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CH. 50 GUAM COLLEGE SAVINGS PROGRAM

**CHAPTER 50**  
**GUAM COLLEGE SAVINGS PROGRAM**

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**§ 50001. Definitions.**

As used in this Chapter, unless the context otherwise requires:

(a) “Account” or “college account” means an individual savings account established in accordance with this Chapter.

(b) “Account owner” means the individual who enters into a tuition savings agreement pursuant to this Chapter and as defined under the proposed income tax regulations, §§ 1.529-1 to 1.529-6 or the final regulations relating to § 529 of the Internal Revenue Code of 1986, as amended, whichever is applicable, including any amendments or supplements thereto.

(c) “Conunissioner” means the Commissioner of Banking and Insurance appointed under Title 11 G.C.A. § 103102.

(d) “Designated beneficiary” means a designated beneficiary as defined in §529 of the Internal Revenue Code of 1986, as amended, or successor legislation. (e) "Eligible educational institution" means an institution defined as such in § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(f) “financial organization” means an organization authorized to do business on Guam that is:

- (1) Certified as an insurer by the Commissioner; or
- (2) Licensed or chartered as a financial institution by the Commissioner; or
- (3) Chartered by an agency of the federal government; or

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(4) Subject to the jurisdiction and regulation of the Securities and Exchange Commission of the federal government; or

(5) Any other entity otherwise authorized to act on Guam as a trustee pursuant to the Employee Retirement Income Security Act of 1974, as may be amended from time to time, or pursuant to the provisions of the Guam-Based Trust Company Act, Title 11 GCA § 160101, et seq.

(g) “Management contract” means the contract executed by the Commissioner and a financial organization selected to act as a depository and manager of the program.

(h) “Member of the family” means a family member as defined in § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(i) “Nonqualified withdrawal” means a withdrawal from an account that is not:

(1) Used for qualified higher education expenses of the designated beneficiary; or

(2) Made on account of the death or disability of the designated beneficiary; or

(3) Made on the account of a scholarship (or allowance or payment described in § 135( d)(l )(B) or (C) of the Internal Revenue Code of 1986, as amended) received by the designated beneficiary, to the extent the withdrawal does *not* exceed the amount of the scholarship, allowance, or payment.

(j) “Program” means the Guam College Savings Program.

(k) “Program manager” means a financial organization selected by the Commissioner to act as a depository and manager of the program.

(l) “Qualified higher education expenses” means any qualified higher education expense as defined by § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(m) “Qualified withdrawal” means withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account. (n) “Tuition savings agreement” means an agreement between the Commissioner or a financial organization and the account owner.

**§ 50002. Guam College Savings Program Established.**

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There is hereby established the Guam College Savings Program. The purpose of this program is to enable families to save for college tuition and other expenses related to higher education through college accounts. The program shall provide college accounts to enable residents of Guam and other territories and states to benefit from the tax incentives provided for qualified state tuition programs under the Internal Revenue Code of 1986, as amended.

**§ 50003. Functions And Powers Of The Commissioner.**

(a) The Commissioner shall administer the program pursuant to this Chapter. The Commissioner may make changes to the program as required for participants to obtain or maintain the federal tax benefits or treatment provided by § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(b) The Commissioner shall implement the program through the use of financial organizations as account depositories and managers. Individuals may establish accounts directly with an account depository.

(c) The Commissioner shall solicit proposals from financial organizations to act as program managers and trustees. Financial organizations submitting proposals shall describe the investment instruments that will be held in accounts. The Commissioner shall select a program manager based on the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instruments being offered;

(3) The ability of the investment instruments to track the expected increasing costs of higher education;

(4) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(5) The financial organization's plan for promoting the program and the resources it will commit to promote the program;

(6) The fees, if any, proposed to be charged to persons for opening accounts;

(7) The minimum initial deposit and minimum contributions that the financial organization will require;

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(8) The ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and

(9) Other benefits to Guam or its residents included in the proposal.

