

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R04-535]

PREAMBLE

1. Sections Affected

R2-8-117
Article 5
R2-8-501
R2-8-502
R2-8-503
R2-8-504
R2-8-505
R2-8-506
R2-8-507
R2-8-508
R2-8-509
R2-8-510
R2-8-511
R2-8-512
R2-8-513
R2-8-514
R2-8-515
R2-8-516
R2-8-517
R2-8-518
R2-8-519
R2-8-520
R2-8-521

Rulemaking Action

Repeal
New Article
New Section
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. §§ 38-714(F)(5), 38-715(C)(3)

Implementing statute: A.R.S. §§ 38-711, 38-730, 38-742, 38-743, 38-744, 38-745, 38-747, 38-769, Title 38, Chapter 5, Article 7

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A. R. 3189, published August 13, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Nancy Johnson, Rules Coordinator

Address: Arizona State Retirement System
Office of External Affairs
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012

Telephone: (602) 308-5172

Notices of Proposed Rulemaking

Fax: (602) 240-5303
E-mail: NancyJ@asrs.state.az.us
or
Name: Susanne Dobel, Manager, External Operations
Address: Arizona State Retirement System
Office of External Affairs
3300 N. Central Ave., Suite 1400
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Telephone: (602) 240-2039
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5. An explanation of the rule, including the agency's reasons for initiating the rule:

A.R.S. §§ 38-743, 38-744, 38-745, and 38-747 allow a current, contributing member of ASRS to purchase credited service, upon which ASRS benefits are based. There are different categories of eligible service that a member may purchase, and several methods by which the member may pay for that credited service.

The rulemaking addresses:

1. The categories of eligible service and required documentation,
2. The procedure for requesting purchase of service,
3. Restrictions on purchases,
4. Methods of purchasing credited service,
5. Interest charges for payroll deduction agreements when purchasing service credits,
6. How the cost of purchasing service credits is calculated, and
7. The effect of termination or death on service purchases.

R2-8-117, Prior Service Pensions, addresses teachers who worked prior to the creation of ASRS in 1953. ASRS will repeal R2-8-117, because the average annual wage has already been determined for those few members that R2-8-117 applies to and therefore, the rule is irrelevant and unnecessary.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:

None

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

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Repeal of R2-8-117

Repealing R2-8-117 will cause no economic impact. The average annual wage has already been determined for those few members that R2-8-117 applies to. The rule is irrelevant and unnecessary.

R2-8-501 through R2-8-505; R2-8-507 through R2-8-512; R2-8-514 through R2-8-521

These rules specify required documentation, identify the current procedure for purchasing various types of service credit, and identify the current procedure for electing various payment options. These rules have no economic impact.

R2-8-506

This rule implements legislation, changing the cost of service credit purchases from normal cost to actuarial present value. It is the legislation, as opposed to the rule, that impact ASRS members who choose to purchase service credit. The change in calculation will cause those members who are further from retirement to pay less for service credit they purchase, while those members closer to retirement will pay more for service credit they purchase. Because calculating service credit at normal cost was creating a liability to the ASRS, the change to actuarial present value will mean a savings of approximately 17 basis points on the contribution rates for employee members and 17 basis points on the contribution rates for employer members.

R2-8-513

Payroll deduction agreements are authorized by A.R.S. § 38-747, and began on July 1, 1998. Making payments through a salary reduction agreement with an employer, makes the payments pre-tax. PDA contracts are irrevocable and terminate only at completion of the contract, at retirement, or at separation from the member's current employer. In previous years, ASRS did not exercise statutory provisions to assess interest on PDAs. However, the number of members requesting to purchase service credit using a PDA has increased from 3,645 in fiscal year 1999 to 5,250 in fiscal year 2004, and continues to grow with almost 3,000 new PDAs in the first five months of fiscal year 2005. Because of this increase, ASRS has identified a significant amount of forgone income by the plan as a result of not charging interest.

Charging interest affects active members, employers, and members who choose to pay for service credit through a PDA. A member who chooses to pay for service credit through a PDA incurs minimal to substantial costs depending on the cost of the service credit the member chooses to purchase, and the length of time over which the member wishes to extend the agreement. For example, if a member purchases five years of service credit, if the member's cost is calculated to be \$40,000, and if the member chooses to pay for that service credit over a period of ten years, under the interest-free method, the member would pay \$4,000 per year in 26 equal payments a year through payroll deduction, or \$153.85 per paycheck. Pursuant to the new rule, charging interest at the assumed actuarial investment earnings rate approved by the Board, which is currently 8%, the cost per paycheck increases to \$223.04, an increase of \$69.19 per paycheck.

Without charging interest on PDAs, active members' and employers' contribution rates would increase by at least 12 basis points each, based on an estimate that an average of \$17,000,000 per year of forgone income will be saved in the next five years by charging interest.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Nancy Johnson, Rules Coordinator

Address: Arizona State Retirement System
Office of External Affairs
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012

Telephone: (602) 308-5172

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E-mail: NancyJ@asrs.state.az.us

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Name: Susanne Dobel, Manager, External Operations Manager

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Telephone: (602) 240-2039

Fax: (602) 240-5303

E-mail: SusanneD@asrs.state.az.us

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The ASRS has scheduled an oral proceeding on the proposed rulemaking:

Date: Wednesday, February 16, 2005

Location: 3300 N. Central, Board Room, 10th Floor
Phoenix, AZ 85012

Time: 10:00 a.m.

The close of record is 5 p.m., Wednesday, February 16, 2005.

A person may also submit written comments on the proposed rules no later than 5 p.m., Wednesday, February 16, 2005, to the individuals listed in questions 4 and 9.

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. Incorporation by reference and their location in the rules:

Not applicable

13. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-117. ~~Prior service pensions~~ Repeal

ARTICLE 5. PURCHASING SERVICE CREDIT

Section

R2-8-501. Definitions
R2-8-502. Request to Purchase Service Credit and Notification of Cost
R2-8-503. Requirements Applicable to All Service Credit Purchases
R2-8-504. Service Credit Calculation for Purchasing Service Credit
R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers
R2-8-506. Cost Calculation for Purchasing Service Credit
R2-8-507. Required Documentation and Calculations for Forfeited Service Credit
R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit
R2-8-509. Required Documentation and Calculations for Military Service Credit
R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit
R2-8-511. Required Documentation and Calculations for Other Public Service Credit
R2-8-512. Purchase Service Credit by Check, Cashier's Check, or Money Order
R2-8-513. Purchase Service Credit by Irrevocable Payroll Deduction Authorization
R2-8-514. Purchase Service Credit by Direct Rollover
R2-8-515. Purchase Service Credit by Trustee-to-Trustee Transfer
R2-8-516. Purchase Service Credit by Indirect IRA Rollover
R2-8-517. Purchase Service Credit by Distribution Rollover Contribution
R2-8-518. Purchase Service Credit by Partial Lump Sum Retirement Distribution
R2-8-519. Purchase Service Credit by Termination Pay Distribution
R2-8-520. Separation from Employment or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization
R2-8-521. Adjustment of Errors

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-117. ~~Prior service pensions~~ Repeal

- ~~A. Average annual wages: Average annual wages used as a basis for determining prior service credit shall be determined by the wages paid during the five fiscal years commencing July 1, 1948, and concluding June 30, 1953, for state employees. For employees of political subdivisions, the average annual wage shall be determined by the wages paid to the employee during the five fiscal years immediately preceding the establishment of the retirement system by the political subdivision. In no case, shall any earnings over \$3,600 in any fiscal year be taken into consideration in determining the average annual wage. If employment by the member was less than the five fiscal years preceding establishment of the retirement system, the average annual wage for the actual period of employment shall be used.~~
- ~~B. Irregular and part-time employment: Employment during the period for which prior service credit is allowed which was at irregular intervals or on a daily basis shall reflect the number of days of actual employment during a fiscal year for the purpose of determining prior service credit. Employment which was regular but constituted less than a full day and resulted in salaries proportionate to such part-time service shall be treated as full-time service at the rate of compensation actually paid for the purpose of determining the period and the amount of prior service credit.~~
- ~~C. Teachers at the University of Arizona who were not members of the Arizona Teachers' Retirement System shall have their prior service credit calculated for the years preceding July 1, 1953.~~

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. “Active duty” has the same meaning as in 32 USC § 101.
2. “Active member” means the same as in A.R.S. § 38-711.
3. “Active reserve duty” means participating in required meetings and annual training in a Reserve or National Guard branch of a United States uniformed service, for which the member received pay.
4. “Actuarial present value” means an amount that is the value in today’s dollars of a member’s future retirement benefit when calculated using the actuarial assumptions in R2-8-123 and the:
 - a. Member’s current years of credited service to the nearest month;
 - b. Member’s age to the nearest day;
 - c. Amount of service credit the member wishes to purchase to the nearest month, except for the calculation in R2-8-506(A)(2); and
 - d. Member’s current annual compensation.
5. “ASRS” means the same as in A.R.S. § 38-711.
6. “ASRS employer” means the same as “employer” in A.R.S. § 38-711.
7. “Authorized representative” means an individual who has been delegated the authority to act on behalf of a custodian, trustee, plan administrator, or, if applicable, a member.
8. “Compensation” means the same as in A.R.S. § 38-769.
9. “Credited service” means the same as in A.R.S. § 38-711.
10. “Current annual compensation” means the greater of:
 - a. Annualized compensation of the full pay period immediately before the date of a request to ASRS to purchase credited service pursuant to § 38-743 or § 38-745.
 - b. Annualized compensation of the partial year if a member has less than 12 months total credited service on the date of a request to purchase credited service pursuant to § 38-743 or § 38-745.
 - c. The sum of the 12 months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to § 38-743 or § 38-745.
 - d. The sum of the 36 months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to § 38-743 or § 38-745 divided by three.
 - e. If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member’s last pension times 12.
11. “Current years of credited service” means the amount of credited service a member has earned or purchased, and the amount of service credit for which an irrevocable payroll deduction authorization is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid.
12. “Custodian” means a financial institution that holds financial assets for guaranteed safekeeping.
13. “Day” means a calendar day, and excludes the:
 - a. Day of the act or event from which a designated period of time begins to run; and
 - b. Last day of the period if a Saturday, Sunday, or official state holiday.
14. “Direct rollover” means movement of eligible funds made payable to the ASRS for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747 (H)(2) or (H)(3).
15. “Eligible funds” means payments listed in A.R.S. § 38-747(H)(2) and (3).
16. “Eligible member” means an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.
17. “Error” means a typographical mistake, incorrect information, or other inaccuracy, whether intentional or unintentional.
18. “Forms of payment” means check, cashier’s check, money order, irrevocable payroll deduction authorization, direct rollover, trustee-trustee transfer, IRA rollover, partial lump sum distribution, and termination pay distribution.
19. “Forfeited service” means credited service for which the ASRS has returned contributions to the member under A.R.S. § 38-742.
20. “Immediate family member” means:
 - a. A member’s spouse or life partner;
 - b. A member’s natural, step, or adopted sibling;
 - c. A member’s natural, step, or adopted child;
 - d. A member’s natural, step, or adoptive parent; or
 - e. An individual for which the member has legal guardianship.
21. “IRA” means an Individual Retirement Account or Annuity under IRC § 408.
22. “IRC” means the Internal Revenue Code.
23. “Irrevocable payroll deduction authorization” means a contract between an eligible member, an ASRS employer and the ASRS, that requires the ASRS employer to withhold payments from a member’s pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747, and that shall not be revoked.

