

CHAPTER 136G

MINNESOTA COLLEGE SAVINGS PLAN

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136G.01 PLAN ESTABLISHED.

A college savings plan known as the Minnesota college savings plan is established. In establishing this plan, the legislature seeks to encourage individuals to save for post-secondary education by:

- (1) providing a qualified state tuition plan under federal tax law;
- (2) providing matching grants for contributions to the program by low- and middle-income families; and
- (3) by encouraging individuals, foundations, and businesses to provide additional grants to participating students.

History: 1997 c 183 art 2 s 12; 1Sp2001 c 1 art 3 s 2,23

136G.03 DEFINITIONS.

Subdivision 1. **General.** For purposes of sections 136G.01 to 136G.13, the following terms have the meanings given.

Subd. 2. **Account.** "Account" means the formal record of transactions relating to a Minnesota college savings plan beneficiary.

Subd. 3. **Account owner.** "Account owner" means a person who enters into a participation agreement and is entitled to select or change the beneficiary of an account or to receive distributions from the account for other than payment of qualified higher education expenses.

Subd. 4. **Adjusted gross income.** "Adjusted gross income" means adjusted gross income as defined in section 62 of the Internal Revenue Code.

Subd. 5. **Beneficiary.** "Beneficiary" means the designated beneficiary for the account, as defined in section 529(e)(1) of the Internal Revenue Code.

Subd. 6. **Board.** "Board" means the state board of investment.

Subd. 7. **Contingent account owner.** "Contingent account owner" means the individual designated as the account owner, either in the participation agreement or pursuant to a separate Minnesota college savings plan form, in the event of the death of the account owner.

Subd. 8. **Contribution.** "Contribution" means a payment directly allocated to an account for the benefit of a beneficiary. For a rollover distribution, only the portion of the rollover amount that constitutes investment in the account is treated as a contribution to the account.

Subd. 9. **Director.** "Director" means the director of the higher education services office.

Subd. 10. **Distribution.** "Distribution" means a disbursement from an account to the account owner, the beneficiary, or the beneficiary's estate or to an eligible educational institution. Distribution does not include a change of beneficiary to a member of the family of the prior beneficiary or a rollover distribution.

Subd. 11. **Dormant account.** "Dormant account" means an account that has not received contributions for at least three consecutive years and the account statements mailed to the account owner have been returned as undeliverable.

Subd. 12. **Earnings.** "Earnings" means the total account balance minus the investment in the account.

Subd. 13. **Eligible educational institution.** "Eligible educational institution" means an institution as defined in section 529(e)(5) of the Internal Revenue Code.

Subd. 14. **Inactive account with a matching grant account.** "Inactive account with a matching grant account" means an account in which the beneficiary:

(1) is not the account owner, the beneficiary has reached 28 years of age, and the beneficiary has not informed the plan administrator that the beneficiary is enrolled in an eligible educational institution;

(2) is the account owner, the beneficiary was over the age of 18 when the account was opened, and the beneficiary has not informed the program administrator that the beneficiary is enrolled in an eligible educational institution within ten years of the date of opening the account; or

(3) is the account owner, the beneficiary was a minor when the account was opened, the account becomes inactive when the beneficiary turns 28 years of age, and the beneficiary has not informed the program administrator that the beneficiary is enrolled in an eligible educational institution.

Subd. 15. **Executive director.** "Executive director" means the executive director of the state board of investment.

Subd. 16. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

Subd. 17. **Investment in the account.** "Investment in the account" means the sum of all contributions made to an account by a particular date minus the aggregate amount of contributions included in distributions or rollover distributions, if any, made from the account as of that date.

Subd. 18. **Matching grant.** "Matching grant" means an amount added to a matching grant account under section 136G.11.

Subd. 19. **Matching grant account.** "Matching grant account" means an account owned by the state that contains matching grants and earnings.

Subd. 20. **Maximum account balance limit.** "Maximum account balance limit" means the amount established by the office under section 136.2441, subdivision 8, paragraph (d).

