

**ARTICLE 12.5-02  
COLLEGE SAVE**

Chapter  
12.5-02-01      College SAVE

**CHAPTER 12.5-02-01  
COLLEGE SAVE**

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**12.5-02-01-01. Establishment of the plan.**

1. **Statutory authority and plan establishment.** North Dakota Century Code section 6-09-38 requires the Bank to adopt rules to administer, manage, promote, and market a higher education savings program in compliance with section 529 of the Code. Pursuant thereto, the Bank has adopted the rules of this chapter to implement the program and to provide for its administration, management, promotion, and marketing.
2. **Plan description and purpose.** This program shall be known as College SAVE and is also referred to in these rules as the "plan". The plan is established and maintained so that participants may make contributions to accounts established for the purpose of meeting the qualified higher education expenses of the designated beneficiaries of such accounts. The plan will be operated and maintained in accordance with the rules of this chapter.
3. **Construction of rules, declaration of trust, and other plan documents.** The plan is intended to qualify as a qualified tuition program under section 529 of the Code. The participation agreements for the plan and the accounts in the trust are intended to qualify as municipal securities and municipal fund securities under applicable securities laws. The provisions of these rules, the declaration of trust, and any other plan documents shall be construed by the Bank and the participants consistent with these objectives.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

**12.5-02-01-02. Definitions.**

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

1. "Account" means an account within the trust established for a participant pursuant to a participation agreement. More than one account may be established for the same designated beneficiary.
2. "Act" means North Dakota Century Code section 6-09-38, which provides that the Bank shall adopt rules to administer, manage, promote, and market a higher education savings plan in compliance with section 529 of the Code.
3. "Bank" means the state doing business as the Bank of North Dakota and also includes the executive committee of the Bank acting on behalf of the Bank. The Bank is the administrator of the plan and the trustee of the trust.
4. "Business day" means each day on which the New York Stock Exchange is open for trading.
5. "Code" means the Internal Revenue Code of 1986, interpreted in accordance with the regulations promulgated thereunder, as amended from time to time.
6. "Contribution" means any payment to an account for the benefit of a designated beneficiary, including amounts used to pay fees or expenses associated with the account.
7. "Declaration of trust" means the declaration of trust for the College SAVE Trust, as amended from time to time.
8. "Designated beneficiary" means:
  - a. The individual designated as the beneficiary of the account at the time the account is established;
  - b. The individual who is designated as the new designated beneficiary when the designated beneficiary of an account is changed; and
  - c. The individual receiving the benefits from an account established by any state or local government or an organization described in section 501(c)(3) of the Code, as part of a scholarship program operated by such government or organization.
9. "Distribution" means any disbursement, other than for the payment of fees or expenses, from an account. Distributions include a payment to the participant, to the designated beneficiary, or to such other person or entity as the participant or designated beneficiary properly directs in accordance with these rules.
10. "Distribution request form" means the form approved by the Bank for use in requesting a distribution from an account.
11. "Eligible educational institution" means an institution as defined by section 529 of the Code.
12. "Enrollment form" means the College SAVE enrollment form that is to be completed and signed by a participant and submitted to the manager to open an account. By completing and signing an enrollment form, the participant agrees to be bound by the terms and conditions of the participation agreement, the declaration of trust, and the rules. A separate enrollment form is required for each account.
13. "Investment fund" means the assets of the trust that are divided into portfolios.
14. "Manager" means the third-party contractor appointed by the Bank to act as its agent in administering the plan, or, if none is appointed, the Bank.
15. "Matching grant" means the grant of funds awarded by the Bank to eligible participants on behalf of a designated beneficiary.

16. "Maximum contribution amount" means the amount established for each calendar year equal to the amount that is necessary to pay tuition, required fees, and room and board expenses of the designated beneficiary for five years of undergraduate enrollment at the highest cost eligible educational institution, as defined by section 529 of the Code, and for two years of graduate enrollment at the highest cost eligible educational institution rounded down to the nearest one thousand dollars. Only amounts of tuition, required fees, and room and board expenses that constitute qualified higher education expenses shall be taken into account for these purposes. The Bank shall announce the maximum contribution amount for a year as soon as practicable by including the amount in plan communications and enrollment materials.
17. "Member of the family" means an individual who is related to the designated beneficiary as described in this subsection. Member of the family means:
  - a. A son or daughter, or a descendant of either;
  - b. A stepson or stepdaughter;
  - c. A brother, sister, stepbrother, or stepsister;
  - d. The father or mother, or an ancestor of either;
  - e. A stepfather or stepmother;
  - f. A son or daughter of a brother or sister;
  - g. A brother or sister of the father or mother;
  - h. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law;
  - i. The spouse of the designated beneficiary or the spouse of any individual described in subdivisions a through h;
  - j. A first cousin; or
  - k. Any other individual defined as a member of the designated beneficiary's family for purposes of section 529 of the Code.