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24. "Leave of absence" means the same as in A.R.S. § 38-711.
25. "Life partner" means an individual who lives with the member as a spouse, but without being legally married.
26. "Member" means the same as in A.R.S. § 38-711.
27. "Military service" means active duty or active reserve duty with any branch of the United States uniformed services.
28. "Military call-up" means a directive from the President of the United States, initiating active duty for personnel of the active or inactive National Guard and Reserve branches of the United States uniformed services.
29. "Military service record" means the military form DD-214, or other military form that provides the following information:
 - a. The member's full name;
 - b. The member's social security number;
 - c. The member's date of birth;
 - d. Type of discharge the member received;
 - e. Active duty dates, if applicable;
 - f. Active reserve duty dates, if applicable; and
 - g. Points received for active duty or active reserve duty.
30. "Other public service" means previous employment listed in A.R.S. § 38-743 (A).
31. "PDA pay-off letter" means written correspondence from ASRS to a member that specifies the amount necessary to be paid by the member to complete an irrevocable payroll deduction authorization and receive the credited service specified in the irrevocable payroll deduction authorization.
32. "Person" means the same as in A.R.S. § 1-215.
33. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.
34. "Plan Administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
35. "Political subdivision" means the same as in A.R.S. § 38-711.
36. "Political subdivision entity" means the same as in A.R.S. § 38-711.
37. "Public employer" means the United States government, a state of the United States, a political subdivision of a state of the United States, or a political subdivision entity.
38. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747 (H)(2) and (3).
39. "Service credit" means forfeited service under A.R.S. § 38-742, leave of absence under A.R.S. § 38-744, military service and military call-up service under A.R.S. § 38-745, and other public service under A.R.S. § 38-743 that an eligible member may purchase.
40. "SP invoice" means a written correspondence from the ASRS providing an eligible member with the amount of money required to purchase a specified amount of service credit.
41. "Termination pay distribution" means an ASRS employer's payment to the ASRS of an eligible member's termination pay to purchase service credit as specified in § 38-747(B)(2).
42. "Three full calendar months" means the first day of the first full month through the last day of the third full month.
43. "Trustee" means an individual who holds monetary assets within an eligible retirement plan or IRA for the benefit of a member.
44. "Trustee-to-trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution, and that is:
 - a. Qualified under IRC § 401(a) or 403(a).
 - b. An annuity contract described in IRC § 403(b), or
 - c. An eligible deferred compensation plan described in IRC § 457(b) sponsored by a government in the state of Arizona.
45. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, the National Oceanic and Atmospheric Administration, and the Public Health Service.
46. "United States" means the same as in A.R.S. § 1-215.
47. "Window credit" means overpayments made on previously purchased service credit by eligible members of the ASRS as provided by Laws 1997, Chapter 280, Section 21, and Laws 2003, Chapter 164, Section 3.

R2-8-502. Request to Purchase Service Credit and Notification of Cost

- A. An eligible member may request to purchase service credit verbally, in writing, or electronically. The eligible member shall provide the eligible member's mailing address and designate which category of service credit the eligible member is requesting to purchase.**
- B. The ASRS shall send a letter acknowledging the request to purchase service credit to the mailing address provided by the eligible member. The ASRS shall provide, with the acknowledgment letter, any form specified in this Article that corresponds to the category of service credit the eligible member requests to purchase and the deadline for providing supporting documentation of service credit to the ASRS.**

- C. Except as provided in R2-8-519(A), the eligible member shall provide documentation of service credit as required by this Article, within 90 days of the eligible member's request to purchase service credit. If the ASRS has not received complete and correct documents within 90 days of the request to purchase service credit, the ASRS shall cancel the eligible member's request to purchase service credit. The eligible member may make a new request to purchase service credit.
- D. Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide the following to the eligible member:
 - 1. A SP invoice stating the cost to purchase the amount of service credit the member is eligible to purchase and the date the payment is due; and
 - 2. A Service Purchase Payment Request form requesting the following information:
 - a. The member's name;
 - b. The member's social security number;
 - c. The member's mailing address;
 - d. The member's daytime telephone number;
 - e. ID number listed on the SP invoice;
 - f. The years the member wishes to purchase;
 - g. If the member elects to pay for the service credit by trustee-to-trustee transfer, IRA rollover, distributed rollover contribution, or direct rollover, the anticipated number of rollovers or transfers;
 - h. If the member elects to pay by irrevocable payroll deduction authorization, the amount of money the member wishes to pay per pay period;
 - i. If the member elects to pay for the service credit by check, the check number and amount of the check;
 - j. If the member elects to pay any cost remaining at retirement or termination of employment with a termination pay distribution, the retirement date or last date work;
 - k. If the member is retiring and wishes to pay by a partial lump sum retirement distribution or termination pay distribution, the member's requested retirement date; and
 - l. The member's signature and date of the signature; and
 - 3. Other forms the member may need to complete the request for service credit purchase.

R2-8-503. Requirements Applicable to all Service Credit Purchases

- A. To purchase service credit at the amount provided in the SP invoice, the eligible member shall purchase the service credit by check or money order, or request an irrevocable payroll deduction authorization, rollover, transfer, termination pay distribution, or partial lump sum retirement distribution as specified in this Article, within 30 days from the date on the SP invoice.
- B. An eligible member may purchase all of the service credit or a portion of the service credit. If the eligible member wishes to purchase only a portion of the service credit, the eligible member shall make a new request for purchase. ASRS shall recalculate the cost. A new request to purchase a portion of the service credit initially requested automatically terminates the initial request.
- C. ASRS shall not consider more than one active request to purchase service credit at a time from a member in each of the following categories:
 - 1. Leave of absence,
 - 2. Military service,
 - 3. Military call-up service,
 - 4. Forfeited service, and
 - 5. Other public service.
- D. An eligible member may cancel an active request to purchase a specific category of service credit verbally or in writing, and submit a new request in the same category of service credit for a different amount of service credit.
- E. If an eligible member is entitled to a window credit, the eligible member may apply the window credit to a purchase of service credit. To apply a window credit to a purchase of service credit, the eligible member shall make a request to the ASRS in writing within 30 days from the date on the SP invoice and include the following information:
 - 1. The amount the member wants to apply,
 - 2. The member's signature, and
 - 3. The date of the member's signature.
- F. The amount of service credit an eligible member may purchase and the benefits an eligible member may receive are subject to the limitations prescribed in A.R.S. § 38-747(E).
- G. ASRS shall extend the time for an eligible member to respond to a SP invoice as follows:
 - 1. If the member notifies the ASRS of an ASRS error within 30 days from the date on the SP invoice, the time is extended 30 days from the date the ASRS sends notification to the eligible member that the ASRS has corrected the error;
 - 2. If an ASRS internal legal review is made of the member's service credit purchase request, the time is extended 30

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days from the date ASRS sends notification to the member that the review is completed;

3. If the member appeals an issue regarding the SP invoice, the time is extended 30 days from the date ASRS sends notification to the member that a decision on the appeal has been made; or
4. If an unforeseeable event occurs that is outside of the member's control, such as an incapacitating illness of the member or death of an immediate family member, the ASRS shall extend the time by up to six months, after a review of the unforeseeable event to determine the length of the extension.

R2-8-504. Service Credit Calculation for Purchasing Service Credit

An eligible member who purchases service credit shall receive one month of credited service for one or more days of service in a calendar month.

R2-8-505. Restrictions on Purchasing Overlapping Service Credit: Transfers

- A.** An eligible member may not purchase service credit that, when added to credited service earned in any plan year, results in more than:
 1. One year of credited service in any plan year, or
 2. One month of credited service in any one calendar month.
- B.** The restrictions in subsection (A) do not apply to service credit that an eligible member transfers from another retirement system to the ASRS as authorized in A.R.S. § 38-730 or A.R.S. Title 38, Chapter 5, Article 7, whether the eligible member requests the transfer before or after purchasing other service credit.

