

**AGENCY CERTIFICATE
NOTICE OF PROPOSED EXPEDITED RULEMAKING**

1. Agency name:

State Board of Investment

2. Chapter # and heading:

CHAPTER 13. STATE BOARD OF INVESTMENT

3. Code Citation for the Chapter:

2 A.A.C. CHAPTER 13

4. Article, Part, or Section Affected (as applicable)

R2-13-204

Rulemaking Action

Amend

5. The rules contained in this rulemaking package are true and correct as proposed.




Signature of agency chief executive officer in ink

Kimberly Yee

Typed name of signer*

Arizona State Treasurer

Title of signer



Type date here

Date signed

* Please note, the signature of signer and typed name must match.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 13. STATE BOARD OF INVESTMENT

PREAMBLE

- 1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:**

This rulemaking is not subject to the rulemaking moratorium under A.R.S. § 41-1039, which only applies to rulemaking by "state agencies." The State Board of Investment (the "BOI"), at the direction of the Arizona State Treasurer (the "Treasurer"), is responsible for adopting rules to prevent excess contributions under A.R.S. § 15-1875(L). The Treasurer is the chairperson of the BOI. A.R.S. § 35-311(A). Thus, the BOI is "headed by a single elected state official" and therefore excepted from the definition of "state agency" under A.R.S. § 41-1039(E)(2)(a).

- | | |
|--|--------------------------|
| 2. Article, Part, or Section Affected (as applicable) | Rulemaking Action |
| R2-13-204 | Amend |

- 3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

A.R.S. §§ 15-1872(B), 15-1875(L), 35-311(A), (B)(5)

- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:**

Not applicable.

- 5. The agency's contact person who can answer questions about the rulemaking:**

Name: Jeffrey Ong
Title: AZ529 Plan Administrator
Division: Not Applicable
Address: 1700 W. Washington, Suite #102, Phoenix, AZ 85007
Telephone: 602-542-7880
Fax: N/A
Email: jeffreyo@aztreasury.gov
Website: <https://www.aztreasury.gov/board-of-investment>

- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

After evaluating the rules and receiving feedback from AZ529 Plan stakeholders, including plan providers like Fidelity Investments and Goldman Sachs, the Board intends to implement minor updates to R2-13-204. Specifically,

R2-13-204(A)(1)-(2) currently provides that “[f]or each designated beneficiary, the balance in all qualified tuition programs ... shall not exceed the lesser of: The product (rounded down to the nearest multiple of \$1000) of 7 and the average one year’s undergraduate tuition, fees, room and board at the ten independent four year eligible educational institutions as measured and last published by the College Board’s Independent College [CSB] 500 Index that have the largest total direct charges ... or The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.”

Since this rule’s adoption, the methodology for calculating the amount using the College Board’s Independent College 500 Index is now out of date. Thus, the Board intends to remove the rule’s reference to the College Board’s Independent College 500 Index and amend R2-13-204 to reflect the current methodology for determining account balance limitations.

Additionally, R2-13-204 currently requires the Board to annually review the maximum balance amounts set forth in subsection (A). To support consistency with other statutes and current processes in other states, the Board would like to eliminate this requirement or reduce the frequency in which the Board must conduct this review.

7. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable.

8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

9. **A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):**

This rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. **Where, when, and how a person may provide written comments on the proposed expedited rule:**

A person may submit written comments no later than the close of record to the person listed under Item #5.

Close of Record: August 6, 2026

11. **All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

- a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The proposed AZ529 Rules do not require a permit.

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

I.R.C. § 529 applies to the subject of the AZ529 Rules. The AZ529 Rules are not more stringent than federal law.

- c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.**

Not applicable.

- 12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:**

A.R.S. § 15-1871 -- R2-13-201(H); R2-13-203; R2-13-205

A.R.S. § 15-1874 -- R2-13-206(C)(3), (E)

A.R.S. § 15-1875 -- R2-13-204

A.R.S. §§ 15-1871 to 15-1877 -- R2-13-207

A.R.S. § 35-141 -- R2-13-101(2)

A.R.S. § 35-315 -- R2-13-101(3)-(4); R2-13-102(A)

A.R.S. § 47-3104 -- R2-13-201(I)

I.R.C. § 529 -- R2-13-201(J); R2-13-203; R2-13-204(A); R2-13-205; R2-13-206(B); R2-13-207

- 13. The full text of the rules follows:**

Rule text begins on the next page.