(d) The Commissioner may enter into a management contract of *up to* ten (10) years in duration with a financial organization. The management contract shall, at a minimum, require the financial organization to:

(1) Take any action required to keep the program in compliance with § 50004 of this Chapter and to manage the program so as to qualify it as a qualified state tuition plan under § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;

(2) Keep adequate records of each account, keep each account segregated from every other account, and provide the Commissioner with the information necessary to prepare the statements required by § 50004;

(3) Compile information contained in statements required by § 50004 of this Chapter and provide the compilations to the Commissioner;

(4) If there is more than one program manager, provide the Commissioner with the information necessary to determine compliance with § 50004;

(5) Provide the Commissioner access to its books and records to the extent needed to determine compliance with the contract;

(6) Administer and invest all accounts for the benefit of the account owner;

(7) Be audited at least annually by a firm of independent certified public accountants selected by the program manager, and to provide the results of the audit to the Commissioner;

(8) Provide the Commissioner with copies of all regulatory filings and reports related to the program made by it during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that are *not* part of the program. The program manager shall provide, for review by the Commissioner, the results of any periodic examination of the manager by any local or federal banking, insurance, or securities commission, except as such

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reports may *not* be disclosed under applicable law or rules enacted by the Commissioner; and

(9) Provide the information required by Rule 15c2-12(b)(5) under the Securities Exchange Act of 1934 pursuant to a continuing disclosure certificate for the benefit of the account owners.

(e) The Commissioner may select more than one financial organization for the program.

(f) The Commissioner may require an audit to be conducted of the operations and financial position of the program manager at any time if the Commissioner has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts held by the program manager.

(g) During the term of any contract with a program manager, the Commissioner shall conduct examinations of the manager and its handling of accounts. The examination shall be conducted at least biennially if the manager is not otherwise subject to periodic examination by the Commissioner, the Federal Deposit Insurance Corporation or a similar entity.

(h) The Commissioner may adopt rules necessary to implement the program.

**§ 50004. Program Requirements; College Account.**

(a) A college account may be opened by any person who desires to save money for the payment of qualified higher education expenses on behalf of a designated beneficiary. Said person shall be considered the account owner as defined in § 50001, *supra*. An application for an account shall be in a form prescribed by the program manager and shall contain:

(1) The name, mailing address, and social security number or employer identification number of the account owner;

(2) The designation of a beneficiary;

(3) The name, mailing address, and social security number of the designated beneficiary;

(4) A certification relating to no excess contributions; and

(5) Such other information as the Commissioner may require.

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(b) Only the account owner may contribute to the account after it is opened.

(c) Contributions to accounts may be made only in cash.

(d) An account owner may withdraw all or part of the balance from an account on sixty (60) days' notice or a shorter period as may be authorized by rules governing the program. The rules enacted by the Commissioner shall include provisions to generally enable the determination of whether a withdrawal is a non qualified withdrawal or a qualified withdrawal. The rules may require one (1) or more of the following:

(1) That an account owner seeking to make a qualified withdrawal shall provide certifications of qualified higher education expenses and other information required to comply with § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;

(2) That withdrawals *not* meeting the requirements of this Section shall be treated as nonqualified withdrawals by the program manager and, if the withdrawals are subsequently deemed qualified within a reasonable time as specified by the Commissioner, that the account owner may seek a refund of penalties directly from the program manager.

(e) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary. An account owner may transfer all or a portion of an account to another college account, the designated beneficiary of which is a member of the same family, as defined in § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, as the beneficiary of the initial account. Changes in designated beneficiaries and transfers under this Section shall *not* be permitted if they constitute excess contributions.

(f) In the case of any nonqualified withdrawal from an account, an amount equal to ten percent (10%) (or that rate imposed under final regulations adopted by the Internal Revenue Service) of the portion of the withdrawal constituting income as determined in accordance with § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, shall be collected as a penalty and paid to the college savings program trust fund, as provided under § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, or any guidance issued by the Internal Revenue Service.

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(g) The percentage of the penalty described in Subsection (f) hereof may be increased if the Commissioner determines that the amount of the penalty must be increased to constitute a greater than de minimus penalty for purposes of qualifying the program as a qualified tuition program under § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(h) The percentage of the penalty described in Subsection (f) may be decreased by rule if the Commissioner determines that the penalty is greater than the amount required to constitute a greater than de minimus penalty for purposes of qualifying the program as a qualified tuition program under § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(i) The program shall provide separate accounting for each designated beneficiary.

(j) No account owner or designated beneficiary of any account shall be permitted to direct the investment of any contributions to an account or the earnings on it.

(k) Neither an account owner nor a designated beneficiary shall use an interest in an account as security for a loan. Any pledge of an interest in an account shall be void and of no force and effect.

(l) Contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the designated beneficiary shall *not* be allowed. The prohibition on excess contributions shall conform to § 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(m) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution shall be reported to the Department of Revenue and Taxation and the account owner, the designated beneficiary, or the distributee, to the extent required by federal law or regulations.

