massachusetts, parents purchase tuition certificates, which are really Massachusetts general obligation municipal bonds designed to accrue interest at the rate of inflation plus 2 percentage points. Participating colleges have agreed to accept the certificates even if the actual tuition costs are higher. The plan also includes private schools, and earnings are tax exempt. (Davis, 1996).

Davis (1995), noted that the State of Ohio allowed individuals to transfer savings through the Ohio State Prepaid Tuition Trust Authority to private institutions, although, the Trust was originally established for the state's 13 public 4-year colleges.

Duquesne University, in Pittsburgh, offered the first tuition guaranteed program in 1985, offering Alumni and others the opportunity to pay current market prices for future

guaranteed tuition. Duquesne suspended the plan 3 years later, citing unfavorable economic conditions. (Rothschild, 1992).

THE PRIVATE SECTOR

Other programs were introduced in 1991 by Indiana University and the Phillips Academy in Hanover, Massachusetts.

In 1989, the first nationwide tuition prepayment program operated by the college prepayment fund of the State of Maryland, became operational. Working in cooperation with the National Bank of Detroit, the program allowed participation with an initial payment of at least \$1000, and the parents were taxed annually on the interest only, although, they can withdraw the principal and interest earnings at any time without penalty. (Rothschild, 1992).

The Washington University in St. Louis and the University of Southern California established prepayment plans wherein families could front load 4 years of tuition. Once the student was accepted for admission, there would be no increasing in tuition. The number of institution that now offer prepayment plans as part of their package of financing options has increased substantially, especially in the private sector. (Hauptman, 1990).

The University of Pennsylvania has aggressively combined tuition prepayment with loans, offering multiple options and a substantial lending operation, making it possible for parents to borrow nearly all the funds they need to cover 4 years of tuition prepayment. (Hauptman, 1990).

According to Rothschild, (1992) although private sector plans allow parents to choose among college and universities nationwide, there is a certain amount of gamble involved, because the institution, especially the smaller ones, might change substantially over the years. The institutions also are taking a risk, because they might underestimate future tuition and become liable for the shortfall between what the parents prepaid and the actual cost.

College savings plans usually use State and City college savings bonds and federal savings bonds in an attempt to maintain safe and conservative investments. There are also, however, problems associated with being too conservative and not paying a high enough rate of interest. (Rothschild, 1992).

THIRD PARTY VENDORS

One group that offers services to the general public and to academic institutions, from the area of financial aid to development is the United College and University Network (UCUN). This is an organization composed of a number of colleges and universities who have a reciprocal agreement wherein students who

have been participating in the savings program may elect to go to a different school than originally designated and carry their savings benefits with them to the new school. Students can also move all of their savings principle to a school outside of the network, but forfeit substantial portions of their earnings. Separate programs have been established for students under 14 years of age and those in the 14 to 18 age bracket. (Crantz, 1996).

Another program is known as the Student Aid Through Guaranteed Earnings (SAGE) Scholar Program. This program allows the institution to recapture a portion of its discounted tuitions through compounded interest returns from the investments. Families must make an initial investment of at least \$5,000 and the maximum total investment can not exceed \$50,000. This program, managed by the Chase Manhattan Bank and with the U.S. Trust as the trustee, makes certain guarantees to both the student's family and the institution. (Crispin, 1995).

LATE DEVELOPMENTS

Recently, Republican Presidential candidate Bob Dole endorsed the idea of a tax-free and tax-advantaged prepayment plan. Some congressional representatives expected that the popularity of programs would increase. (Wall Street Journal, 1996).

President Clinton signed a bill in August, 1996, which exempted prepayment programs from being taxable. The director of the program in Texas suggested that the new statute would cause a flood of bills in state legislatures to create programs, and provided new confidence to the states. (Healy, 1996).

Some individuals have recommended a federally sponsored program which would give participants a greater choice of institutions, since it would not be limited to specific states. (Hauptman, 1990).