Subd. 21. **Member of the family.** "Member of the family" means an individual who is related to the beneficiary as defined in section 529(e)(2) of the Internal Revenue Code.

Subd. 22. **Nonqualified distribution.** "Nonqualified distribution" means a distribution made from an account other than (1) a qualified distribution; or (2) a distribution due to the death or disability of, or scholarship to, a beneficiary.

Subd. 23. **Office.** "Office" means the higher education services office.

Subd. 24. **Participation agreement.** "Participation agreement" means an agreement to participate in the Minnesota college savings plan between an account owner and the state, through its agencies, the office, and the board.

Subd. 25. **Penalty.** "Penalty" means the amount established by the office that is applied against the earnings portion of a nonqualified distribution. The amount established by the office must be the minimum required to be de minimis under section 529 of the Internal Revenue Code. The office must impose, collect, and apply penalties consistent with section 529 of the Internal Revenue Code.

Subd. 26. **Person.** "Person" means an individual, trust, estate, partnership, association, company, corporation, or the state.

Subd. 27. **Plan.** "Plan" refers to the plan established under sections 136G.01 to 136G.13.

Subd. 28. **Plan administrator.** "Plan administrator" means the person selected by the office and the board to administer the daily operations of the Minnesota college savings plan and to provide marketing, recordkeeping, investment management, and other services for the program.

Subd. 29. **Qualified distribution.** "Qualified distribution" means a distribution made from an account for qualified higher education expenses of the beneficiary.

Subd. 30. **Qualified higher education expenses.** "Qualified higher education expenses" means expenses as defined in section 529(e)(3) of the Internal Revenue Code.

Subd. 31. **Rollover distribution.** "Rollover distribution" means a transfer of funds made:

- (1) from one account to another account within 60 days of a distribution;
- (2) from another qualified state tuition program to an account within 60 days of the distribution; or
- (3) to another qualified state tuition program from an account within 60 days of a distribution.

Each transfer of funds must be made for the benefit of a new beneficiary who is a member of the family of the prior beneficiary.

Subd. 32. **Scholarship.** "Scholarship" means a scholarship, allowance, or payment under section 529(b)(3)(C) of the Internal Revenue Code.

Subd. 33. **State.** "State" means the state of Minnesota and any Minnesota agency or political subdivision of Minnesota.

Subd. 34. **Total account balance.** "Total account balance" means the amount in an account on a particular date or the fair market value of an account on a particular date.

History: 1997 c 183 art 2 s 13; 1Sp2001 c 1 art 3 s 3,23

136G.05 HIGHER EDUCATION SERVICES OFFICE.

Subdivision 1. **Responsibilities.** (a) The director shall establish the rules, terms, and conditions for the plan, subject to the requirements of sections 136G.01 to 136G.13.

(b) The director shall prescribe the application forms, procedures, and other requirements that apply to the plan.

Subd. 2. **Accounts-type plan.** The office must establish the plan and the plan must be operated as an accounts-type plan that permits persons to save for qualified higher education expenses incurred at any eligible educational institution, regardless of whether it is private or public or whether it is located within or outside of the state. A separate account must be maintained for each beneficiary for whom contributions are made.

Subd. 3. **Consultation with state board of investment.** In designing and establishing the plan's requirements and in negotiating or entering into contracts with third parties under subdivision 8, the director shall consult with the executive director. The director and the executive director shall establish an annual fee, equal to a percentage of the average daily net assets of the plan, to be imposed on participants to recover the costs of administration, recordkeeping, and investment management as provided in subdivision 9 and section 136G.07, subdivision 4.

Subd. 4. **Plan to comply with federal law.** The director shall ensure that the plan meets the requirements for a qualified state tuition program under section 529(b)(1)(A)(ii) of the Internal Revenue Code. The director may request a private letter ruling or rulings from the Internal Revenue Service or take any other steps to ensure that the plan qualifies under section 529 of the Internal Revenue Code or other relevant provisions of federal law.