R2-8-506. Cost Calculation for Purchasing Service Credit

- A.** For leave of absence service credit, military service credit, and other public service credit, the ASRS shall calculate, as of the date of the request to purchase service credit:
 1. The actuarial present value of the future retirement benefit for the member including the service credit that the eligible member has requested to purchase, and
 2. The actuarial present value of the future retirement benefit for the member without the service credit that the eligible member has requested to purchase.
- B.** The cost for purchasing the service credit that the member has requested to purchase is the amount that equals the difference between the actuarial present value in subsection (A)(1) and the actuarial present value in subsection (A)(2).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

- A.** An eligible member who requests to purchase service credit for forfeited service under A.R.S. § 38-742 shall provide to the ASRS:
 1. The eligible member's:
 - a. Full name and, if applicable, nicknames or other names used while working for an ASRS employer for which the eligible member is requesting to purchase service credit;
 - b. Mailing address;
 - c. Telephone number, if applicable;
 - d. Social security number;
 2. The name of each ASRS employer, if known, for which the eligible member is requesting to purchase service credit for previously forfeited service;
 3. The year the eligible member began working for each ASRS employer and the year the eligible member left each employment, if known; and
 4. The year the eligible member believes the ASRS returned contributions to the member.
- B.** The amount the eligible member shall pay to purchase service credit for previously forfeited service is the amount of contributions that the ASRS returned to the eligible member, plus interest on that amount from the date of the return of contributions to the date of redeposit at the interest rate determined by the Board as specified in A.R.S. § 38-742.

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit

- A.** An eligible member may request to purchase service credit for an approved leave of absence from an ASRS employer under A.R.S. § 38-744. To request to purchase service credit for approved leave of absence the eligible member shall provide to the ASRS:
 1. The items listed in R2-8-507(A)(1);
 2. The name of the ASRS employer;
 3. A written statement from the ASRS employer specifying the beginning and ending dates of the leave of absence and the eligible member's salary on the day before the leave of absence; and
 4. A copy of the guidelines referenced in A.R.S. § 38-744, if applicable.
- B.** The amount the member shall pay to purchase service credit for leave of absence is determined as provided in R2-8-506.

R2-8-509. Required Documentation and Calculations for Military Service Credit

- A.** An eligible member may request to purchase military service credit under A.R.S. § 38-745(A) and (B). To request to pur-

chase service credit for military service, the eligible member shall provide to the ASRS:

1. The items listed in R2-8-507(A)(1), and
2. A copy of the eligible member's military service record.

B. The amount the eligible member pays to purchase military service credit is determined as provided in R2-8-506.

C. ASRS determines the amount of service credit an eligible member receives for active reserve duty time by the points the eligible member received while on active reserve duty. Unless the eligible member produces documentation that shows otherwise, four points equals one weekend of active reserve duty.

R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit

A. An eligible member may request to purchase up to 60 months of military call-up service under A.R.S. § 38-745(C) through (I). To request to purchase service credit for military call-up service, the eligible member's ASRS employer shall provide to the ASRS:

1. The items listed in R2-8-507(A)(1);
2. A copy of the eligible member's military service record; and
3. A completed Military Call-up form that includes the following:
 - a. The salary received by the eligible member on the day before the eligible member's active military service pursuant to the military call-up;
 - b. Statement that the eligible member returned to employment within 90 days after the active duty termination date, if applicable; and
 - c. Member's death certificate, if applicable.

B. The ASRS calculates the amount the ASRS employer pays to purchase military call-up service by multiplying the eligible member's salary at the time active duty commences, by the contribution rate in effect for the period of active duty, and by the years or partial years of service elapsing from the active duty commencement date through the active duty termination date. The active duty termination date is:

1. The date the eligible member separates from active military duty;
2. The date the eligible member is released from active duty-related hospitalization or one year after initiation of active duty-related hospitalization, whichever date is earlier; or
3. The date the eligible member dies as a result of active military duty.

C. If an ASRS employer deducts contributions from an eligible member's pay while the eligible member is on military call-up service, the ASRS shall return the contributions to the ASRS employer after the ASRS receives the information in subsection (A).

D. If an ASRS employer deducts contributions from an eligible member's pay while the eligible member is on military call-up military service, and the eligible member does not return to the ASRS employer after separation from active military service, the ASRS shall apply the contributions to the member's credited service.

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

A. An eligible member who requests to purchase other public service credit under A.R.S. § 38-743 shall provide to the ASRS a completed Affidavit of Other Public Service form, signed and dated by the member, and notarized, that includes the following:

1. The member's full name;
2. The member's social security number;
3. The member's mailing address;
4. The member's home telephone number, if applicable;
5. The member's daytime telephone number;
6. The name, mailing address, and business telephone number of the other public service employer's retirement system;
7. The position the member held while working for the other public service employer;
8. The amount of service to be purchased;
9. If the other public service employer was a non-ASRS employer, a statement whether or not the member participated in the non-ASRS employer's retirement plan;
10. If the member participated in a non-ASRS public service employer's retirement plan, the name of the retirement plan and identify whichever one of the following applies:
 - a. That the member took a refund of all benefits and has forfeited all benefits under the retirement plan/system, and the approximate date the member took a refund;
 - b. That the member has no accrued benefit and is not eligible for any future benefits under the retirement plan/system; or
 - c. That the member will request a refund of all benefits and forfeit all benefits under the retirement plan/system; and
11. Acknowledgement that:
 - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an

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intent to defraud ASRS is guilty of a Class 6 felony, pursuant to A.R.S. § 38-793;

- b. The service purchase transaction is subject to audit and the ASRS shall adjust a member's total credited service with the ASRS if any errors are discovered;
- c. Any overpayment is refunded at retirement, or if the member is already retired, adjustments to the member's credited service will affect the member's retirement benefit;
- d. Any overpayment that is refunded as pre-tax dollars will have tax consequences;
- e. If an audit determines that the member is eligible for a benefit from the other public service employer's retirement plan, the member is required to take necessary steps to forfeit the benefit; and
- f. If the member cannot provide documentation that the member is no longer eligible for a benefit from the other public service employer's retirement plan, any ASRS service that the member has purchased based on employment with the other public service employer listed on the Affidavit of Other Public Service will be revoked and the money will be refunded to the member.

B. The amount the member shall pay to purchase other public service credit is determined as provided in R2-8-506.

R2-8-512. Purchase Service Credit by Check, Cashier's Check, or Money Order

- A.** An eligible member may purchase service credit by check, cashier's check, or money order.
- B.** Within 30 days of the date on the SP invoice or PDA payoff letter, the member shall return to the ASRS the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2), and a check, cashier's check or money order made to the order of the Arizona State Retirement System in an amount to purchase the requested service credit.
- C.** If an eligible member purchases service credit by check, cashier's check, or money order in conjunction with one or more rollovers, trustee-to-trustee transfers, or termination pay, the member has 30 days from the date the ASRS sends out written confirmation that the ASRS received the final rollover, trustee-to-trustee transfer, or termination pay payment to make payment by check, cashier's check, or money order.

R2-8-513. Purchase Service Credit by Irrevocable Payroll Deduction Authorization

- A.** An eligible member may purchase service credit by irrevocable payroll deduction authorization.
- B.** Within 30 days of the date on the SP invoice, the member shall return to the ASRS the completed Service Purchase Payment Request form with the information specified in R2-8-502 (D)(2).
- C.** If the eligible member elects to pay for service credit by irrevocable payroll deduction authorization, ASRS shall prepare an Irrevocable Payroll Deduction Authorization and send it to the eligible member for signature. The eligible member shall return the signed Irrevocable Payroll Deduction Authorization to the ASRS within 14 days from the date on the Irrevocable Payroll Deduction Authorization. The signed Irrevocable Payroll Deduction Authorization becomes irrevocable upon receipt by the ASRS.
- D.** At the time the eligible member signs the Irrevocable Payroll Deduction Authorization, the eligible member may elect to use termination pay towards the balance of the irrevocable payroll deduction authorization at the time the eligible member terminates employment. If the eligible member chooses this option, the eligible member shall complete a Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization, attach it to the signed Irrevocable Payroll Deduction Authorization, and return it to the ASRS within 30 days from the date on the Irrevocable Payroll Deduction Authorization. The Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization includes the following:
 - 1. The member's social security number;
 - 2. The agreement number;
 - 3. A statement that the member:
 - a. Understands and agrees that the member must continue working at least three full calendar months after the date of submission of the form before termination pay may be used on a pre-tax basis.
 - b. Understands that if the termination payment exceeds the balance owed on the payroll deduction agreement contract, the overage will be returned to the ASRS employer to be distributed to the member; and
 - c. Elects to irrevocably agree to have termination pay that may be payable to the member upon termination of employment sent to the ASRS on a pre-tax basis and used toward any remaining balance of the irrevocable payroll deduction authorization if all scheduled deductions have not been completed upon termination of service; and
 - 4. A statement that either all termination pay or a specified amount of termination pay is to be applied to the balance of the irrevocable payroll deduction authorization.
- E.** The ASRS shall:
 - 1. Charge interest on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect at the time the authorization was entered into;
 - 2. Limit the payroll deduction time period to a maximum of 20 years; and
 - 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 year of service credit per payroll period, whichever is greater.

- E. The ASRS employer shall begin payroll deductions no later than six months from the date on the signed irrevocable payroll deduction authorization.
- G. A member with an irrevocable payroll deduction authorization who takes a leave of absence shall not cancel the irrevocable payroll deduction authorization. The ASRS employer shall resume deductions immediately upon the member's return to employment with the ASRS employer who granted the leave. The period during which the member was on leave of absence is not included in the 20-year payment time limitation under subsection (E)(1).
- H. Deductions made pursuant to an irrevocable payroll deduction authorization will continue until the:
 - 1. Irrevocable payroll deduction authorization is completed;
 - 2. Member retires, whether or not the member continues employment as allowed in A.R.S. § 38-766.01; or
 - 3. Member separates from the member's ASRS employer as specified in A.R.S. § 38-747 (B).
- I. If a member retires or separates from employment before all deductions have been made as authorized by the irrevocable payroll deduction authorization, the member's purchase of service credit is canceled unless the member notifies the ASRS in writing within 14 days before or 14 days after retirement or separation from employment of the intent to purchase in a lump sum any of the remaining amount due.
- J. When the member notifies ASRS of retirement or separation from employment, the ASRS shall send the member a PDA pay-off letter to the mailing address given by the member. The ASRS shall calculate the amount still owed by the member, and reduce the amount still owed by any excess interest that the member has paid.
- K. Within 30 days of the date of the PDA pay-off letter, the member may purchase the remaining service credit by one or more of the following methods:
 - 1. By check, cashier's check, or money order made out to the ASRS;
 - 2. By making a request to the ASRS for a rollover or transfer as allowed in this Article and completing the rollover or transfer within 90 days of the date of the PDA pay-off letter;
 - 3. By requesting a partial lump sum retirement benefit distribution from the ASRS as provided in R2-8-517; or
 - 4. By termination pay distribution, if the member authorized this option at the time the member signed the Irrevocable Payroll Deduction Authorization.