Nationwide, over one-half million families have begun to pay tuition in advance. Six states currently have prepaid tuition plans, and Texas and Virginia plan to launch programs in 1996. (Davis, 1995).

According to Button and Koselka, (1994) college prepayment plans are just what the country needs, and are another middle class tax subsidy. Meanwhile, Arkansas, Louisiana, Virginia, and Pennsylvania are all developing enabling legislation in consideration of the need to provide tax advantaged opportunities for families.

WEST VIRGINIA

According to Mr. Bill Belcher of Steptoe & Johnson in Clarksburg, West Virginia, the State of West Virginia set aside

\$50,000, five years ago in order to begin a tuition prepayment plan. The State of Michigan program was not favorable and did not have tax advantaged legislation. Each parent was required to file a form 1099 with the IRS for all the interest earned. Mr. Belcher reported, that any program imposed by a college or university in West Virginia must be supported by the State, and administrated by the State, as defined under the 1995 legislation.

According to a recent interview with Mr. David Moore, of The West Virginia Secretary of Education and The Arts Office, Secretary Barbara Harman Shamberger and State Senator Oshel Craigo, of Putnam County, have taken an active interest in West Virginia adopting a tuition prepayment program. An earlier piece of legislation enacted in 1988, under Chapter 18, Article 30 of the State Code, called the West Virginia Higher Education Tuition and Trust Act, had intended to establish a program in West Virginia. However, the legislation expired by law January 1, 1992, because of worries at the state level about the ability of the investments to keep pace with the rate of escalations of college tuitions. The 1988 scandal involving the West Virginia Treasury's Office, also contributed to the lack of program follow-through.

Mr. Moore also mentioned that the recently-proposed legislation contained two investment options, wherein, individuals could participate in a program aimed specifically at the public Colleges and Universities, or could participate in an institutionally neutral program. It had been proposed that the major investment vehicle would be through small denomination bonds, split between school building authority and/or through Series E Savings bonds. Mr. Moore suggested that the Treasurer-elect and the Putnam County Senator might lead the way in development of a new program proposal during the next legislative session. However, it does appear that West Virginia will not have a program available at the State level for at least the immediate future. Mr. Moore also suggested that West Virginia might be interested in a program patterned closely around the State of Georgia Plan, where a certain amount of lottery proceeds have been set aside to help underwrite the program.

State College and University Systems of West Virginia

Central Office

**Clifford M. Trump, Chancellor
State College System of West Virginia**

**Charles W. Manning, Chancellor
University System of West Virginia**

September 8, 1997

**The Honorable John D. Perdue
Office of the State Treasurer
State of West Virginia
Building 1, Room E-145
State Capitol
Charleston, West Virginia 25305**

Dear Treasurer Perdue:

We are writing in reference to the legislative rule for the West Virginia Prepaid Tuition Trust Fund.

The State College and University Systems appreciate the leadership you have provided in developing a program designed to help West Virginia families handle college expenses in a more planned and systematic way. We believe a properly designed college savings program will be a very valuable vehicle to encourage appropriate family planning for meeting college expenses.

In Senate Bill 70 which was passed earlier this year, there was language which stated that "The Legislature finds and declares that prepaid tuition trust fund contracts neither contain nor obligate any general revenue funds". Additional language says that "There shall be no obligation of the State general revenue funds to the trust fund for any purpose whatsoever". This seems to make it clear that the State is not obligated to cover any shortfalls which might occur in the Prepaid Tuition Trust Fund. While public colleges and universities are generally supportive of additional college savings options, we are deeply concerned about any provision that would create an unfunded liability for our institutions in the future. We believe it is very important that the West Virginia Prepaid Tuition Trust Fund be governed by legislative rules which do not obligate our institutions to either allocate additional resources or adjust tuition and fee rates to offset any shortfall which might occur in Trust Fund earnings.