TITLE 2. ADMINISTRATION

CHAPTER 13. STATE BOARD OF INVESTMENT

ARTICLE 1. GENERAL PROVISIONS

R2-13-101. Definitions

In this Article, unless otherwise specified, the following terms mean:

1. "General Accounting Office" means the General Accounting Office of the Department of Administration.
2. "General Fund" means the General Fund of the State as defined in A.R.S. § 35-141.
3. "Servicing Bank" means the bank awarded the servicing bank contract pursuant to A.R.S. § 35-315(C).
4. "Servicing Bank Contract" means the contract awarded pursuant to A.R.S. § 35-315.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). R2-13-101(3) reflects corrected A.R.S. citation (Supp. 06-1). R2-13-101(1) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

R2-13-102. Servicing Bank Charges Account

- A. As authorized by A.R.S. § 35-315(B), General Fund interest earnings shall be deposited monthly into a General Fund account known as the "Servicing Bank Charges Account" to the extent necessary to pay for current servicing charges.
- B. Claims for servicing bank charges shall be paid from the Servicing Bank Charges Account. After each payment the General Accounting Office shall transfer any remaining interest earnings in the Servicing Bank Charges Account into the General Fund.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). R2-13-102(A) reflects corrected A.R.S. citation (Supp. 06-1). R2-13-102(B) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

R2-13-103. Information Required to be Submitted with Servicing Bank's Monthly Statement

This Servicing Bank shall deliver to the state treasurer its monthly account analysis statement for services rendered in the preceding month which shall include the number and type of transactions performed, amount and time duration of deposits, and any other information required under the servicing bank contract.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3).

ARTICLE 2. AZ529, ARIZONA'S EDUCATION SAVINGS PLAN

R2-13-201. Definitions

- A. "Account year" means the period beginning on October 1 and ending on September 30 of each year.
- B. "A.R.S." means Arizona Revised Statutes.
- C. "Board" means the Arizona State Board of Investment.
- D. "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
- E. "Code" means the Internal Revenue Service Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.
- F. "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.
- G. "Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.
- H. "Financial institution" means a financial institution as defined in A.R.S. § 15-1871(6).
- I. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.
- J. "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.
- K. "Treasurer" means the Office of the Arizona State Treasurer.

Historical Note

New Section R2-13-201 recodified from Section R7-3-501 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

R2-13-202. Cash Contributions; Fees

- A. Contributions to accounts in all qualified tuition programs shall be made only in cash as defined in R2-13-201.
- B. Application fee. The application fee is \$10. Application fees shall be forwarded to the Treasurer at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Treasurer \$10 for each new account opened; said tender to be made at the end of the month in which the account is opened. The Treasurer shall review the application fee every 24 months and recommend to the Board whether the application fee should be adjusted.

- C. Reasonable fees and charges. Reasonable fees and charges may be levied against a qualified tuition program pursuant to an agreement for services between a financial institution and the Board. Fees shall be forwarded to the Treasurer at the end of each month.

Historical Note

New Section R2-13-202 recodified from Section R7-3-502 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

R2-13-203. Changing Designated Beneficiary

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in § 529 of the Code, A.R.S. § 15-1871(8) or both, of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary on a form prescribed by the financial institution and approved by the Treasurer. The change shall be effective upon the financial institution's receipt of such certification.

Historical Note

New Section R2-13-203 recodified from Section R7-3-503 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-203 repealed, new Section R2-13-203 renumbered from R2-13-204 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