For purposes of determining who is a member of the family, a legally adopted child of an individual shall be treated as the child of such individual by blood. The terms brother and sister include a brother or sister by the half-blood.

18. "Participant" means the person, organization or governmental entity, as defined in section 529 of the Code, that establishes an account on behalf of a designated beneficiary and any person, organization or governmental entity who is the successor in interest to such person or entity in accordance with these rules.
19. "Participation agreement" means the written agreement between a participant and the Bank, substantially in the form approved by the Bank. A participant agrees to the terms and conditions of the participation agreement by completing and signing an enrollment form.
20. "Plan" means the College SAVE program established by the Act and implemented by these rules.
21. "Plan disclosure statement" means the College SAVE plan disclosure statement and any applicable supplement thereto, as amended and supplemented from time to time.

22. "Plan start date" means the date the Bank designates as the date on which it will be prepared to enter into participation agreements with participants and to accept contributions to accounts.
23. "Portfolio" means the set of mutual funds, separate accounts or other investment vehicles in which assets in the investment fund are invested in accordance with the asset allocation adopted by the Bank. An account is invested in a portfolio based upon the selections properly made by the participant.
24. "Portfolio unit value" for a portfolio means the aggregate value of the assets in a portfolio as of the market close of that business day, plus receivables and less any liabilities of such portfolio received each business day, divided by the number of units reflected in accounts invested in that portfolio.
25. "Qualified higher education expenses" means the expenses for higher education as defined by section 529 of the Code.
26. "Qualified tuition program" means a higher education savings program or prepaid tuition program that qualifies for treatment under section 529 of the Code.
27. "Rules" means this chapter, as amended and supplemented from time to time.
28. "State" means the State of North Dakota, acting through its executive, legislative, and judicial branches.
29. "Tax-free rollover" means a transfer to a qualified tuition program of the redemption proceeds of a qualified United States savings bond, or the distribution proceeds from a Coverdell education savings account or a qualified tuition program, which is not subject to federal income tax.
30. "Trust" means the College SAVE Trust, a public instrumentality of the state.
31. "Units" refers to the unit of measurement used for determining the value of a portfolio. The value of a unit is based upon the net asset value of the applicable underlying funds, separate accounts or other investment vehicles for the portfolio to which an account is invested and any fees and expenses charged to such portfolio. A unit of the portfolio is a municipal fund security.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002; July 16, 2008.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

### **12.5-02-01-03. Implementation and administration of the plan.**

1. **Executive committee.** The executive committee established by the Bank in accordance with its operating policies will oversee the administration of the plan and is authorized to act on behalf of the Bank in all matters pertaining to the plan. Any actions taken by the executive committee with respect to the plan shall be in accordance with the Bank's operating policies. Initially, for purposes of administering the plan, the executive committee shall operate as follows:
  - a. Appointment. All members of the executive committee are appointed by the chief executive officer of the Bank. Members will serve until removed by the chief executive officer.
  - b. Alternate members. In the absence of a member, the absent member or the presiding officer may designate an alternate.