To ensure that our colleges and universities do not face financial obligations which might compromise our long-term financial viability or adversely affect bond ratings in both the near term and future, we believe that the legislative rule which governs this program should be explicit in terms of removing any potential for financial liabilities on public higher education. We recommend the insertion of the underscored language in the rule as follows:

Treasurer Perdue
September 8, 1997
Page Two

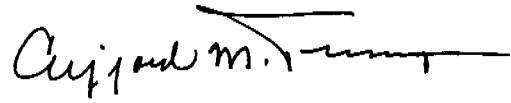
#3 4.10 Contract benefits - Plan benefits shall be specifically limited by the terms and conditions provided in the purchaser's Plan contract. In general, the Plan will pay, on the behalf of the beneficiary, the tuition and mandatory fees, at the instate student rate, for course work at a public postsecondary institution. Any difference between the actual tuition and mandatory fees of the institution at which the beneficiary enrolls and the Plan benefits paid to the institution by the Trust is the responsibility of the beneficiary and is due and payable upon enrollment. No guarantee or call on the funds of the State higher education institutions shall be pledged or controlled to ensure the solvency of the plan. On the behalf of any one individual the Plan will pay no more than the maximum plan benefit. Plan benefits shall be paid directly to the postsecondary institution on behalf of the beneficiary before or on the first day of enrollment each semester or quarter. #4 With advance permission, a beneficiary may begin receiving benefits up to two years in advance of the projected college entrance date pursuant to the terms and conditions listed in the Plan contract.

Thank you for providing the opportunity for comment on this very important legislative rule.

Sincerely,



Charles W. Manning



Clifford M. Trump

CWM/CMT/cla

cc: The Honorable Lloyd Jackson
The Honorable Jerry Mezzatesta
State College and University Presidents

**PRESIDENT'S OFFICE
Fairmont State College**

Fairmont, WV 26554

Telephone: 304/367-4151

Fax No.: 304/367-4580

Facsimile Cover Sheet

DELIVER TO: Anoop K. Bhasin

FROM: Janet Dudley-Eshbach

DATE: September 15, 1997

Phone: (304) 367-4151

Fax: (304) 367-4580

No. of Pages Including Cover: 5

Comments:

Attached are comments on the proposed Prepaid Tuition Trust
Fund from Executive Staff at Fairmont State College.



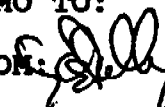
FAIRMONT

STATE COLLEGE

Office of the Vice President
for Student Affairs

September 10, 1997

MEMO TO: Janet Dudley-Eshbach

FROM:  Ken Kelly

SUBJECT: COMMENTS - PREPAID TUITION TRUST FUND

As you requested, I have reviewed the procedural rules for the new W.V. Prepaid Tuition Trust Fund, as has Bill Shaffer. The following consolidates our joint comments, organized by section of the document. I met briefly with Fred Schaupp and Chris Morgan this morning about this, and Fred will be submitting to you several additional comments.

In general, the procedural rules seem to effectively address most contingencies, but there are a few areas where clarification would be helpful.

#5 2.13 - Part-time students may run into difficulty with the 8 or 10 semester limitation on plan benefit payments; many of them take more than five years to graduate. This should be addressed.

#6 2.19 - The "only one purchaser" limitation will create problems for divorced parents, especially those who share joint custody of their children. Provision should be made to address these situations.

#7 2.20 - The definition of "scholarship" should also explicitly exclude work/study pay or other employment compensation; the last sentence should read, "A loan or work-study employment are not considered a scholarship."

#8 3.4 - Is it really likely that appropriations will be made to support administrative costs? I would expect opposition from at least some legislators, as taxpayers would be asked to subsidize a program which only benefits those who opt to participate in this program rather than to support their local banks and fiscal institutions by depositing their savings there in their local communities.

(2)

#9 4.11 - Does this section take into account common market situations? If so, how would the value and monthly amount be set in the contract to accommodate projected differences in and increases in tuition rates?