R2-13-204. Account Balance Limitations

- A. For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
1. The product (rounded down to the nearest multiple of \$1000) of 7 and the average one year's undergraduate tuition, fees, room and board at the ten independent four year eligible educational institutions as ~~determined by the board measured and last published by the College Board's Independent College 500 Index~~ that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution; or
 2. The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.
- B. No person shall make any contribution to a qualified tuition program during an account year that would cause the sum of the account balances in all qualified tuition programs of the designated beneficiary as of the first day of the account year plus contributions made during the account year less withdrawals during the account year to or from any such account to exceed the maximum allowable balance set forth in subsection (A). Any excess contributions with respect to a designated beneficiary shall be promptly withdrawn as a non-qualified withdrawal or transferred to another account in accordance with A.R.S. § 15-1875(E) or A.R.S. § 15-1875(F).
- C. No financial institution shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).
- D. ~~Biennially Each year~~, the Board shall review the amounts set forth in subsection (A).
- E. Persons making a contribution to an account shall certify that as to the account's designated beneficiary, and to the best of the contributor's knowledge, the contribution shall not cause the balances in all qualified tuition programs to exceed the account balance limitations described in subsection (A).
- F. If the Treasurer determines that contributions have been made to program accounts in violation of subsection (B) or (C), the Treasurer shall notify the Board, the designated beneficiary and the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Treasurer will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allowable balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

Historical Note

New Section R2-13-204 recodified from Section R7-3-504 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-204 renumbered to R2-13-203, new Section R2-13-204 renumbered from R2-13-205 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

R2-13-205. Withdrawals; Uses of Withdrawn Funds

- A. An account owner may withdraw funds from an account at any time. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses as defined in A.R.S. § 15-1871(12) and § 529 of the Code.

- B. Neither the Board nor the Treasurer are responsible for tracking how withdrawn funds are used. It is the responsibility of the account owner to ensure that withdrawn funds are used for qualified higher education expenses as defined in A.R.S. § 15-1871(12) and § 529 of the Code, and to substantiate any exemption from tax or penalty.

Historical Note

New Section R2-13-205 recodified from Section R7-3-505 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-205 renumbered to R2-13-204, new Section R2-13-205 renumbered from R2-13-206 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

R2-13-206. Oversight of Financial Institutions

- A. Disclaimer of state liability. Unless otherwise expressly agreed upon by the Treasurer in writing, every document pertaining to the AZ529, Arizona's Education Savings Plan shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the AZ529, Arizona's Education Savings Plan. This language may also be hand-written or provided by any other method to facilitate compliance.
- B. No Investment Direction. A financial institution shall not permit an account owner to move funds, once deposited, that in any way would result in investment direction of the funds or earnings on the funds except to the extent permissible under § 529 of the Code and any applicable regulations and guidance.
- C. Reporting Requirements.
1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, a year-end balance, and any distributions paid.
 2. Within the time-frames established by the Code, financial institutions, at the request of the Treasurer, shall provide Form 1099Q to all distributees.
 3. A copy of the statement described in (C)(1) and (2) shall be sent to the Treasurer. Additionally, each financial institution shall provide the Treasurer with the information required by A.R.S. § 15-1874(H).
- D. Access to books and records. No contractor shall have access to the books and records of a financial institution or Program Manager unless the Treasurer or its designee first approves, with or without modification, such request for access.
- E. Non-renewal. The Board's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).
- F. Marketing programs.
1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program for the AZ529, Arizona's Education Savings Plan may do so provided that any proposed marketing program is first submitted to the Treasurer for review. If, within 60 days, the Treasurer does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
 2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Treasurer for a credit against future marketing fees.

Historical Note

New Section R2-13-206 recodified from Section R7-3-506 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-206 renumbered to R2-13-205, new Section R2-13-206 renumbered from R2-13-207 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

R2-13-207. IRS Regulations, Rulings, Notices, and Other Guidance

- A. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in this Article, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 to 15-1877, then the more restrictive rule shall be deemed liberalized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.
- B. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in this Article or the statutes contained in A.R.S. §§ 15-1871 to 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

Historical Note

New Section R2-13-207 recodified from Section R7-3-507 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-207 renumbered to R2-13-206, new Section R2-13-207 renumbered from R2-13-208 by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

R2-13-208. Renumbered

Historical Note

New Section R2-13-208 recodified from Section R7-3-508 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-208 renumbered to R2-13-207 by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3)

AGENCY RECEIPT
NOTICE OF PROPOSED EXPEDITED RULEMAKING

1. Agency name:

State Board of Investment

2. Chapter number and heading:

CHAPTER 13. STATE BOARD OF INVESTMENT

3. Code Citation for the Chapter:

2 A.A.C. CHAPTER 13

4. Any Subchapter, if applicable; Article; Part, if applicable; and Section involved in the rulemaking, listed in alphabetical and numerical order:

Article, Part, or Section Affected (as applicable)

Rulemaking Action

R2-13-204

Amend