- c. **Secretary.** The chairman shall appoint a secretary of the committee.
  - d. **Quorum.** A majority of the whole executive committee shall constitute a quorum.
  - e. **Vote required for action.** A majority of the whole executive committee must vote favorably to carry a motion.
2. **Establishment of the College SAVE Trust.** In order to hold the assets of the plan, the Bank is authorized to and shall establish the trust, execute a declaration of trust and other trust documents, and act as the trustee of the trust. Such trust shall be named the College SAVE Trust.
  3. **Declaration of trust.** The declaration of trust shall set forth the rights, privileges, and obligations of the trustee, the participants, and their designated beneficiaries.
  4. **Participation agreement.** The Bank shall approve for use a participation agreement that will require the participant to be bound by its terms and conditions, these rules, and the declaration of trust in connection with their participation in the plan.
  5. **Third-party contractors.** The Bank is authorized to employ service providers, agents, counsel, or other third-party contractors to administer the plan, market the plan, provide investment advice for the plan, provide accounting and recordkeeping services for the plan, offer and sell accounts and participation agreements, solicit and accept contributions, process enrollment and other approved forms, and provide other services relating to the plan and the trust. Notwithstanding the foregoing, the Bank will retain the responsibility in all events for selecting, supervising, monitoring, and terminating any such contractor. The Bank will hold such contractors to the same standards and requirements that apply when private contractors handle funds that belong to the state or provide services to the state.
  6. **Execution of documents.** The Bank is authorized to execute all necessary or desirable documents to implement the plan, including services agreements, participation agreements, selling agreements, and other similar agreements to authorize institutions to offer and sell accounts and participation agreements, solicit and accept contributions, and to process enrollment and other approved forms, and any amendments thereto.
  7. **Establishment of fees.** The Bank is authorized to establish fees, expenses, and other payments relating to the plan, some or all of which may be paid from the assets of the trust and charged against the accounts as provided by the Bank.
  8. **Maintenance of records.** The Bank shall maintain records for accounts in the plan or shall cause such records to be maintained.
  9. **Notice to participants.** The manager shall give notice, or cause notice to be given, to all participants if there is any change in these rules, the declaration of trust, or any other documents that affect the rights and responsibilities of the participants with respect to the plan.
  10. **Compliance with applicable laws.** If the Bank determines that any provision in these rules is contrary to any provision of the Code, any securities law or any other federal or state constitutional, statutory, or regulatory provision, the Bank is authorized to do all things necessary for the proper administration of the plan, including ensuring that the plan obtains and maintains its qualified status under section 529 of the Code.
  11. **No debt.** No indebtedness, other than the obligation to make distributions, may be incurred by or on behalf of the plan.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002.

**General Authority:** NDCC 6-09-38

**12.5-02-01-04. The College SAVE Trust.**

1. **State instrumentality.** The trust shall be an instrumentality of the state and shall be subject to the declaration of trust.
2. **Composition of the trust.** The trust is made up of the investment fund and such other segregated funds as may be established by the trustee from time to time under the declaration of trust.
3. **Portfolios.** Each portfolio is comprised of one or more mutual funds, separate accounts or other investment vehicles in which assets in the investment fund are invested in accordance with the asset allocation adopted by the Bank. An account is initially invested in a portfolio based upon the selections made by the participant on the enrollment form. An account will be reallocated to a new portfolio if the participant changes the investment selections for the account in accordance with these rules.

The Bank will approve:

- a. The percentage asset allocations by investment sector for each portfolio; and
  - b. Specific underlying funds, separate accounts or other investment vehicles for each portfolio that are consistent with the investment sector asset allocations for that portfolio. Asset allocations will be based either on the age of the designated beneficiary specified for such portfolio or on a specific investment strategy (fixed portfolios).
4. **Investment in an age-based portfolio.** A participant may select the age-based option and the fixed option for an account on the appropriate form. If a participant chooses an age-based option on the appropriate form, the account will be assigned to an age-based portfolio based upon:
    - a. The designated beneficiary's birth date identified by the participant; and
    - b. The investment style (either aggressive, moderate, or conservative) selected by the participant.

The Bank will determine the age-based portfolios and the age of the designated beneficiary specified for each portfolio. The Bank will determine the investment styles that are available for each age-based portfolio.

As time passes and the designated beneficiary ages, the account will be automatically reassigned to a more conservative age-based portfolio. When an account is reassigned to a more conservative age-based portfolio, units of the age-based portfolio to which the account has been invested will be redeemed and the proceeds of such redemption will be used by the manager to purchase units of the more conservative age-based portfolio to which the account is invested. Thereafter, contributions to the account and earnings thereon, if any, will be used by the manager to purchase units of the more conservative age-based portfolio.