Subd. 5. **Minimum penalty.** In establishing the terms of the program, the office must provide that refunds of amounts in an account are subject to a minimum penalty, as required by section 529(b)(3) of the Internal Revenue Code. If the refunds or payments are not used for qualified higher education expenses of the designated beneficiary, this penalty must equal, at least, the proportionate amount of any matching grants deposited in the account under section 136G.11 and the investment return on the grants, plus an additional penalty that meets the requirement of federal law.

Subd. 6. **Three-year period for withdrawal of grants.** A matching grant deposited in the account under section 136G.11 may not be withdrawn within three years of the establishment of the account of the beneficiary. In calculating the three-year period, the period held in another account is included, if the account includes a rollover from another account under section 529(c)(3)(C) of the Internal Revenue Code.

Subd. 7. **Marketing.** The director shall make parents and other interested individuals aware of the availability and advantages of the program as a way to save for higher education costs. The cost of these promotional efforts may not be funded with fees imposed on participants.

Subd. 8. **Administration.** The director shall administer the program, including accepting and processing applications, maintaining account records, making payments, making matching grants under section 136G.11, and undertaking any other necessary tasks to administer the program. The office may contract with one or more third parties to carry out some or all of these administrative duties, including promotion and marketing of the program. The office and the board may jointly contract with third-party providers, if the office and board determine that it is desirable to contract with the same entity or entities for administration and investment management.

Subd. 9. **Authority to impose fees.** The office may impose annual fees, as provided in subdivision 3, on participants in the plan to recover the costs of administration. The office must use its best efforts to keep these fees as low as possible, consistent with efficient administration, so that the returns on savings invested in the plan will be as high as possible.

Subd. 10. **Data.** Account owner data, account data, and data on beneficiaries of accounts are private data on individuals as defined in section 13.02, except that the names and addresses of the beneficiaries of accounts that receive matching grants are public.

History: 1997 c 183 art 2 s 14; 1999 c 214 art 2 s 8; 2001 c 202 s 9; 1Sp2001 c 1 art 3 s 4-9,23

136G.07 INVESTMENT OF ACCOUNTS.

Subdivision 1. **State board to invest.** The state board of investment shall invest the money deposited in accounts in the plan and all investments are directed by the board. Neither persons making contributions to an account nor beneficiaries may direct the investment of contributions to the plan or plan earnings.

Subd. 2. **Permitted investments.** The board may invest the accounts in any permitted investment under section 11A.24, except that the accounts may be invested without limit in investment options from open-ended investment companies registered under the federal Investment Company Act of 1940, United States Code, title 15, sections 80a-1 to 80a-64.

Subd. 3. **Contracting authority.** The board may contract with one or more third parties for investment management, recordkeeping, or other services in connection with investing the accounts. The board and office may jointly contract with third-party providers, if the office and board determine that it is desirable to contract with the same entity or entities for administration and investment management.

Subd. 4. **Fees.** The board may impose annual fees, as provided in section 136G.05, subdivision 3, on participants in the plan to recover the cost of investment management and related tasks for the plan. The board must use its best efforts to keep these fees as low as possible, consistent with high quality investment management, so that the returns on savings invested in the plan will be as high as possible.

History: 1997 c 183 art 2 s 15; 1999 c 214 art 2 s 9; 1Sp2001 c 1 art 3 s 10,11,23

136G.09 MINNESOTA COLLEGE SAVINGS PLAN ACCOUNTS; GENERALLY.

Subdivision 1. **Contributions to an account.** A person may make contributions to an account on behalf of a beneficiary. Contributions to an account made by persons other than the account owner become the property of the account owner. A person

does not acquire an interest in an account by making contributions to an account. Contributions to an account must be made by check, money order, or other commercially acceptable means as permitted by the United States Internal Revenue Service and authorized by the plan administrator in cooperation with the office and the board.

Subd. 2. Authority of account owner. An account owner is the only person entitled to:

- (1) select or change a beneficiary or a contingent account owner; or
- (2) request distributions or rollover distributions from an account.

Subd. 3. Security for loans. An interest in an account or matching grant account must not be used as security for a loan.