R2-8-514. Purchase Service Credit by Direct Rollover

- A. An eligible member may purchase service credit, or may pay-off an irrevocable payroll deduction authorization at retirement or separation from employment, by direct rollover.
- B. Within 30 days of the date on the SP invoice the member receives from the ASRS, the member shall return to the ASRS the completed Service Purchase Payment Request form with the information specified in R2-8-502 (D)(2).
- C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.
- D. The member shall ensure that the member and the plan that is making a distribution complete the Direct Rollover/Transfer Certification to Purchase Service Credit form and return it to the ASRS.
- E. The information requested on the Direct Rollover/Transfer Certification to Purchase Service Credit form includes:
 - 1. Member's full name;
 - 2. Member's social security number;
 - 3. Member's mailing address;
 - 4. Daytime telephone number;
 - 5. Member's date of birth;
 - 6. The amount of each rollover or transfer, if known;
 - 7. The account number of each plan, if applicable;
 - 8. The member's signature certifying that the member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase service credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information sheets;
 - 9. The date the member signs the form;
 - 10. The authorized representative's name and title;
 - 11. The authorized representative's address;
 - 12. The authorized representative's telephone number;
 - 13. Certification by the authorized representative that:
 - a. The plan is either:
 - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
 - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of the state of the United States, or an agency or instrumentality of a state of the United States or political subdivision of the state of the United States;
 - iii. An annuity contract described in IRC § 403(b); or
 - iv. An IRA described in IRC §§ 408, 408(k), or 408(p);

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- b. The plan administrator certifies that the rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable section of the Internal Revenue Code;
- c. The plan administrator is not aware of any plan provision or operational failure that would cause the plan/IRA not to satisfy the applicable section of the Code; and
- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a trustee-to-trustee transfer; and
- 14. The date and signature of the authorized representative.
- E. The ASRS shall provide the member with written notification regarding the eligibility of the rollover.
- G. The member shall contact the plan administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives the check from the eligible plan within 90 days of the date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- H. Notwithstanding subsection (G) and R2-8-502, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the eligible plan at the written request of the member, if:
 - 1. The member has followed the procedure in this Article for requesting to purchase service credit.
 - 2. The member has responded to the ASRS correspondence within the time frame set forth in this Article.
 - 3. The eligible plan has not provided the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
 - 4. The member makes the written request for extension before expiration of the 90 days.
- I. The member shall ensure that the ASRS receives a check from the eligible plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- J. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the eligible plan and notify the member that the ASRS has returned the payment.

R2-8-515. Purchase Service Credit by Trustee-to-Trustee Transfer

- A. An eligible member may purchase service credit or pay off an irrevocable payroll deduction authorization by a trustee-to-trustee transfer if the member participates in:
 - 1. A deferred compensation plan described in IRC § 457 and maintained by:
 - a. The state of Arizona;
 - b. A political subdivision, agency, or instrumentality of the state of Arizona; or
 - c. A political subdivision entity of the state of Arizona;
 - 2. An annuity contract described in IRC § 403(b); or
 - 3. A retirement program qualified under IRC §§ 401(a) or 403(a).
- B. Within 30 days of the date on the SP invoice the member receives from the ASRS, the member shall return to the ASRS the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form.
- D. The member shall ensure that the member and the plan administrator complete the Direct Rollover/Transfer Certification to Purchase Service Credit form, containing all of the applicable information identified in R2-8-514(E), and return the form to the ASRS.
- E. The ASRS shall provide the member with written notification regarding the eligibility of the transfer.
- F. The member shall contact the plan administrator to have the funds transferred to the ASRS. Unless the ASRS receives the check from the eligible plan within 90 days of the date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- G. Notwithstanding subsection (F) and R2-8-502, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the eligible plan at the written request of the member, if:
 - 1. The member has followed the procedure under this Article for requesting to purchase service credit.
 - 2. The member has responded to the ASRS correspondence within the time frame set forth in this Article.
 - 3. The eligible plan has not provided the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
 - 4. The member makes the written request for extension before expiration of the 90 days.
- H. The member shall ensure that the ASRS receives a check from the eligible plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- I. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the eligible plan and notify the member that the payment has been returned.

R2-8-516. Purchase Service Credit by Indirect IRA Rollover

- A. An eligible member may purchase service credit, or pay off an irrevocable payroll deduction authorization at retirement or termination, by an eligible indirect IRA rollover contribution if the rollover purchase is completed within 60 days of the date of distribution of funds from the IRA account, as required by IRC § 408(d)(3)(A). The 60-day time limitation is

exclusive of any other time limitations prescribed in this Article and the ASRS shall not extend the 60-day period.

- B.** Within 30 days of the date on the SP invoice the member receives from the ASRS, the member shall return to the ASRS the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- C.** Upon the receipt of the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide an Indirect IRA Rollover Contribution form. The member shall complete the Indirect IRA Rollover Contribution form and return it to the ASRS, along with:
1. A copy of the distribution statement or check stub identifying it as an IRA distribution, showing the date of distribution and amount distributed; or
 2. The distribution check endorsed by the member made payable to the ASRS with documentation that it is an IRA distribution.
- D.** The information requested on the Indirect IRA Rollover Contribution form includes:
1. The member's full name,
 2. The member's social security number,
 3. The member's mailing address,
 4. The member's daytime telephone number,
 5. The member's date of birth,
 6. The member's signature certifying that the member understands the statements on the form regarding the distribution the member has received from an individual retirement account and the requirements for an IRA rollover to the ASRS and agrees to the statements, and
 7. The date the member signs the form.
- E.** The ASRS shall provide the member with written notification regarding the eligibility of the rollover contribution.
- F.** After receiving notice from the ASRS that the rollover is an eligible rollover contribution, if the member has not sent payment for the purchase of service credit, the member shall submit payment for the service credit purchase. Payment shall be made by:
1. The distribution check from the IRA made payable to the member and endorsed by the member to make it payable to the ASRS; or
 2. Direct payment by the member by check or money order to the ASRS, after the IRA distribution is deposited to the member's account.
- G.** Unless the ASRS receives payment from the member within 90 days of the date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- H.** Notwithstanding subsection (G) and R2-8-502, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the eligible plan at the written request of the member, if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,
 2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
 3. The eligible plan has not provided the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
 4. The member makes the written request for extension before expiration of the 90 days.
- I.** The member shall ensure that the ASRS receives a check made payable to the ASRS for an amount that does not exceed the amount specified on the SP Invoice.
- J.** If the payment exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

R2-8-517. Purchase Service Credit by Distributed Rollover Contribution

- A.** An eligible member may purchase service credit with a distribution from a prior employer's eligible plan which has already been distributed to the member if the rollover purchase is completed within 60 days of the date of distribution to the member, as required by IRC §§ 402(c)(3)(A), 403(b)(8)(B) and 457(e)(16)(B). The 60-day time limitation is exclusive of any other time limitations prescribed in this Article and the ASRS shall not extend the 60-day period. Eligible plans are:
1. A pension, profit sharing, or other qualified plan described in IRC § 401(a) and (k);
 2. A qualified annuity plan described in IRC § 403(a);
 3. A deferred compensation plan described in IRC § 457 maintained by a state of the United States, political subdivision of the state of the United States, and any agency or instrumentality of the state of the United States; and
 4. A tax deferred annuity described in IRC § 403(b).
- B.** Within 30 days of the date on the SP invoice the member receives from the ASRS, the member shall return to the ASRS the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- C.** When the ASRS receives the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide a Certification by Eligible Plan Rollover Contribution form and Rollover Contribution form.
- D.** The information requested on the Certification by Eligible Plan Rollover Contribution form includes:
1. Name of the plan;
 2. Member's full name;