5. **Investment in a fixed portfolio.** A participant may select the age-based option and the fixed option for an account on the appropriate form. If a participant chooses the fixed option on the appropriate form, the account will be invested in a combination of underlying mutual funds, separate accounts or investment vehicles in accordance with a fixed asset allocation that does not change based on the age of a designated beneficiary.
6. **Investment change permitted upon change in designated beneficiary.** If the participant changes the designated beneficiary for an account as described herein, the participant may, at

the same time as a new designated beneficiary is selected, change the investment selections for the account on the appropriate form. The account will be invested in a new portfolio based upon the investment selections made by the participant on the properly completed change in designated beneficiary form. If the account is invested in an age-based portfolio and a participant does not change the investment selection for the account, the account will automatically be moved to the age-based portfolio that corresponds to the designated beneficiary's birth date identified by the participant.

7. **Investment change permitted twice per calendar year.** Twice each calendar year, the participant may change the investment selections for an account without changing the designated beneficiary by executing such form as the Bank may require. The account will be invested in the new portfolio based upon the investment selections made by the participant.
8. **Bank authority to change portfolios and units.** The Bank has the authority to create additional portfolios, change the asset allocation or underlying investments of existing portfolios, or delete portfolios, without regard to prior participant selections. The terms of such subsequent portfolios shall be as set forth in the plan disclosure statement or supplements thereto. The Bank shall also have the authority to modify the method for valuing accounts, including the ability to authorize unit splits, reclassifications, or equitable adjustments; provided, however, that such action shall not adversely affect the interests of any participant or designated beneficiary.
9. **Investment procedures.** Contributions to an account and earnings thereon, if any, will be used by the manager to purchase shares of mutual funds, separate accounts or other investment vehicles on behalf of the trust in accordance with the asset allocation for the portfolio to which the account is invested. Investments shall be made in mutual funds, separate accounts or other investment vehicles as set forth in the plan disclosure statement.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002; July 16, 2008; April 1, 2015.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-05. Establishment of an account.**

An account may be established for a participant if each of the following requirements is satisfied:

1. **Eligibility requirements for participants.** The participant must satisfy the following eligibility requirements:
  - a. Type of entity/residency requirements. The participant must be an individual who is a United States citizen or United States resident, any state or local government within the United States, an organization validly existing under the laws of any state or the District of Columbia that is exempt from federal income tax under section 501(c)(3) of the Code, or a trust that is validly existing under the laws of any state or the District of Columbia. Except as provided under subsection 6, the participant is not required to be a resident of North Dakota.
  - b. Age requirements. If the participant is an individual, the participant must be at least eighteen years old. There is no maximum age restriction.
2. **Eligibility requirements for designated beneficiaries.** The designated beneficiary of an account must satisfy the following eligibility requirements:
  - a. Residency requirements. The designated beneficiary must be a United States citizen or United States resident, as certified in the enrollment form. The designated beneficiary is not required to be a resident of North Dakota.

- b. Age requirements. Beginning at birth with no maximum age restriction.
  - c. School requirements. The plan may be used to fund qualified higher education expenses of a designated beneficiary with respect to any eligible educational institution.
  - d. Relationship requirements. There are no relationship requirements between the participant and the designated beneficiary. If the account of a current designated beneficiary is transferred to a new designated beneficiary, however, the new designated beneficiary must be a member of the family of the current designated beneficiary or the transfer will be treated where required for tax reporting purposes as a distribution to the participant and a contribution to a new account on behalf of the new designated beneficiary.
3. **Documentation requirements.** The participant is required to complete an enrollment form that will confirm the participant's acceptance of the terms and conditions of the participation agreement and the participant's agreement to be bound by the terms of these rules and the declaration of trust. The enrollment form will provide basic information such as name, address, citizenship or residency status, social security number, date of birth, and other information regarding the participant and the designated beneficiary and such other information as the Bank may require from time to time. If the source of any contribution to the account is a custodial account established under any state's Uniform Transfers or Uniform Gifts to Minors Act (a "UT/UGMA account"), the custodian must execute the enrollment form as a UT/UGMA custodian and establish the account separate from any account the custodian may hold in the custodian's individual capacity before contributing funds from the UT/UGMA account to the account. A participant maintaining accounts as custodian must notify the manager when the custodianship terminates.
4. **Initial contribution or payment schedule.** At the time the account is established, the participant is required to make a contribution or to authorize a schedule for automatic periodic payments to be made to the account.
5. **Identification of designated beneficiary.** Except as set forth below, the participant is required to name the designated beneficiary of the account at the time the account is established. The participant may name himself or herself as the designated beneficiary. If the source of any contribution to the account is a UT/UGMA account, at the time the account is established the participant must designate the minor for whom the UT/UGMA account was established as the designated beneficiary.

