

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

PREAMBLE

1. **Sections Affected**

Article 5	<u>Rulemaking Action</u>
R7-3-501	New Article
R7-3-502	New Section
R7-3-503	New Section
R7-3-504	New Section
R7-3-505	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 15-1852(C)
Implementing statute: A.R.S. § 15-1873 et seq.
3. **The effective date of the rules:**

October 31, 1997
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 1691, June 20, 1997
Notice of Proposed Rulemaking: 3 A.A.R. 2586, September 26, 1997
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Verna Allen, Executive Director
Address: Commission for Postsecondary Education
2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004
Telephone: (602) 229-2595
Fax: (602) 229-2599
6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

R7-3-501 through R7-3-505 will provide procedures for implementing the Arizona Family College Savings Program through financial institutions as a public-private partnership. These rules will establish a uniform and consistent manner in implementing the Arizona Family College Savings Program. Pursuant to A.R.S. § 15-1852(C), the Commission is exempt from the regular rulemaking procedures.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
8. **The summary of the economic, small business, and consumer impact:**
 - a. **An identification of the proposed rulemaking:** Arizona Family College Savings Program, R7-3-501 through R7-3-505, adopted pursuant to A.R.S. § 15-1873 et seq.
 - b. **An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:** Persons directly affected are account holders, beneficiaries, and financial institutions. Account holders will bear costs in paying an application fee and a potential maintenance fee. Account holders will benefit from the Program as the interest is tax deferred and taxed at the income bracket of the beneficiary. Beneficiaries will directly benefit from the Program as having money available to attain a college education. Financial institutions will bear the cost of paying a marketing fee and will benefit

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by increasing the deposits into their financial institutions.

c. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking: The Commission will bear administrative costs in keeping track of the information received from the financial institutions and enforcing the penalties for nonqualified withdrawals.

d. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: Financial institutions will bear the cost of paying a marketing fee. The Office of Administrative Hearings will hear any causes which involve an appeal from the Commission.

e. A statement of the probable impact of the proposed rulemaking on small business: Some financial institutions are small businesses and will need to bear administrative costs in implementing and maintaining the Program.

f. A statement of the probable effect on state revenues: Additional funding for the Commission will be needed to implement the program.

g. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives were not available.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Not applicable

10. A summary of the principal comments and the agency response to them:

On October 30, 1997, the Commission held a public hearing to consider comments regarding the proposed rules. No one from the public attended the hearing, and the Commission did not receive any written comments from the public. Prior to the October 30 public hearing, the Commission received substantial input from both the Oversight Committee and the Advisory Committee. Staff from the Commission had public meetings with each committee regarding the rules on July 14, 1997, and again on August 11, 1997. Input from both committees was considered and used in drafting the proposed rules. The Commission also discussed the proposed rules at its regular meetings on July 22, 1997, August 27, 1997, and September 4, 1997. The Commission received no input from the public at any of the 3 meetings.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable

12. Incorporations by reference and their location in the rules:
Not applicable

13. Was this rule previously adopted as an emergency rule?
No

14. The full text of the rules follows:

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ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Section	
R7-3-501.	Definitions
R7-3-502.	Fees
R7-3-503.	RFP Process
R7-3-504.	Set-up and Maintenance of Accounts - Reporting of Nonqualified Withdrawals; Penalties
R7-3-505.	Oversight of Financial Institutions

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

- A. "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, pay-roll deposit, traveler's check, and wire transfer will be treated as cash.
- B. "Certification" means a signed, written statement by an account owner authorizing withdrawal for specific educational item or items or service or services. If the account

owner has a guardian, conservator, or another person appointed to manage the account owner's personal affairs, or an individual granted power of attorney, that individual shall have the power to sign the certification.

- C. "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.
- D. "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.
- E. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.

R7-3-502. Fees

- A. Application fee. The application fee is \$10. Application fees shall be forwarded to the Commission 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 Commission \$10 for each new account opened; said tender to be made at the end of the month in which the account is opened. The Committee shall review the application fee every 24 months and recommend to the Commission whether the application fee should be adjusted.
- B. Administrative fee. For each account opened, the financial institution shall pay to the Commission a 1-time fee of \$3 at

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the end of the month in which the account was opened. The Committee shall review the administrative fee every 24 months and recommend to the Commission whether the administrative fee should be adjusted. The financial institution shall not charge the account holder the administrative fee.

- C. Marketing fee.** The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a \$200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a pro-rated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Committee shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account holder the marketing fee.

R7-3-503. RFP Process

The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.

R7-3-504. Set-up and Maintenance of Accounts - Reporting of Nonqualified Withdrawals; Penalties

- A.** Pursuant to A.R.S. §§ 15-1875(H), (I), and (J), the Commission has authority to assess penalties for nonqualified withdrawals. In order to make a withdrawal, the account holder or the account holder's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871. If a financial institution has reason to believe that a nonqualified withdrawal has been made, the financial institution shall report that fact to the Commission within 3 business days, in writing, including identification of the account holder, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be nonqualified. The financial institution may, but shall not be required to, notify the account holder and beneficiary of any such communication to the Commission.
- B.** If the Commission determines that a withdrawal is nonqualified, the Commission shall assess a 10% penalty on the amount of the nonqualified withdrawal. Within 3 business days, the Commission shall give written notification to the financial institution and the account holder that the withdrawal has been determined to be nonqualified and that a 10% penalty will be assessed. The account holder may dispute the Commission's determination by submitting written notice, to the Commission, within 30 days from the date of

the notice. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account holder. If the account holder disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

R7-3-505. Oversight of Financial Institutions

- A. Disclaimer of State liability.** Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by this state and neither the principal deposited nor the investment return is guaranteed." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.
- B. Reporting Requirements.**
- 1.** To account holders. Each calendar quarter, every financial institution shall provide each account holder with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the 4th calendar quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.
 - 2.** To Commission. A copy of the statement described in R7-3-505(B)(1) above shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).
- C. Access to books and records.** No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee 1st approves with or without modification such request for access.
- D. Non-renewal.** The Commission'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).
- E. Marketing programs.**
- 1.** Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is 1st submitted to the Commission for review. If, within 30 days, the Commission 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 Commission for a credit against future marketing fees.