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3. Member's social security number;
 4. Member's mailing address;
 5. Certification by the plan administrator that the plan is one of the plans described in subsection (A);
 6. Certification by the plan administrator that:
 - a. If the plan is described in either IRC §§ 401(a) or 403(a), the plan has received a determination letter from the Internal Revenue Service indicating that the plan is qualified under either IRC §§ 401(a) or 403(a);
 - b. If the plan is described in either IRC §§ 401(a) or 403(a), the plan has not received a determination letter from the Internal Revenue Service, but the plan satisfies the requirements of IRC §§ 401(a) or 403(a) or is intended to satisfy the requirements of IRC §§ 401(a) or 403(a) and the plan administrator is not aware of any plan provision or operational failure that would disqualify the plan; or
 - c. If the plan is a deferred compensation plan described in IRC § 457 or an annuity contract described in IRC § 403(b), the plan or annuity satisfies the applicable requirements of IRC §§ 457 or 403(b) and the plan administrator is not aware of any plan provision or operational failure that would cause the plan or annuity to not satisfy the applicable provisions of IRC §§ 457 or 403(b);
 7. Certification by the plan administrator that the plan permits a direct rollover of an eligible rollover distribution to a defined benefit plan;
 8. The full name, title, and signature of the plan administrator;
 9. The plan administrator's business address and telephone number; and
 10. Date of the signature of the plan administrator;
- E.** The information requested on the Rollover Contribution form includes:
1. The member's social security number;
 2. The member's full name;
 3. The member's mailing address;
 4. The member's daytime telephone number;
 5. The member's date of birth;
 6. The member's signature certifying that:
 - a. The member has read the statements on the Rollover Contribution form regarding requirements for a rollover contribution, understands all the statements, and believes the statements, certifications, and any documents attached to the form to be true and correct to the best of the member's knowledge and belief; and
 - b. The member understands that:
 - i. The ASRS assumes no responsibility for ensuring that the member makes a timely rollover contribution to the ASRS or that the amount rolled over constitutes a valid rollover contribution;
 - ii. The member accepts full responsibility for ensuring that the rollover contribution is an eligible rollover contribution before making the contribution to the ASRS;
 - iii. If the ASRS accepts the rollover contribution and it is later determined that the contribution was an invalid rollover contribution the ASRS will distribute the invalid contribution, plus any earnings, directly to the member; and
 - iv. Any invalid rollover contributions returned to the member may decrease the member's benefits and the Internal Revenue Service and state taxing authorities may require the member to pay taxes, penalties and interest on the returned contributions; and
 7. The date the member signed the form.
- F.** The member shall return to the ASRS the Certification by Eligible Plan Rollover Contribution form signed and dated by the plan administrator, the Rollover Contribution form signed and dated by the member, and a copy of the distribution statement showing the:
1. Date of the distribution;
 2. Amount of the distribution; and
 3. Amount of taxes withheld, if any.
- G.** The ASRS shall provide the member with written notification regarding the eligibility of the rollover.
- H.** After receiving notice from the ASRS that the rollover is eligible, the member shall submit payment for the service credit purchase. The member shall make payment by:
1. The distribution check from the eligible plan made payable to the member and endorsed by the member to make it payable to the ASRS; or
 2. Direct payment by the member by check or money order to the ASRS, after the eligible plan distribution is deposited to the member's personal financial account.
- I.** Unless the ASRS receives the check from the eligible plan within 90 days of the date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- J.** Notwithstanding subsection (I) and R2-8-502, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the eligible plan at the written request of the member, if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,

2. The member has responded to the ASRS correspondence within the time frame set forth in this Article.
3. The eligible plan has not provided the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.
- K.** The member shall ensure that the ASRS receives a check, made payable to the ASRS, for an amount that does not exceed the amount specified in the written notification identified in subsection (G).
- L.** If the payment from the eligible plan exceeds the amount specified in the written notification identified in subsection (G), the ASRS shall return the entire payment to the member.

R2-8-518. Purchase Service Credit by Partial Lump Sum Retirement Distribution

- A.** An eligible member who retires may purchase service credit or pay off an irrevocable payroll deduction authorization by partial lump sum retirement distribution.
- B.** An eligible member who requests to purchase service at retirement by partial lump sum retirement distribution shall make the request to the ASRS before the eligible member's retirement date.
- C.** An eligible member who requests to pay off an irrevocable payroll deduction authorization by partial lump sum retirement distribution shall request a PDA pay-off letter during the period 14 days before to 14 days after the eligible member's retirement date.
- D.** Within 30 days of the date on the SP invoice or PDA pay-off letter, the member shall return to the ASRS the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- E.** The member shall ensure that the Partial Lump Sum Retirement Distribution form is completed and returned to the ASRS.
- F.** For the purpose of purchasing service credit or paying off an irrevocable payroll deduction authorization, the information requested on the Partial Lump Sum Retirement Distribution form includes:
 1. Member's full name;
 2. Member's social security number;
 3. Member's daytime telephone number;
 4. Member's date of birth;
 5. The number of partial lump sum months the member chooses;
 6. A statement the member initials that indicates that the member has read the Special Tax Notice provided by the ASRS regarding the plan payment;
 7. Election of a rollover to purchase the service credit;
 8. Whether the member authorizes the ASRS to increase the number of elected months to an amount necessary to purchase all remaining service, up to a maximum of 36 months;
 9. Whether the member intends to transfer funds from the member's partial lump sum distribution option to purchase the service credit;
 10. Whether the member intends to purchase a portion of the member's service credit by rollover from another eligible plan or termination pay;
 11. Identification number of the irrevocable payroll deduction authorization, if applicable;
 12. Amount of partial lump sum to be applied to each irrevocable payroll deduction authorization, if applicable;
 13. The years of service to be purchased for each irrevocable payroll deduction authorization, if applicable;
 14. Identification number of the SP invoice, if applicable;
 15. Amount of partial lump sum to apply to each SP invoice, if applicable;
 16. Years of service credit to be purchased for each SP invoice, or all service credit; and
 17. Acknowledgement that the member knows the member may not choose to rollover to an eligible plan if the member chooses to rollover to purchase ASRS service credit.
- G.** The member shall return the completed Partial Lump Sum Retirement Distribution form to the ASRS.
- H.** The ASRS shall provide the member with written notification regarding the eligibility of the rollover.

R2-8-519. Purchase Service Credit by Termination Pay Distribution

- A.** To purchase service credit using termination pay distribution, an eligible member shall request to purchase service credit as specified in R2-8-502 and specify that the member wants to use termination pay distribution to pay for the service credit no later than six months before the date the eligible member plans to retire or separate from service. Upon receipt of the acknowledgement letter identified in R2-8-502, the eligible member shall provide documentation for service credit as required by this Article, within 30 days of the eligible member's request to purchase service credit.
- B.** Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide a:
 1. SP invoice stating the calculated cost to purchase the requested amount of service credit, the date the payment is due,
 2. Service Purchase Payment Request form as described in R2-8-502(D)(2), and
 3. Termination Pay Authorization for the Purchase of Service Credit form.
- C.** The information requested on the Termination Pay Authorization for the Purchase of Service Credit form includes:

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1. Member's full name.
2. Member's social security number.
3. Member's daytime telephone number.
4. Member's date of birth.
5. The SP Request identification number.
6. Name of ASRS employer.
7. Whether the member elects all termination pay or a specific amount of termination pay to go toward the purchase of service credit.
8. Signature of the member, certifying that the member understands that:
 - a. The member is required to continue working at least three full calendar months after the date the member submits this document before termination pay may be used on a pre-tax basis;
 - b. If the member terminates employment more than six months from the date on the SP invoice, the ASRS shall recalculate the cost for purchasing the service credit and the member is obligated to go forward with the purchase at the newly calculated rate and at a possible higher cost;
 - c. The termination pay is binding and irrevocable;
 - d. The member's employer is required to make payment directly to the ASRS after mandatory deductions are made, and the member does not have the option of receiving the funds directly from the employer;
 - e. The ASRS shall apply service credit to the member's account upon the receipt of payments authorized by the member under this authorization;
 - f. If the member has elected to purchase only apportion of the service credit th which the member is entitled with termination pay, the member may be eligible to use other forms of payment to purchase additional service credit. However, using other forms of payment to purchase additional service credit dies not alter, amend, or revoke the terms of this authorization;
 - g. It is the member's responsibility to ensure that the member's employer properly deducts termination pay, as provided in this authorization; and
 - h. The amount of termination pay the member is allowed to apply to purchase service credit is subject to federal laws.
- D. Within 30 days of the date on the SP invoice the member receives from the ASRS, the member shall return to the ASRS the completed Service Purchase Payment Request form and the completed Termination Pay Authorization for the Purchase of Service Credit form.
- E. Notwithstanding other time limitations in this Section, to apply termination pay to a service purchase the eligible member shall complete, sign, and return the Termination Pay Authorization for the Purchase of Service Credit form to the ASRS at least three full calendar months before the member retires or separates from service.
- F. The ASRS shall not apply a termination pay distribution to service credit purchases covered by an irrevocable payroll deduction authorization in effect at the time of termination unless the eligible member signed a Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization specified in R2-8-513(D) at the time the member signed the Irrevocable Payroll Deduction Authorization, irrevocably authorizing the distribution.
- G. If a member elects to use all of the member's available termination pay to purchase service credit, ASRS shall not apply any other forms of payment until the ASRS receives the termination pay.

R2-8-520. Separation from Employment or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization

- A. If a member separates from employment while purchasing service credit by an irrevocable payroll deduction authorization and requests return of contributions, the ASRS shall return any payments made for the purchase of service credit including interest earned on those payments ad determined by the Board.
- B. If a member dies while purchasing service credit, the ASRS shall credit the member's account with:
 1. The service credit for which the ASRS received payment before the member's death.
 2. Interest earned on payment at the valuation rate established by the Board through the date of distribution to the person identified in A.R.S. § 38-762, and
 3. All service purchase payments.
- C. The ASRS shall not refund interest charged as part of an irrevocable payroll deduction authorization.

R2-8-521. Adjustment of Errors

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment, including, but limited to, increasing or decreasing a member's total credited service with the ASRS and increasing or decreasing the payment amount.
- B. If the ASRS determines that a member is receiving or is eligible to receive retirement benefits from another public employee retirement system that makes the member ineligible to purchase service credit for the same period, the ASRS shall revoke that purchase of service credit, and return any payments made, less any interest payments made, if applicable.

C. The ASRS shall notify the member in writing of any adjustments.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

[R04-536]

PREAMBLE

1. Sections Affected

Rulemaking Action

R4-39-101	Amend
R4-39-103	Amend
R4-39-104	Amend
R4-39-105	Amend
R4-39-106	Amend
R4-39-107	Amend
R4-39-108	Repeal
R4-39-108	New Section
R4-39-110	Amend
R4-39-301	Amend
R4-39-302	Amend
R4-39-303	Amend
R4-39-305	Amend
R4-39-308	Amend
R4-39-402	Amend
R4-39-404	New Section
R4-39-405	New Section
R4-39-406	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. § 32-3003(A)(3)

Implementing statutes: A.R.S. §§ 32-3021, 32-3022, 32-3023, 32-3025, 32-3051, 32-3052, and 32-3058

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 216, January 9, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Teri Candelaria, Executive Director
Address: State Board for Private Postsecondary Education
1400 W. Washington, Room 260
Phoenix, AZ 85007
Phone: (602) 542-5709
Fax: (602) 542-1253

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The rulemaking is authorized by the Board's general rulemaking authority contained in A.R.S. § 32-3003(A)(3). Specific rulemaking authority is contained in A.R.S. §§ 32-3021, 32-3022, 32-3023, 32-3025, 32-3051, 32-3052, and 32-3058.