Subd. 4. Separate accounting. The plan must provide a separate account for each beneficiary for whom contributions are made. Each account must have a single account owner and a single beneficiary. An account owner must not open more than one account for the same beneficiary, but several account owners may open accounts for the same beneficiary.

Subd. 5. Naming of beneficiary. The account owner must designate the beneficiary of an account when the account is established, except for accounts established under section 529(e)(1)(C) of the Internal Revenue Code, which do not require a designated beneficiary until a distribution is made.

Subd. 6. Change of beneficiary. An account owner may change the beneficiary of an account to a member of the family of the current beneficiary, at any time without penalty, if the change will not cause the total account balance of all accounts held for the new beneficiary to exceed the maximum account balance limit as provided in subdivision 8. A change of beneficiary other than as permitted in this subdivision is treated as a nonqualified distribution under section 136G.13, subdivision 3.

Subd. 7. Change of account ownership. An account owner may transfer ownership of an account to another person eligible to be an account owner. All transfers of ownership are absolute and irrevocable.

Subd. 8. Maximum account balance limit. (a) When a contribution is made, the total account balance of all accounts held for the same beneficiary, including matching grant accounts, must not exceed the maximum account balance limit as determined under this subdivision.

(b) The maximum account balance limit is reduced for withdrawals from any account for the same beneficiary that are qualified distributions, distributions due to the death or disability of the beneficiary, or distributions due to the beneficiary receiving a scholarship. Subsequent contributions must not be made to replenish an account if the contribution results in the total account balance of all accounts held for the beneficiary to exceed the reduced maximum account balance limit. Any subsequent contributions must be rejected. A subsequent contribution accepted in error must be returned to the account owner plus any earnings on the contribution less any applicable penalties.

(c) The maximum account balance limit is not reduced for a nonqualified distribution or a rollover distribution. When such distributions are taken, subsequent contributions may be made to replenish an account up to the maximum account balance limit.

(d) The office must establish a maximum account balance limit. The maximum account balance limit is four times the cost of one year of qualified higher education expenses at the most expensive eligible educational institution in Minnesota. The office must adjust the maximum account balance limit, as necessary, or on January 1 of each year. Qualified higher education expenses for the academic year prior to January 1 of each year must be used in calculating the maximum account balance limit. The maximum account balance limit must not exceed the amount permitted for the plan to qualify as a qualified state tuition program under section 529 of the Internal Revenue Code.

(e) If the total account balance of all accounts held for a single beneficiary reaches the maximum account balance limit prior to the end of that calendar year, the beneficiary may receive an applicable matching grant for that calendar year.

Subd. 9. Excess contributions and balances. A contribution to any account for a beneficiary must be rejected if the contribution would cause the total account balance of all accounts held for the same beneficiary, including the matching grant account, to exceed the maximum account balance limit under section 529 of the Internal Revenue Code as established by the office. If a contribution under this subdivision is accepted in error, the contribution must be returned to the account owner plus any earnings thereon, less applicable penalties. A payment of an excess contribution to the account owner may be a nonqualified distribution subject to a penalty.

Subd. 10. Dormant accounts. (a) The plan administrator shall attempt to locate the account owner or the beneficiary, or both, to determine the disposition of a dormant account. A fee of five percent of the total account balance of the dormant account, not to exceed \$100, plus allowable costs, may be charged for this service. Costs will not exceed \$100 or five percent of the total account balance in the dormant account, whichever is less.

(b) If the account owner, or the account owner's legal heirs, are not found after three attempts by the plan administrator, the remaining funds in the dormant account must be turned over to the office. The funds are treated as unclaimed property for purposes of sections 345.31 to 345.60, and the office shall turn all remaining dormant account funds over to the commissioner of commerce. If the dormant account has a matching grant account, all amounts in the beneficiary's matching grant account, if any, must be returned to the office.

Subd. 11. Effect of plan changes on participation agreement. Amendments to sections 136G.01 to 136G.13 automatically amend the participation agreement. Any amendments to the operating procedures and policies of the plan shall amend the participation agreement 30 days after adoption by the office or the board.