In the case of an account that is established as part of a scholarship program operated by any state or local government, or by an organization described in section 501(c)(3) of the Code, the designated beneficiary need not be identified at the time the account is established. Such government or organization shall provide the identification of the designated beneficiary prior to any distribution to or on behalf of a designated beneficiary from such account.

6. **Matching grant.** A matching grant account may be established, and subsequent awards granted, if a participant who has completed and signed the appropriate form, meets the requirements set forth in the then current matching grant instructions established by the Bank at the time the award is granted. A participant may be eligible for a matching grant if the participant filed a North Dakota state income tax return as a state resident.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002; July 16, 2008.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38



## 12.5-02-01-06. Operation of the plan.

1. **Investment direction.** In general, neither the participant nor the designated beneficiary may directly or indirectly control the investment of contributions or earnings, if any, in an account. An account is initially invested in a portfolio based upon the selections made by the participant on the enrollment form. Once the participant makes such selections, all subsequent contributions to the same account generally will be invested in accordance with those investment selections; provided, however, that a participant may, in accordance with these rules, reallocate assets in an account upon a change in the designated beneficiary and also once per calendar year without changing the designated beneficiary of the account. Upon such reallocation, the participant's account will be invested in portfolios consistent with the new investment selections, and subsequent contributions to the account will be invested in accordance with the new investment selections. A participant who wishes to make different investment selections with respect to a future contribution for the same designated beneficiary may do so at any time. If a participant is awarded a matching grant, the matching grant will be invested according to the portfolio allocation instructions on file for the participant's account. Notwithstanding the foregoing, the Bank has the authority to modify the investment strategy, asset allocation, or the underlying investments with respect to any portfolio or any account held under the plan, at any time, without regard to prior participant selections.
2. **Change in designated beneficiary.** Subject to the limitations set forth below, a participant may transfer an account to a new designated beneficiary. If the new designated beneficiary is a member of the family of the prior designated beneficiary, the transfer will not be treated as a distribution. If the new designated beneficiary is not a member of the family of the prior designated beneficiary, the transfer will be treated where required for tax reporting purposes as a distribution to the participant and a contribution to a new account on behalf of the new designated beneficiary. Under no circumstances may a participant transfer an account to a new designated beneficiary if the source of any contribution made to the account was a UT/UGMA account and the account is still held under a custodianship. If the designated beneficiary for whom the UT/UGMA account was established has become the participant of the account, a change in the designated beneficiary will be permitted. Except as provided by the plan disclosure statement, a matching grant account may not transfer and the matching grant may be forfeited if the new designated beneficiary has received a matching grant, has a matching grant account or is the participant on the account. Notwithstanding the foregoing, the Bank has the authority to suspend processing a designated beneficiary change if it suspects that the participant has submitted the change in the designated beneficiary request primarily to avoid the limitation on the number of changes in investment selection permitted in a calendar year under federal law.
3. **Successor participant.** In accordance with procedures established by the Bank, the participant is entitled to designate a successor participant on the enrollment form, or such other form as may be approved by the Bank, who shall become the new participant and assume all of the rights and responsibilities of the current participant with respect to an account and succeed to all of the current participant's rights, title, and interests in an account, including the right to change the designated beneficiary, upon the death, resignation, or refusal to act of the current participant. The successor participant shall execute such forms as the Bank may require to assume all rights and responsibilities as participant. If the designated beneficiary is at least eighteen years old, the designated beneficiary may be named as the successor participant. A designation executed by a participant prior to the participant's death that is accepted following the participant's death will govern distributions following, but not prior to, the manager's acceptance of the designation. In the event a successor participant is not named on the enrollment form or on another form accepted by the manager, or the named successor participant does not accept the account, the surviving spouse of the participant will become the participant for the account. A participant that is not an individual will be deemed not to have a surviving spouse. In the event there is no surviving spouse and the designated

beneficiary is not a minor, the designated beneficiary will become the participant for the account. If the designated beneficiary is a minor, the designated beneficiary's custodial parent will become the participant for the account. If the designated beneficiary has more than one custodial parent, the custodial parent whose birthday is earlier in the calendar year will become the participant for the account. Notwithstanding the foregoing, if the source of any contribution made to the account was a UT/UGMA account, the participant may be removed or replaced, and the designated beneficiary or the successor custodian may become the successor participant, only in accordance with the applicable UT/UGMA laws. In the event there is a dispute relating to who is duly authorized to act with respect to an account, the manager may, in its sole discretion, refuse to accept any contribution to an account or to make any distribution from an account until such dispute is resolved to its satisfaction.