The Board has amended Article 1, Article 3, and Article 4 to address the issues identified in the Five-Year Review Report approved by the Governor's Regulatory Review Council on February 5, 2002, to conform to current rulemaking format and style requirements, and to improve the rules' clarity, conciseness, and understandability. In addition, rules are added to clarify or establish requirements for surety bonds, institutional insurance, financial statements, tuition refunds, financial assistance programs, and institutional closures. The revised rules better reflect current industry standards, are consistent with federal and state statutes and rules, better protect the public, and enhance regulatory oversight of private postsecondary educational institutions operating in Arizona.

Article 1:

Notices of Proposed Rulemaking

- Definitions in R4-39-101 are amended, deleted, or added to correspond to amended or new sections in Article 1, Article 3, and Article 4.
- Licensing requirements in R4-39-103, R4-39-106, and R4-39-107 are amended to revise eligibility and application requirements for institutions that are accredited or are required to be accredited. Similarly, licensing requirements in R4-39-104 and R4-39-105 are amended to revise eligibility and application requirements for non-accredited vocational institutions. These licensing requirements better reflect current industry standards and enhance regulatory oversight.
- License renewal requirements currently found in R4-39-108 are removed and included as under licensing requirements in R4-39-103, R4-39-105, and R4-39-107.
- To correspond to statutory changes and to better reflect industry practices, surety bond/cash deposit requirements, insurance requirements, and financial statement requirements are added under a new Section, R4-39-108.
- R4-39-110 is amended to update and clarify requirements for continuation of licensure after a change of ownership.

Article 3:

- Non-accredited institutional requirements for catalogs in R4-39-301 and for management and staff qualifications in R4-39-303 are amended to better reflect current industry educational practices and enhance regulatory oversight.
- Requirements for non-accredited institutional facilities and equipment in R4-39-302, are amended to conform the rule text to current rulemaking format and style requirements.
- Requirements for non-accredited institutional student recruitment practices in R4-39-305 and for non-accredited institutional pricing and refund policies and practices are clarified to conform the rule text to current rulemaking format and style requirements as necessary and to enhance regulatory oversight.

Article 4:

- Requirements for the preservation of student records in R4-39-402 are amended to better reflect current industry educational practices and enhance regulatory oversight.
- Tuition refund, student loan, and financial aid requirements are clarified or established under new sections R4-39-404 and R4-39-405.
- New requirements are established in R4-39-406 for institutions that close or cease to operate a program in which a student is enrolled.

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

The Board did not review any study relevant to the rules.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The rulemaking directly impacts:

- 23 Accredited degree-granting institutions,
- 4 non-accredited degree-granting institutions,
- 64 accredited vocational institutions,
- 74 non-accredited vocational institutions, and
- Over 200,000 enrolled in private postsecondary educational institutions in Arizona.

Annual cost/revenues are designated as minimal when less than \$1,000.00, moderate when between \$1,000.00 and \$10,000.00, and substantial when greater than \$10,000.00. There will be no new or additional costs to the public.

The overall economic impact of the rulemaking on persons impacted is expected to be minimal to moderate, with the benefits of the rulemaking outweighing the costs. The retention of requirements and practices already in rule should have little or no direct impact. The impact of new requirements or changes in requirements that correspond to existing industry practices and standards should be mitigated to the extent that those affected have already incorporated these requirements and practices into their general operations. The elimination of requirements should also have a minimal impact. New requirements and changes in existing requirements designed to improve regulation and better protect the public should also have a minimal to moderate economic impact in most cases. Specifically:

1. The Board anticipates that changes in surety bond/cash deposit requirements, insurance requirements, and tuition refund requirements will impact less than 15% of currently licensed institutions, and that the economic impact should

be minimal to moderate in most cases. In those cases where the economic impact is substantial, the impact would be justified because the benefit to the public would far outweigh the cost to the institution.

2. A new requirement that precludes the Board from granting a license to an applicant due to conviction of a felony or any crime related to the operation of an educational institution, should have only minimal to moderate economic impact, since A.R.S. § 32-3051(2) already identifies such criminal behavior as grounds for disciplinary action and the Board already considers convictions of this nature when deciding whether or not to grant a license.

3. Requirements for tuition refunds should have no economic impact on the accredited institutions (87 accredited institutions are currently licensed) and no economic impact on non-accredited institutions operating programs less than 100 clock hours (6 such institutions are currently licensed). Of the remaining 72 non-accredited institutions, only about 20% will be minimally to moderately impacted based on their current refund policies.

Those affected and the general public will substantially benefit from updated and simplified rules that better reflect current industry standards, are consistent with federal and state statutes and rules, better protect the public, and enhance regulatory oversight of private postsecondary educational institutions operating in Arizona.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Teri Candelaria, Executive Director
Address: State Board for Private Postsecondary Education
1400 W. Washington, Room 260
Phoenix, AZ 85007
Phone: (602) 542-5709
Fax: (602) 542-1253

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Written comment on the proposed rulemaking may be submitted to an individual listed in item #4 until 5:00 p.m., February 14, 2005, the date scheduled for the close of record. The Board will schedule an oral proceeding on the proposed rulemaking if a written request for an oral proceeding is submitted to the individual named in item #4 before 5:00 p.m., February 14, 2005.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follow:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

ARTICLE 1. DEFINITIONS, LICENSURE AND REPORTING

Section

- R4-39-101. Definitions
- R4-39-103. Requirements for ~~Regular Licensure to Operate a Private, Accredited, Vocational or a Regular License to Operate a Private Accredited Vocational Institution or a Private Accredited Degree-Granting Institution in Arizona~~
- R4-39-104. Requirements for ~~Conditional Licensure to Operate a New, Private, Non-Accredited, a Conditional License to Operate a New Private Non-Accredited Vocational Institution in Arizona~~
- R4-39-105. Requirements for ~~Regular Licensure to Continue to Operate an Existing, Private, Non-Accredited, a Regular License to Continue to Operate a Private Non-Accredited Vocational Institution in Arizona~~
- R4-39-106. Requirements for ~~Conditional Licensure to Operate a New, Private, Non-Accredited, a Conditional License to Operate a New Private Non-Accredited Degree-Granting Institution in Arizona~~
- R4-39-107. Requirements for ~~Provisional Licensure to Operate an Existing, Private, Non-Accredited, a Provisional License to Continue to Operate a Private Non-Accredited Degree-Granting Institution in Arizona~~
- R4-39-108. ~~License Renewals Surety Bond, Cash Deposit, or Equivalent Security Requirements; Insurance Requirements, Financial Statement Requirements~~

R9-4-110. Change of Ownership or Control

ARTICLE 3. OPERATION OF NON-ACCREDITED INSTITUTIONS

Section

- R4-39-301. Catalog
- R4-39-302. Facilities and Equipment
- R4-39-303. ~~Control and Personnel Staff~~
- R4-39-305. Recruitment
- R4-39-308. ~~Pricing and Refund Policy~~ Pricing, Educational Loans, and Refund Policies

ARTICLE 4. OPERATION OF ALL LICENSED INSTITUTIONS

Section

- R4-39-402. Preservation of Records
- R4-39-404. Tuition Refund Policy
- R4-39-405. Student Loans and Financial Aid
- R4-39-406. Closure of an Institution or Cessation of a Program

ARTICLE 1. DEFINITIONS, LICENSURE AND REPORTING

R4-39-101. Definitions

In this Chapter, unless the context otherwise requires:

1. A “conditional license” means a license issued for one year only to:
 - a. ~~A new non-accredited vocational institution or program.~~
 - b. ~~A new non-accredited degree-granting institution pursuant to the provisions of R4-39-106.~~
2. A “new” institution means one that has not previously operated in Arizona. However, if an applicant for an original license to grant degrees has not granted degrees and has only operated as a licensed vocational institution in Arizona, it shall be regarded as a new institution for purposes of obtaining a license to grant degrees.
3. A “provisional” license to grant degrees may be issued to a non-accredited degree-granting institution upon expiration of the conditional license to grant degrees and upon compliance with the provisions of R4-39-107.
4. “Regular” license means:
 - a. ~~The license which may be granted to a non-accredited vocational institution or program upon expiration of the conditional license to operate a vocational institution or program.~~
 - b. ~~The license which may be granted to an accredited vocational or degree-granting institution.~~

In addition to the definitions in A.R.S. § 32-3001, the following definitions apply in this Chapter unless the context otherwise requires:

1. “Accreditation” has the same meaning as “accredited” in A.R.S. § 32-3001.
2. “Board” means the Arizona State Board for Private Postsecondary Education.
3. “Conditional license” means a non-renewable one-year license issued by the Board to a new private non-accredited vocational institution or a new private non-accredited degree-granting institution.
4. “New” used in this Section and in R4-39-104 and R4-39-106 means a:
 - a. Private non-accredited vocational institution that has not previously been issued a license by the Board to operate as the private non-accredited vocational institution in this state, or
 - b. Private non-accredited degree-granting institution that has not previously been issued a license by the Board to operate as the private non-accredited degree-granting institution in this state.
4. “Person” has the meaning in A.R.S. § 1-215.
5. “Provisional license” means a renewable one-year license issued by the Board to a private non-accredited degree-granting institution.
6. “Regular license” means a renewable one-year license issued by the Board to a private accredited vocational institution, a private accredited degree-granting institution, or a private non-accredited vocational institution.
7. “Signature” or “signing” means:
 - a. A handwritten or stamped representation of an individual’s name or a symbol intended to represent an individual’s name, or
 - b. An “electronic signature” as defined in A.R.S. § 44-7002.
8. “Staff” means an individual employed by or representing a private vocational institution or private degree-granting institution.
9. “Student fees” means charges for registration, admission, tuition financing, or loans incurred by a student or other funding source on behalf of the student.