Subd. 12. Special account to hold plan assets in trust. All assets of the plan, including contributions to accounts and matching grant accounts and earnings, are held in trust for the exclusive benefit of account owners and beneficiaries. Assets must be held in a separate account in the state treasury to be known as the Minnesota college savings plan account. Plan assets are not subject to claims by creditors of the state, are not part of the general fund, and are not subject to appropriation by the state. Payments from the Minnesota college savings plan account shall be made under sections 136G.01 to 136G.13.

History: *1Sp2001 c 1 art 3 s 12,23*

136G.11 MATCHING GRANTS.

Subdivision 1. Matching grant qualification. By March 1 of each year, a state matching grant must be added to each account established under the program if the following conditions are met:

- (1) the contributor applies, in writing in a form prescribed by the director, for a matching grant;
- (2) a minimum contribution of \$200 was made during the preceding calendar year; and
- (3) the family income of the beneficiary did not exceed \$80,000.

Subd. 2. Family income. (a) For purposes of this section, "family income" means:

- (1) if the beneficiary is under age 25, the combined adjusted gross income of the beneficiary's parents or legal guardians as reported on the federal tax return or returns for the most recently available tax year. If the beneficiary's parents are divorced, the income of the parent claiming the beneficiary as a dependent on the federal individual income tax return and the income of that parent's spouse, if any, is used to determine family income; or

(2) if the beneficiary is age 25 or older, the combined adjusted gross income of the beneficiary and spouse, if any.

(b) For a parent or legal guardian of beneficiaries under age 25 and for beneficiaries age 25 or older who resided in Minnesota and filed a federal individual income tax return two years prior to the year in which the matching grant is awarded, the matching grant must be based on family income from Internal Revenue Service tax data on file with the Minnesota department of revenue.

(c) Parents or legal guardians of beneficiaries under age 25 and beneficiaries age 25 or older who did not reside in Minnesota two years prior to the year in which the matching grant is awarded must provide a signed copy of their federal individual income tax return to the office, regardless of who the account owner is, in order to be considered for a matching grant.

Subd. 3. Residency requirement. (a) If the beneficiary is under age 25, the beneficiary's parents or legal guardians must be Minnesota residents to qualify for a matching grant. If the beneficiary is age 25 or older, the beneficiary must be a Minnesota resident to qualify for a matching grant.

(b) To meet the residency requirements, the parent or legal guardian of beneficiaries under age 25 must have filed a Minnesota individual income tax return as a Minnesota resident, claiming the beneficiary as a dependent, two years prior to the year in which the matching grant is awarded. For beneficiaries age 25 or older, the beneficiary, and a spouse, if any, must have filed a Minnesota individual income tax return as a Minnesota resident two years prior to the year in which the matching grant is awarded.

(c) A parent of beneficiaries under age 25 and beneficiaries age 25 or older who did not reside in Minnesota two years prior to the year in which the matching grant is awarded must establish Minnesota residency through the issuance of a Minnesota driver's license or identification card.

Subd. 4. Age and date of birth determination of beneficiary. In determining the age of the beneficiary for purposes of a matching grant, the plan administrator shall use the age of the beneficiary as reported on the participation agreement on December 31 of the year in which the request for a matching grant is made.

Subd. 5. Amount of matching grant. The amount of the matching grant for a beneficiary equals:

(1) if the beneficiary's family income is \$50,000 or less, 15 percent of the sum of the contributions made to the beneficiary's account during the calendar year, not to exceed \$300; and

(2) if the beneficiary's family income is more than \$50,000 but not more than \$80,000, five percent of the sum of the contributions made to the beneficiary's account during the calendar year, not to exceed \$300.

Subd. 6. Budget limit. If the total amount of matching grants determined under subdivision 3 exceeds the amount of the appropriation for the fiscal year, the director shall proportionately reduce each grant so that the total equals the available appropriation. The director must reduce matching grants so that the amount of the matching grant assigned to a beneficiary's account equals:

(1) the ratio of state appropriations for the matching grant divided by the total dollar amount of matching grants for all beneficiaries; multiplied by

(2) the dollar amount of the matching grant for each eligible beneficiary.

