

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

HIGHER EDUCATION

(a)

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

Student Loan and College Savings Programs Policy Governing New Jersey Better Educational Savings Trust (NJBEST) Program

Proposed Amendment: N.J.A.C. 9A:10-7.15

Authorized By: Higher Education Student Assistance Authority, Christy Van Horn, Chairperson.

Authority: N.J.S.A. 18A:71A-1 et seq., and 18A:71C-35 et seq.; and P.L. 2020, c. 81.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-113.

Submit written comments by February 5, 2021, to:

Marnie B. Grodman, Esquire
Administrative Practice Officer
Higher Education Student Assistance Authority
PO Box 545
Trenton, NJ 08625-0545
Email: Regulations@hesaa.org

The agency proposal follows:

Summary

The Higher Education Student Assistance Authority (Authority) is statutorily responsible for the administration of the State's higher education savings program, the New Jersey Better Educational Savings Trust (NJBEST) Program, and for the promulgation of all rules to that effect, pursuant to N.J.S.A. 18A:71B-35 et seq. NJBEST is administered in accordance with section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

Through the NJBEST Program, money saved by parents, grandparents, or others is invested for a designated beneficiary. When the designated beneficiary is ready to attend college, the account holder may withdraw the principal and interest earned from the account, and provided that these funds are used for qualified higher education expenses, the distributed investment earnings are not subject to either Federal income tax pursuant to section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, or New Jersey gross income tax pursuant to N.J.S.A. 54A:6-25.

At N.J.S.A. 18A:71B-35.c, the Legislature declared that, "[i]ncentives are needed to encourage families to save for college education." In addition to the tax-favored status of earnings on investments in an NJBEST account, the NJBEST program establishes an additional incentive to families to save for college by offering an NJBEST

Scholarship if the designated beneficiary attends an eligible higher education institution in New Jersey.

On September 14, 2020, Governor Murphy signed P.L. 2020, c. 81, which was effective immediately. This law amended the NJBEST statute by deleting the requirement that previously limited the availability of the NJBEST Scholarship to the beneficiary's initial attendance or enrollment in a higher education institution. The Authority is proposing amendments to align the rules to P.L. 2020, c. 81.

The Authority also has determined to make three other proposed amendments to the existing rules. First, it proposes increasing the minimum scholarship from \$500.00 to \$1,000. Second, it proposes increasing the incremental additional scholarship amount for every two additional years of savings in an NJBEST account from \$250.00 to \$500.00, and third, it proposes increasing the scholarship cap from \$1,500 to \$3,000. Additionally, in light of the fact that the NJBEST Scholarships have been fully funded by the administrative fees assessed on NJBEST accounts since fiscal year 2006 without any State appropriations, the Authority is proposing amendments to clarify that while the scholarships are subject to available funding from NJBEST administrative fees, they are not currently funded through annual State budget appropriations.

The proposed amendment at N.J.A.C. 9A:10-7.15(a) increases the minimum scholarship amount from \$500.00 to \$1,000. The proposed amendment also replaces the word "appropriation" with the word "funding."

N.J.A.C. 9A:10-7.15(a)1iv defines first-time enrollment for purposes of determining the scholarship amount and for determining whether a student meets the first-time enrollment requirement. In accordance with P.L. 2020, c. 81, the proposed amendment narrows the definition so that first-time enrollment is solely defined for purposes of determining the scholarship amount.

N.J.A.C. 9A:10-7.15(a)2 requires students to demonstrate undergraduate attendance or enrollment in a higher education institution in this State by submitting a certification by the higher education institution. The proposed amendment deletes the requirement that this certification is applicable only to the time of the student's initial attendance or enrollment, in accordance with the statutory changes at P.L. 2020, c. 81.

The proposed amendments at N.J.A.C. 9A:10-7.15(b) increase the additional incremental scholarship amount for every two additional years of savings in an NJBEST account from \$250.00 to \$500.00 and increase the scholarship cap from \$1,500 to \$3,000. The proposed amendment also replaces the word "appropriation" with the word "funding."