Statements shall be provided to each account owner at least once each year within sixty (60) days after the end of the twelve (12) month period to which they relate. The statement shall identify the contributions made during a preceding twelve (12) month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other

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information that the Commissioner requires to be reported to the account owner.

Statements and information relating to accounts shall be prepared and filed as required by federal and local tax law.

(n) A local government or organization described in § 501(c)(3) of the Internal Revenue Code of 1986, as amended, or successor legislation, may open and become the owner of an account to fund scholarships for persons whose identity shall be determined upon disbursement. An organization opening an account pursuant to this Subsection need *not* comply with the condition set forth in Subsection (a) hereof that a beneficiary be designated when the account is opened, and each individual who receives an interest in the account as a scholarship shall be treated as a designated beneficiary.

(o) An annual fee may be imposed upon the account owner for the maintenance of the account.

(p) The Commissioner may require that an account be open for a minimum length of time before distributions for qualified higher education can be made.

(q) The program manager shall disclose in writing the following information to each account owner and prospective account owner of a college account:

- (1) The terms and conditions for opening a college account;
- (2) Any restrictions on the substitution of beneficiaries;
- (3) The person or entity entitled to terminate the tuition savings agreement;
- (4) The period of time during which a beneficiary may receive benefits under the tuition savings agreement;
- (5) The terms and conditions under which money may be wholly or partially withdrawn from the program, including any reasonable charges and fees that may be imposed for withdrawal; and
- (6) The probable tax consequences associated with contributions to and distributions from accounts.

**§ 50005. Program Limitations; College Account.**

(a) Nothing in this Chapter shall be construed to:



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(1) Give a designated beneficiary any rights or legal interest with respect to an account;

(2) Guarantee that a designated beneficiary:

(A) Will be admitted to an institution of higher education; or

(B) Upon admission to an institution of higher education, will be permitted to continue to attend or will receive a degree from the institution;

(3) Create residency for an individual merely because the individual is a designated beneficiary; or

(4) Guarantee that amounts saved pursuant to the program will be sufficient to pay the qualified higher education expenses of a designated beneficiary.

(b) Nothing in this Chapter shall create or be construed to create any obligation of the Commissioner, program manager or any agency or instrumentality of the Government of Guam to guarantee for the benefit of an account owner or designated beneficiary:

(1) The rate of interest or other return on any account;

(2) The payment of interest or other return on any account; or

(3) The repayment of the principal of any account.

The Commissioner shall provide by rule that every tuition savings agreement, contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicates that the account is not insured by the Government of Guam and that neither the principal deposited nor the investment return is guaranteed by the Government of Guam.

**§ 50006. College Savings Program Trust Fund.**

(a) There is hereby established the College Savings Program Trust Fund. The program manager shall administer and have custody of the Fund. All payments from the Fund shall be made in accordance with this Chapter.

(b) The Fund shall consist of a trust account and an operating account. The trust account shall include amounts received by the college savings program pursuant to tuition savings agreements, administrative charges, fees, all other amounts received by the program from other sources, and

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interest and investment income earned by the Fund. The program manager, from time to time, shall make transfers from the trust account to the operating account for the immediate payment of obligations under tuition savings agreements, operating expenses, and administrative costs of the Guam College Savings Program.

(c) The program manager, as trustee, shall invest fund assets in securities that constitute legal investments under local laws relating to the investment of trust fund assets by trust companies. Trust fund assets shall be kept separate and shall *not* be commingled with other assets, except as provided in this Chapter. The program manager may enter into contracts to obtain for investment advice and management, custodial services, and other professional services regarding the administration and investment of program funds.

(d) The program manager shall administer the Fund, maintaining participant records and accounts and provide annual audit reports. The Commissioner may enter into contracts for administrative services, including reports.

(e) All administrative fees, costs, and expenses, including investment fees and expenses, shall be paid from the operating account of the Fund and, notwithstanding any other law to the contrary, may be made without appropriation or allotment.

**§ 50007. Tax Reporting.**

The program manager of the Guam College Savings Program shall file a report annually with the Department of Revenue and Taxation, setting forth the names and identification numbers of account owners, designated beneficiaries, and distributees of college accounts, the amounts contributed to the accounts, the amounts distributed from the accounts, whether the distributions were qualified withdrawals or nonqualified withdrawals, and any other information that the Commissioner may require regarding the taxation of amounts contributed to or withdrawn from the accounts.

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