Subd. 7. Coordination with department of revenue. In administering matching grants, the director may require that applicants submit sufficient information to determine whether the beneficiary qualifies for a grant, including the social security numbers, family income information, and any other information the director determines necessary. The applicant or applicants may authorize the director to request information from the commissioner of revenue to verify eligibility for a grant from tax information on file with the commissioner or obtained from the Internal Revenue Service. If this method is used and the taxpayer has authorized a release of the

information to the director, the commissioner of revenue may verify that the beneficiary is eligible for a grant at a specified rate and maximum and disclose that information to the director, notwithstanding the provisions of chapter 270B.

Subd. 8. **Private contributions.** (a) The office may solicit and accept contributions from private corporations, other businesses, foundations, employers, or individuals to provide:

(1) matching grants under this section in addition to those funded with direct appropriations;

(2) grants to students who withdraw money from accounts established under the program; or

(3) contributions to an account on behalf of a beneficiary.

(b) Amounts contributed may only be used for those purposes. Amounts contributed are appropriated to the director for the purposes of this subdivision.

(c) Contributors may designate a specific field of study, geographic area, or other criteria that govern use of the grants funded with their contributions, but may not discriminate on the basis of race, ethnicity, or gender. The office may refuse contributions that are subject, in the judgment of the director, to unacceptable conditions on their use.

Subd. 9. **Annual application.** An account owner must submit an application form for a matching grant on an annual basis. The application must be postmarked by December 31 of the year preceding the awarding of the matching grant.

Subd. 10. **Single beneficiaries with multiple accounts.** (a) A matching grant will first be computed on an account owned by a parent or legal guardian of the beneficiary, or an account owner who is also the beneficiary. If there are multiple accounts for a single beneficiary, any matching grant, up to the annual maximum, will be proportionately awarded to the beneficiary named in accounts owned by the parents or guardians.

(b) If the account owned by a parent or a guardian or an account owner who is also the beneficiary does not qualify for the maximum annual matching grant, any remaining matching grant funds are proportionately distributed to the beneficiary to an account or accounts owned by someone other than the parent or guardian.

(c) If the account for a beneficiary is not owned by a parent or a legal guardian, or an account owner who is also the beneficiary, then the matching grant will be proportionately distributed to the beneficiary to accounts owned by others.

Subd. 11. **Ownership of matching grant funds.** The state retains ownership of all matching grants and earnings on matching grants until a qualified distribution is made to a beneficiary or an eligible educational institution.

Subd. 12. **Inactive accounts with matching grants.** (a) The plan administrator will attempt to locate the account owner or the beneficiary of an inactive account with a matching grant to determine the disposition of the account. No fee will be charged for this service. The matching grants and matching grant earnings in the account must be returned to the office, unless the account owner applies for a deferment or the beneficiary begins attending an eligible educational institution within one year of the date of notification.

(b) The account owner may apply to the plan administrator for a deferment of inactive account time limits. Upon application, the plan administrator shall grant a one-time deferment of two years. In addition, the plan administrator shall grant a deferment for the beneficiary's initial enlistment for active duty in the armed forces of the United States, or for the period of active military duty required as part of the beneficiary's obligation as a member in a reserve military unit of the armed forces of the United States.

Subd. 13. **Forfeiture of matching grants.** (a) Matching grants are forfeited if:

(1) the account owner transfers the total account balance of an account to another account or to another qualified state tuition program;

(2) the beneficiary receives a full tuition scholarship or admission to a United States service academy;

(3) the beneficiary dies or becomes disabled;

(4) the account owner changes the beneficiary of the account; or

(5) the account owner closes the account with a nonqualified withdrawal.

(b) Matching grants must be proportionally forfeited if:

(1) the account owner transfers a portion of an account to another account or to another qualified state tuition program;

(2) the beneficiary receives a scholarship covering a portion of qualified higher education expenses; or

(3) the account owner makes a partial nonqualified withdrawal.