The proposed amendments at N.J.A.C. 9A:10-7.15(d) align the regulation with the statutory changes at P.L. 2020, c. 81, providing that a beneficiary may receive a one-time NJBEST scholarship in any term of enrollment at an eligible institution of post-secondary education in New Jersey.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments will have a positive effect on families by providing an additional incentive to save for college and encourage long-term savings.

Economic Impact

The proposed amendments will have a positive economic impact on families that either already have, or choose to open, NJBEST accounts, as they increase the scholarship amount for designated beneficiaries who attend New Jersey institutions. In academic year 2017-2018, 37 applicants were denied NJBEST scholarships solely due to failing to meet the eligibility criterion then in effect that restricted NJBEST scholarships to the student's initial college attendance or enrollment. Due to this restriction, 68 students were denied NJBEST scholarships in academic year 2018-2019 and 48 were denied in academic year 2019-2020. Each of these applicants represents a student who would benefit from the proposed amendments by receiving a scholarship instead of having to take on an additional amount of loans to fund their education.

The availability of the scholarship in any semester and the increased scholarship amount will not have any impact on the State budget as the program has been solely financed by the administrative fees assessed on NJBEST accounts since fiscal year 2006. The proposed amendments will not lead to increased administrative fees as current administrative fees are sufficient to fund the increased scholarship amounts.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not intended to exceed the statutory requirements for a state college savings program to receive favorable Federal tax treatment under section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, and are consistent with administrative guidance from the Internal Revenue Service.

Jobs Impact

The proposed amendments allowing the NJBEST scholarship to be used in any semester and increasing the NJBEST scholarship will provide incentives for saving for college, which promotes access to economic development through higher education. The proposed amendments will not result in the loss or generation of jobs, but do offer an additional incentive to save for college, thereby adding to the skilled workforce to meet employer needs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The participants in this program are individuals, not businesses.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing because the proposed amendments concern higher education savings plans, which have no impact on housing.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendments concern higher education savings plans, which have no impact on housing.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 7. POLICY GOVERNING NEW JERSEY BETTER EDUCATIONAL SAVINGS TRUST (NJBEST) PROGRAM

9A:10-7.15 Eligibility for NJBEST scholarship

(a) An additional amount of [\$500.00] **\$1,000**, subject to [appropriations] **funding** available therefor, shall be credited toward the qualified higher education expenses of a designated beneficiary at the time of a qualified withdrawal provided:

1. The contributor demonstrates to the satisfaction of the Authority that the contributor participated in the program by making and not withdrawing a qualifying minimum initial deposit of \$1,200 or that qualifying minimum annual contributions of \$300.00 for a designated beneficiary were made by persons based on the time periods for crediting these contributions in (a) i [through], **ii, and** iii below. In all cases involving the eligibility of a designated beneficiary for an NJBEST scholarship, the Authority reserves the right to make the final determination as to whether contributions have met the time periods as stated in this paragraph for participation in the NJBEST Program.

i.-iii. (No change.)

iv. First time enrollment is defined as the first time a student enrolls on either a full- or half-time basis at any institution of post-secondary education. [Students who have previously attended another institution of post-secondary education are not first time students.] For semester schools, if a student's first term of enrollment is for the summer or winter term, [the scholarship is awarded for] the succeeding fall or spring semester **will be considered the student's first term of enrollment.**

2. The designated beneficiary in (a) above demonstrates his or her undergraduate attendance or enrollment in a higher education institution in this State by submitting a certification by the higher education institution [at the time of initial attendance or enrollment];

i. (No change.)

3. (No change.)

(b) For every two additional years in which the minimum annual contribution of \$300.00 is deposited in the account of a designated beneficiary, an additional amount of [\$250.00] **\$500.00**, up to a maximum scholarship of [\$1,500] **\$3,000**, subject to [appropriations] **funding** available therefor, shall be credited toward the qualified higher education expenses of a designated beneficiary at the time of a qualified withdrawal provided the requirements of (a) 2 and 3 above are met.

(c) (No change.)

(d) A designated beneficiary satisfying the requirements of (a) or (a) and (b) above shall **be eligible to receive a scholarship in any term of enrollment at an eligible institution of post-secondary education in New Jersey, but shall** not be eligible to receive more than one such additional amount provided under (a) or (a) and (b) above.

(e) (No change.)