R4-39-103. Requirements for ~~Regular Licensure to Operate a Private, Accredited, Vocational or a Regular License to Operate a Private Accredited Vocational Institution or a Private Accredited Degree-Granting Institu-~~

tion in Arizona

- ~~A. A private, vocational, or degree-granting institution that is institutionally accredited or has each of its programs accredited with an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation shall apply to the Board for a regular license before operating in Arizona.~~
- ~~B. To be regularly licensed to operate, a private, accredited, vocational institution shall demonstrate compliance with A.R.S. § 32-3021(B) and a private, accredited, degree-granting institution shall demonstrate compliance with A.R.S. § 32-3022(B), and both shall submit the following to the Board for verification, review, and administrative action:
 - 1. A completed, verified license application;
 - 2. A letter from each recognized accrediting agency by whom the institution or its programs are accredited that confirms the current accredited status of the institution or its programs and is certified as true and correct by an authorized administrative official of the institution;
 - 3. A copy of the institution's current catalog, required by the institution's accrediting agency, certified as true and correct by an authorized administrative official of the institution;
 - 4. A copy of the institution's student enrollment agreement or equivalent documentation, required by the institution's accrediting agency; and
 - 5. Documents specified in R4-39-104(B)(5) through (B)(15).~~
- ~~C. To continue to be regularly licensed, a private, accredited, vocational institution shall demonstrate compliance with A.R.S. § 32-3021(B) and a private, accredited, degree-granting institution shall demonstrate compliance with A.R.S. § 32-3022(B), and both shall annually submit to the Board for verification, review and administrative action documents specified in subsections (B)(1) through (B)(3) and in R4-39-104(B)(5), (B)(6), (B)(9), (B)(11), and (B)(15).~~
- ~~D. In addition to the grounds for disciplinary action described in A.R.S. § 32-3051, the Board shall discipline an accredited, vocational, or degree-granting institution that is regularly licensed if the institution:
 - 1. Fails to comply with applicable accreditation standards or applicable federal standards as determined by the Board;
 - 2. Loses its institutional or program accreditation;
 - 3. Fails to notify the Board in writing within 20 days of any change in any certificate of accreditation; or
 - 4. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.~~
- A. A person shall not operate a private accredited vocational institution or a private accredited degree-granting institution without a regular license granted by the Board.
- B. The Board shall not grant a regular license or renewal of a regular license to an applicant if:
 - 1. Within 10 years before the date of filing an application packet required in subsection (D) or since the start date of the current licensure period, an individual with 20% or more ownership or business interest in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
 - 2. Within 10 years before the date of filing an application packet required in subsection (D) or since the start date of the current licensure period, a person with 20% or more ownership or business interest in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or in any other state or jurisdiction; or
 - 3. The applicant provides false or misleading information on or with an application required by this Section.
- C. The Board shall grant a regular license or renewal of a regular license to an applicant if:
 - 1. The applicant provides the information required in subsection (D); and
 - 2. The information demonstrates:
 - a. For a regular license to operate a private accredited vocational institution, compliance with A.R.S. § 32-3021(B)(1) through (9);
 - b. For a regular license to operate a private accredited degree-granting institution, compliance with A.R.S. § 32-3022(B);
 - c. Management capability and financial responsibility;
 - d. The ability to provide educational services as represented to the public;
 - e. Institutional accreditation or accreditation of each program to be operated; and
 - f. Compliance with all accreditation standards established by each accrediting agency that accredits the applicant's programs or the institution through which the programs are operated.
- D. An applicant for a regular license shall submit to the Board an application packet including:
 - 1. The filing fee required under R4-39-201;
 - 2. The information and documentation required in R4-39-104(D)(2) through (D)(6), (D)(8) through (D)(15), and (D)(17);
 - 3. The name of each accrediting agency that accredits the applicant's programs or the institution through which the programs are operated;
 - 4. For each accrediting agency named in subsection (D)(3), documentation from the accrediting agency that confirms the current accreditation status of the programs or the institution;

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5. Attestation by the individual signing the application required in R4-39-104(D)(2) that the applicant complies and will continue to comply with all accreditation standards established by each accrediting agency named in subsection (D)(3);
 6. The name of each federal student financial aid program in which the applicant is eligible to participate;
 7. For each federal student financial aid program named in subsection (D)(6), documentation from the United States Department of Education demonstrating participation in the federal student financial aid program and showing the applicant's student default rate;
 8. Attestation by the individual signing the application required in R4-39-104(D)(2) that the applicant complies and will continue to comply with all United States Department of Education requirements governing federal student financial aid programs named in subsection (D)(6);
 9. A copy of the applicant's current catalog that meets the accreditation standards established by each accrediting agency named in subsection (D)(3); and
 10. A surety bond, cash deposit, or equivalent security if required under A.R.S. § 32-3023 and R4-39-108.
- E.** No later than 60 days before the expiration date of the licensee's current regular license, an applicant for an annual renewal of a regular license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201; and
 2. The information and documentation required in:
 - a. R4-39-104(D)(2), (D)(4), (D)(5), (D)(9), (D)(10), (D)(14), (D)(15), and (D)(17); and
 - b. Subsections (D)(3) through (D)(10).
- F.** A licensee shall:
1. Comply with all accreditation standards established by each accrediting agency named under subsection (D)(3) or (F)(3)(a);
 2. Comply with all United States Department of Education requirements governing each federal student financial aid program named under subsection (D)(6) or (F)(3)(b);
 3. Notify the Board in writing within 24 hours if the licensee:
 - a. Receives a new grant of accreditation issued by an accrediting agency other than an accrediting agency named under subsection (D)(3); or
 - b. Becomes eligible to participate in a federal student financial aid program other than a federal student financial aid program named under subsection (D)(6).
 4. Notify the Board in writing within 24 hours if the licensee ceases to be accredited by an accrediting agency named under subsection (D)(3) or (F)(3)(a);
 5. Notify the Board in writing within 24 hours if the licensee ceases to be eligible to participate in a federal student financial aid program named under subsection (D)(6) or (F)(3)(b); and
 6. Notify the Board in writing within 14 days of:
 - a. A change in any grant of accreditation issued by an accrediting agency named under subsection (D)(3) or (F)(3)(a); or
 - b. A change in eligibility to participate in a federal student financial aid program named under subsection (D)(6) or (F)(3)(b);
- G.** The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.
- H.** In addition to the grounds for disciplinary action in A.R.S. §§ 32-3051 and 32-3052, the Board may discipline a licensee that:
1. Fails to comply with requirements in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39;
 2. Violates the requirements in subsection (F);
 3. Loses institutional or program accreditation; or
 4. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

R4-39-104. Requirements for ~~Conditional Licensure to Operate a New, Private, Non-Accredited, a Conditional License to Operate a New Private Non-Accredited Vocational Institution in Arizona~~

- ~~**A.** A new, private, vocational institution that is not institutionally accredited and does not have each of its programs accredited with an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation shall apply to the Board for a conditional license before operating vocational programs in Arizona.~~
- ~~**B.** To be conditionally licensed to operate vocational programs a new, private, non-accredited, vocational institution shall demonstrate compliance with A.R.S. § 32-3021(B) and shall submit the following to the Board for verification, review, and administrative action:~~
1. ~~A completed, verified license application;~~
 2. ~~A surety bond in the amount of \$15,000 on a form approved by the Board. A cash deposit in the amount of \$15,000 may be submitted instead of a surety bond. A receipt for the cash deposit from the state treasurer shall suffice as evi-~~

dence of the deposit;

3. A copy of the institution's current catalog, required by R4-39-301, certified as true and correct by an authorized administrative official of the institution;
 4. A copy of the institution's student enrollment agreement specified in R4-39-310(A)(1);
 5. Proof of insurance, sufficient to protect the assets of the institution in the event of damage or a finding of liability;
 6. Current annual financial statements, compiled or reviewed in accordance with standards established by the American Institute of Certified Public Accountants or audited in accordance with generally accepted auditing standards and prepared in accordance with generally accepted accounting principles. The financial statements shall include a balance sheet, statement of operations, statement of changes in financial position and appropriate footnotes with an accountant's report, prepared and signed by an independent certified or public accountant currently licensed by the Arizona State Board of Accountancy or, if applicable, the accountancy Board located in the state of the institution's corporate or home office. Additional financial information may be required by the Board;
 7. Course of study information on each program offered by the institution, including information on graduate employment opportunities and practitioner requirements;
 8. A copy of each certificate or diploma awarded by the institution;
 9. A copy of the institution's published student grievance procedure that provides details regarding the institutional complaint process and references the student's right to file a complaint with the Board;
 10. A sample copy of every document and media presentation that is or is intended to be advertised or presented to potential students;
 11. A resume for each faculty member, director, and owner;
 12. Line drawings or photographs that describe in detail the facilities, and a list of equipment and materials of the institution;
 13. A copy of the most recent fire department inspection report;
 14. An agent license application for each person soliciting students, if applicable; and
 15. Other information deemed necessary by the Board.
- C.** Before issuing a conditional license to operate vocational programs to a new, private, non-accredited, vocational institution, Board staff or a Board appointed, onsite verification team shall visit the institution and confer with the administrative officers, faculty, students, if applicable, and other individuals, and make examinations that are necessary to obtain an accurate reflection of the institution's financial responsibility, management capabilities, programs, facilities, and equipment. After the visit, Board staff or the onsite verification team shall prepare and submit to the Board a written report of its findings. The Board shall review and use the written report in determining whether to grant a conditional license to the institution.
- D.** During its one year of conditional licensure, a new, private, non-accredited, vocational institution shall not use terms such as "licensed", "approved" or "accredited" in conjunction with the institution or the Board. If the institution wishes to refer to its licensure during this time period, it shall use the term "conditional license."
- E.** In addition to the grounds for disciplinary action described in A.R.S. § 32-3051, the Board shall take disciplinary action against a new, private, non-accredited, vocational institution that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.
- A.** A person shall not operate a new private non-accredited vocational institution without a conditional license granted by the Board.
- B.** The Board shall not grant a conditional license to an applicant if:
1. Within 10 years before the date of filing an application packet required in subsection (D), an individual with 20% or more ownership or business interest in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
 2. Within 10 years before the date of filing an application packet required in subsection (D), a person with 20% or more ownership or business interest in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or in any other state or jurisdiction; or
 3. The applicant provides false or misleading information on or with an application required by this Section.
- C.** The Board shall grant a conditional license to an applicant if:
1. The applicant provides the information required in subsection (D); and
 2. The information provided demonstrates:
 - a. Compliance with A.R.S. § 32-3021(B)(1) through (9); and
 - b. The ability to provide educational services as represented to the public.
- D.** An applicant for a conditional license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201;
 2. An application form provided by the Board containing:
 - a. The applicant's name, street address, mailing address, telephone number, facsimile number, e-mail address, and