(c) If the account owner makes a misrepresentation in a participation agreement or an application for a matching grant that results in a matching grant, the matching grant associated with the misrepresentation is forfeited. The office and the board must instruct the plan administrator as to the amount to be forfeited from the matching grant account. The office and the board must withdraw the matching grant or the proportion of the matching grant that is related to the misrepresentation.

History: 1997 c 183 art 2 s 16; 1999 c 214 art 2 s 10; 1Sp2001 c 1 art 3 s 13-21,23

136G.13 ACCOUNT DISTRIBUTIONS.

Subdivision 1. **Qualified distribution methods.** (a) Qualified distributions may be made:

(1) directly to participating eligible educational institutions on behalf of the beneficiary;

(2) in the form of a check payable to both the beneficiary and the eligible educational institution; or

(3) to an account owner with a receipt verifying the payment of qualified higher education expenses.

(b) When administratively feasible, distributions may be made when the account owner and beneficiary certify prior to the distribution that the distribution will be expended for qualified higher education expenses a reasonable time after the distribution. The plan administrator may retain a penalty on the earnings portion of the nonqualified distribution until payment of qualified higher education expenses are substantiated. A payment receipt showing payment for qualified higher education expenses must be submitted to the program administrator within 30 days of distribution.

(c) Qualified distributions must be withdrawn proportionally from contributions and earnings in an account owner's account on the date of distribution as provided in section 529 of the Internal Revenue Code.

Subd. 2. **Matching grant accounts.** Qualified distributions are based on the total account balances in an account owner's account and matching grant account, if any, on the date of distribution. Qualified distributions must be withdrawn proportionally from each account based on the relative total account balance of each account to the total account balance for both accounts. Amounts for matching grants and matching grant earnings must only be distributed for qualified higher education expenses.

Subd. 3. **Nonqualified distribution.** An account owner may request a nonqualified distribution from an account at any time. Nonqualified distributions are based on the total account balances in an account owner's account and must be withdrawn proportionally from contributions and earnings as provided in section 529 of the Internal Revenue Code. The earnings portion of a nonqualified distribution is subject to a penalty. For purposes of this subdivision, "earnings portion" means the ratio of the earnings in the account to the total account balance, immediately prior to the distribution, multiplied by the distribution. The penalty must be withheld from the total amount of any distribution.

Subd. 4. **Nonqualified distributions from matching grant accounts.** (a) If an account owner requests a nonqualified distribution from an account that has a matching grant account, the total account balance of the matching grant account, if any, is reduced.

(b) After the nonqualified distribution is withdrawn from the account including any penalty as provided in subdivision 3, the account owner forfeits matching grant amounts in the same proportion as the nonqualified distribution is to the total account balance of the account.

Subd. 5. **Distributions due to death or disability of, or scholarship to, a beneficiary.** An account owner may request a distribution due to the death or disability of, or scholarship to, a beneficiary from an account by submitting a completed request to the plan. Prior to distribution, the account owner shall certify the reason for the distribution and provide written confirmation from a third party that the beneficiary has died, become disabled, or received a scholarship for attendance at an eligible educational institution. The plan must not consider a request to make a distribution until a third-party written confirmation is received by the plan. For purposes of this subdivision, a third-party written confirmation consists of the following:

- (1) for death of the beneficiary, a certified copy of the beneficiary's death record;
- (2) for disability of the beneficiary, a certification by a physician who is a doctor of medicine or osteopathy stating that the doctor is legally authorized to practice in a state of the United States and that the beneficiary is unable to attend any eligible educational institution because of an injury or illness that is expected to continue indefinitely or result in death. Certification must be on a form approved by the plan; or
- (3) for a scholarship award to the beneficiary, a letter from the grantor of the scholarship or from the eligible educational institution receiving or administering the scholarship, that identifies the beneficiary by name and social security number or taxpayer identification number as the recipient of the scholarship and states the amount of the scholarship, the period of time or number of credits or units to which it applies, the date of the scholarship, and, if applicable, the eligible educational institution to which the scholarship is to be applied.

History: *1Sp2001 c 1 art 3 s 22,23; 1Sp2001 c 9 art 15 s 32*