4. **Pledge or assignment.** Neither the participant nor the designated beneficiary may transfer, pledge, or assign any interest such party may have under the plan as collateral or security for a loan, including a loan used to make a contribution, or for any other purpose, other than as specifically provided in these rules.
5. **Transfer of ownership.** To the extent permitted by law, the participant's and the designated beneficiary's interests in an account under the plan are not subject to attachment or alienation by third-party creditors and are not transferable other than by will, by the laws of descent and distribution, or as provided in these rules or section 529 of the Code.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002; July 16, 2008.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-07. Rules applicable to contributions.**

The following rules apply to contributions:

1. **Eligibility to contribute.** Any person or entity, whether or not the person or entity is a participant, may contribute to an account established for any designated beneficiary. Any contribution to an account shall be deemed to have been made by the participant for that account.
2. **Cash contributions.** All contributions to accounts shall be made only in cash. For these purposes, "contributions in cash" means contributions in United States dollars made by check, money order, or wire transfer of funds, in accordance with such procedures as may be established by the Bank.
3. **Tax-free rollover contributions.** Any person or entity making a contribution to an account shall indicate on the appropriate form whether or not the contribution is a tax-free rollover from a Coverdell education savings account, a qualified United States savings bond, or a qualified tuition program. If the contribution is a tax-free rollover, the person or entity making a contribution shall provide the Bank, or the manager on behalf of the Bank, appropriate documentation showing the earnings portion of the contribution, so that the appropriate amount of earnings may be reflected in the account to which the rollover contribution is made. Until appropriate documentation is received, the entire amount of such contribution shall be recorded as earnings in the account. For this purpose, appropriate documentation shall be:
  - a. In the case of a rollover contribution from a Coverdell education savings account, an account statement issued by the financial institution that acted as trustee or custodian of the Coverdell education savings account that shows basis and earnings in the account;

- b. In the case of a rollover contribution from the redemption of a qualified United States savings bond, an account statement or federal tax form issued by the financial institution that redeemed the bond showing interest from the redemption of the bond; and
  - c. In the case of a rollover contribution from a qualified tuition program, a statement issued by the qualified tuition program making the distribution that shows the earnings portion of the distribution.
4. **Maximum contribution amount limitation.** No contribution to an account for a designated beneficiary will be permitted if the total value of all accounts for the designated beneficiary under the plan, or the amount of the contribution when added to the total value of all accounts for the designated beneficiary under the plan, exceeds the maximum contribution amount. If the total value of all accounts for the designated beneficiary later falls below the maximum contribution amount, additional contributions to the account of the designated beneficiary will be permitted.

Notwithstanding this maximum contribution amount rule, the participant is responsible for projecting the designated beneficiary's qualified higher education expenses and, to avoid income taxes and additional tax penalties on distributions, may need to limit contributions to less than the maximum contribution amount.

- 5. **Minimum contribution amount.** Contributions may be made whenever it is convenient, provided that each contribution is made in accordance with the minimum contribution and other requirements as set forth in the plan disclosure statement.
- 6. **Open enrollment.** Participation in the plan may begin at any time after the plan start date.
- 7. **Crediting of contributions and investment of contributions.** The manager shall credit contributions to an account and invest contributions in units of the portfolios designated by the participant generally as of the business day on which the contributions are received in good order by the manager.
- 8. **Calculation of portfolio unit value for contributions.** The portfolio unit value for the portfolio in which contributions to an account are invested shall be the portfolio unit value the day the contribution has been credited to that account.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002; July 16, 2008.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-08. Rules applicable to distributions.**

The following rules apply to distributions:

- 1. **Distribution process.** Distributions may be requested in writing on the distribution request form or any other method approved by the Bank when made to an eligible educational institution. The participant shall designate the person or entity to whom the distribution should be paid. The manager shall review all distribution request forms to determine that all information needed to process the request has been received.
- 2. **Methods of distribution.** Distributions will be made by check or, at the request of the participant, or designated beneficiary if applicable, by wire transfer. Requests for distributions will be satisfied as soon as practicable following the receipt of a properly completed distribution request form or upon request by the participant for the distributions to be made to an eligible educational institution.