#10 4.12 - Can the payment of all outstanding costs be made by reducing accumulated benefits?

#11 4.14 - A "reasonable attempt to notify beneficiary" clause should be added, to ensure that forfeiture of benefits after 10 years does not occur without notification. Presumably the parent of a student who elected not to attend college or who dropped out or flunked out could exercise the voluntary termination clause, but there might be situations in which the student was not aware that a contract and pending benefits existed, especially if their parents died suddenly and the student had not been informed of the parents' participation in the plan. Many students do not enter college right after high school, but then later become non-traditional students; such students need to be kept informed that plan benefits await them.

#12 6.1.a. - The formula to be used in the actuarial assessment should be specified - otherwise this clause allows arbitrary treatment of individual situations and leaves the plan open to the potential for abuse and/or discriminatory application.

Misc. items:

#13 What about parents who move out-of-state after they have begun payments into the program? Can they continue to participate in the plan, even though their son/daughter would be likely to have to pay out-of-state tuition when they matriculate?

#14 How will payments be handled in consortium agreements with out-of-state schools where the student is enrolled in-state toward a degree, but for various possible reasons, is taking one or more classes at another out-of-state school?

#15 What are the institution's administrative responsibilities regarding verification of enrollment status, satisfactory academic progress, etc.?

#16 How will the administrative cost allowance be determined? (If cost is too high, this program may not be financially competitive, as other external savings programs may yield a higher return on moneys deposited.)

deposited.)

cc: Fred Schaupp
Bill Shaffer
Chris Morgan



FAIRMONT

STATE COLLEGE

*Office of the Vice President
for Administration and Finance*

September 11, 1997

MEMORANDUM

TO: President Janet Dudley-Eshbach

FROM: Fred Schaupp *FS.*

SUBJECT: West Virginia Prepayment Tuition Trust Fund

I have met with Dr. Kelly to discuss and critique the procedural rules for the West Virginia Prepayment Tuition Trust Fund. Dr. Kelly will be sending his comments under separate cover.

There is an array of questions unanswered concerning procedural minutiae, i.e., can more than two people initiate a fund for one individual, do all colleges have to participate, etc. Of a more general nature, however, the following are pivotal questions that must be addressed:

- #17
1. Should there not be sufficient monies generated during the life of the trust fund for a particular individual, who makes up the difference? That is, if the trust fund only generates a return of 5 to 6 percent and the cost of tuition and fees increases by a greater rate, who makes up the difference? Will the shortfall have to be absorbed by the schools and/or State? There needs to be more definitive language to assure that the colleges and/or the State of West Virginia do not have any fiscal responsibility.
 2. Under current West Virginia State law, state trusts are statutorily obligated to invest holdings in bonds; consequently, the return to this fund will be relatively low compared to other trusts that exist in the open market. Given the recent revisions to the Federal income tax statute, parents are now able to invest in sheltered education designated equity trusts. As you know, the rate of return to stocks has historically been higher than bonds. Consequently, a rational, economic person would not invest in the State's trust when there are other trusts that are equity based and would pay a higher rate of return. It is imperative that
- #18

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President Dudley-Eshbach

September 11

the state constitutional referendum that is presently before the citizens be approved to allow trusts to invest in both stocks and bonds.

- #19 3. Conceptually, prepaid tuition trusts should work. This trust would certainly be positive for Fairmont State and West Virginia if it is not beset with legal ambiguities and administration fees.

As an aside, I spoke this morning with a representative from the State Treasurer's Office about questions that I had about the trust. He was able to answer most of them, but the question concerning the legal ability of the trust to invest in equity funds is still unclear. He felt that it would be a moot point if the constitutional referendum passed; however, if the referendum is not successful there will be a need for a court interpretation. It is the Treasurer's Office opinion that since the trust will be set up with private funds, the court will rule that the trust has the ability to invest in stocks.

FWS:jls

DE-PREPA