3. **Processing of distributions.** A distribution request form will be deemed accepted by the manager as of the business day on which the manager determines that the distribution request form has been properly completed or the distribution request to an eligible educational institution has been properly verified. Generally on the business day of such acceptance, the manager, on behalf of the trust, shall take appropriate action with respect to the portfolio to which the account is invested to cause funds to be available for the distribution including reducing the number of units reflected in the account to reflect such action.
4. **Calculation of portfolio unit value for distributions.** The portfolio unit value of the portfolio from which distributions from an account are taken shall be generally the business day on which the distribution request is deemed accepted by the manager.

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**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-09. Bank's authority to terminate an account or require a distribution.**

The Bank may close, or cause its agents to close, an account if the participant or designated beneficiary provides false or misleading information to the plan, if the minimum contribution threshold described under subsection 5 of section 12.5-02-01-07 is not met, or if such action is necessary, in the discretion of the Bank, to ensure that the plan qualifies under section 529 of the Code and complies with all applicable securities laws and other applicable federal or state constitutional, statutory, or regulatory provisions. In addition, the Bank may, without closing an account, require a participant to receive a distribution from the participant's account of such amount as the Bank may determine if such action is necessary, in the discretion of the Bank, to ensure that the plan qualifies under section 529 of the Code and complies with all applicable securities laws and other applicable federal or state constitutional, statutory, or regulatory provisions.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-10. General provisions.**

1. **Distribution of plan disclosure statement.** The Bank and the manager, on behalf of the Bank, shall take all necessary actions to help ensure that each person who receives a participation agreement and an enrollment form shall also receive the plan disclosure statement that sets forth all material aspects of an investment in the plan.
2. **Separate accounting and reporting.** Participants will receive reports at least quarterly that show contributions and associated earnings, distributions, and fees charged to the account as well as the total balance in the account. Separate accounting shall be maintained for each account. Participants will have access to account information during normal business hours and such other times as may be determined by the Bank.
3. **Fees.** The fees set forth below may be assessed. The amount of the fees and the method of calculating the fees will be determined by the Bank from time to time and will be set forth in the plan disclosure statement. Fees will be collected by the manager. Assessed fees shall be deducted from an account, and an appropriate adjustment shall be made to the value of the account. The Bank may decide not to assess any one or more of these fees, may change the amount of these fees and the method of calculating them, and may assess different fees based upon the state of residence of a participant or a designated beneficiary.

- a. Maintenance. Maintenance fees to recover the cost of administering the account, recordkeeping, investment management, marketing, distribution, and related tasks.
- b. Termination. If an account is closed, a fee to recover the administrative costs of closing an account may be assessed under terms to be determined by the Bank.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002; July 16, 2008.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-11. Tax information and withholding.**

The plan will be maintained and operated in accordance with the requirements set forth in section 529 of the Code. Distributions to or on behalf of the designated beneficiary or the participant will be reported to the Internal Revenue Service and to the distributee, as required under section 529 of the Code, and will be subject to any applicable federal or state income tax withholding. Direct transfers to another qualified tuition program will be reported to the receiving program as required under Section 529 of the Code.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-12. Procedure for appeals.**

The Bank may provide procedures for the appeal by a participant or designated beneficiary of any decision made by the Bank or the manager relating to the imposition of maintenance or termination fees, any distribution required by the Bank, or any other matter determined by the Bank.

**History:** Effective September 15, 2000; amended effective August 23, 2001; June 1, 2002.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-13. Rules amendment procedure.**

These rules may be amended at any time and from time to time by the Industrial Commission.

**History:** Effective September 15, 2000; amended effective August 23, 2001.

**General Authority:** NDCC 6-09-38

**Law Implemented:** NDCC 6-09-38

#### **12.5-02-01-14. Changes effective January 1, 2002, through December 31, 2010.**

Repealed effective August 23, 2001.