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- website address if applicable;
 - b. If the applicant has a headquarters in another state or jurisdiction, the headquarters' street address, mailing address, telephone number, facsimile number, and e-mail address;
 - c. Responses to questions regarding the distribution of ownership, business type, and legal structure;
 - d. As applicable, identification of:
 - i. All members of the board of directors or board of trustees;
 - ii. All persons with 20% or more ownership or business interest in the institution, and
 - iii. All individuals responsible for managing the institution in this state;
 - e. Responses to questions regarding whether a person identified in subsection (D)(2)(d) has ever applied for or been issued an educational license in this state or in any other state or territory;
 - f. Responses to questions regarding the financial position, federal or state tax liabilities, management capabilities, and criminal history of the persons identified under subsection (D)(2)(d)(ii);
 - g. Responses to questions regarding programs, student recruitment, student enrollment, student retention, student placement, and student financing;
 - h. Staffing information including:
 - i. Faculty member qualifications for each program to be operated;
 - ii. Total number of current administrative personnel and faculty members;
 - iii. If applicable, projected number of administrative personnel and faculty members at the end of the first licensure period;
 - iv. The names of all current administrative personnel and faculty members;
 - i. Attestation by the individual signing the application that the applicant will comply with all applicable requirements in A.R.S. Title 32, Chapter 30 and this Chapter;
 - j. Attestation by the individual signing the application that all information required as part of the application packet has been submitted and is true and accurate; and
 - k. The signature or electronic signature of an owner or an owner's legal representative and date of signature or electronic signature;
3. If applicable, a copy of the applicant's articles of incorporation, partnership or joint venture documents, or limited liability documents;
4. For each program to be operated, a form provided by the Board describing:
 - a. Program content, length, and delivery system information;
 - b. Program prerequisites and completion requirements;
 - c. Tuition and student fees;
 - d. Any required textbooks or program learning materials;
 - e. Any equipment or technology requirements or competencies;
 - f. As applicable:
 - i. Library resources;
 - ii. Clinical training, practica, externships, internships, or special features;
 - iii. Graduate employment opportunities; and
 - iv. Requirements for a graduate to practice;
5. A copy of the applicant's student enrollment agreement meeting the requirements in R4-39-401;
6. A copy of each type of certificate or diploma to be awarded;
7. A copy of the applicant's catalog meeting the requirements in R4-39-301;
8. A copy of each brochure, promotional document, or advertisement intended for students or potential students;
9. A copy of the applicant's published student grievance procedure that:
 - a. Requires that a student grievance be submitted in writing;
 - b. Provides the steps and time lines involved in the grievance procedure;
 - c. References the student's right under A.R.S. § 32-3052 to file a complaint with the Board; and
 - d. Lists the Board's address and telephone number.
10. An institutional organizational chart including position titles and employee staff names;
11. For each individual identified under subsection (D)(2)(d), a form provided by the Board describing the individual's professional and educational background;
12. For each faculty member named under subsection (D)(2)(h)(iv), a form provided by the Board describing the individual's professional and educational background;
13. For each Arizona location from which the applicant will operate:
 - a. A form provided by the Board describing the facility;
 - b. Line drawings, floor plans, or photographs showing each story of the facility, the room layout, room usage, each door and each window, and each exit; and
 - c. Documentation from the local jurisdiction of compliance with all applicable fire codes, local building codes, and zoning ordinances;

14. Documentation of insurance required under R4-39-108;
 15. Financial statements or financial documentation required under R4-39-108;
 16. A surety bond, cash deposit, or equivalent security as required under A.R.S. § 32-3023 and R4-39-108; and
 17. Other information determined by the Board or the applicant to be relevant to the determination of the applicant's compliance with licensing requirements under this Article.
- E.** Before granting a conditional license, the Board shall conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).
- F.** While conditionally licensed, a licensee:
1. Shall not describe or refer to itself using the terms "licensed", "approved", or "accredited."
 2. May describe or refer to itself using the terms "conditionally licensed" or "conditional license."
- G.** The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of a licensee's place of business to determine compliance with the requirements of this Article.
- H.** In addition to the grounds for disciplinary action in A.R.S. §§ 32-3051 and 32-3052, the Board may discipline a licensee that:
1. Fails to comply with requirements in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39; or
 2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

R4-39-105. Requirements for ~~Regular Licensure to Continue to Operate an Existing, Private, Non-Accredited,~~ a Regular License to Continue to Operate a Private Non-Accredited Vocational Institution in Arizona

- A.** ~~Upon expiration of a conditional license obtained in compliance with R4-39-104, an existing, private, vocational institution that is not institutionally accredited and does not have each of its programs accredited with an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation shall apply to the Board for a regular license to continue to operate non-accredited vocational programs in Arizona.~~
- B.** ~~To be regularly licensed, an existing, private, non-accredited, vocational institution shall demonstrate compliance with A.R.S. § 32-3021(B) and shall submit the following to the Board for verification, review, and administrative action:~~
1. ~~A completed, verified license application;~~
 2. ~~A valid surety bond or cash deposit, if required by A.R.S. § 32-3023(I); and~~
 3. ~~Documents specified in R4-39-104(B)(3), (B)(5), (B)(6), (B)(9), (B)(11), and (B)(15).~~
- C.** ~~Before issuing a regular license to an existing, private, non-accredited, vocational institution, the Board shall conduct an onsite verification as described in R4-39-104(C).~~
- D.** ~~To continue to be regularly licensed, an existing, private, non-accredited, vocational institution shall demonstrate continued compliance with A.R.S. § 32-3021(B) and shall annually submit to the Board for verification, review, and administrative action documents specified in subsections (B)(1) through (B)(3).~~
- E.** ~~In addition to the grounds for disciplinary action described in A.R.S. § 32-3051, the Board shall take disciplinary action against an existing, private, non-accredited, vocational institution that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.~~
- A.** The Board shall not grant a regular license or renewal of a regular license to an applicant, if:
1. Since the start date of the current licensure period, an individual with 20% or more ownership or business interest in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
 2. Since the start date of the current licensure period, a person with 20% or more ownership or business interest in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in Arizona or in any state or jurisdiction; or
 3. The applicant provides false or misleading information on or with an application required by this Section.
- B.** The Board shall grant a regular license or renewal of a regular license to an applicant if:
1. The applicant provides the information required in subsection (C) or (D); and
 2. The information provided demonstrates:
 - a. Compliance with A.R.S. § 32-3021(B)(1) through (9); and
 - b. The ability to provide educational services as represented to the public.
- C.** No later than 60 days before the expiration date of the applicant's conditional license, an applicant for a regular license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201; and
 2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5), (D)(7), (D)(9), (D)(10), and (D)(14) through (D)(17).
- D.** No later than 60 days before the expiration date of the applicant's current regular license, an applicant for renewal of a regular license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201; and

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2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5), (D)(7), (D)(9), (D)(10), and (D)(14) through (D)(17).
- E. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.
- F. In addition to the grounds for disciplinary action in A.R.S. §§ 32-3051 and 32-3052, the Board may discipline a licensee that:
 1. Fails to comply with requirements in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39;
 2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

R4-39-106. Requirements for ~~Conditional Licensure to Operate a New, Private, Non-Accredited, a Conditional License to Operate a New Private Non-Accredited Degree-Granting Institution in Arizona~~

- ~~A. A new, private, degree granting institution that is not institutionally accredited and does not have each of its programs accredited with an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation shall apply to the Board for a conditional license before operating degree programs or granting degrees in Arizona.~~
- ~~B. To be conditionally licensed to operate degree programs or grant degrees, a new, private, non-accredited, degree-granting institution shall demonstrate its intent and ability to make reasonable and timely progress toward obtaining accreditation from an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation. "Reasonable and timely" means the continuous, diligent, and successful pursuit of the various stages of accreditation within the time periods established, by the accrediting agency and as determined by the Board.~~
- ~~C. To be conditionally licensed to operate degree programs or grant degrees, a new, private, non-accredited, degree-granting institution shall demonstrate compliance with A.R.S. § 32-3021(B) and shall submit the following to the Board for verification, review, and administrative action:~~
 1. ~~A completed, verified license application;~~
 2. ~~Evidence that the institution is in compliance with subsection (B). Evidence of compliance includes:~~
 - a. ~~A copy of the written commitment to apply for accreditation that the institution has submitted to each recognized accrediting agency to which the institution plans to apply for accreditation, certified as true and correct by an authorized administrative official of the institution; and~~
 - b. ~~An explanation to the accreditation process and the timeline required to make reasonable and timely progress toward obtaining accreditation, for each recognized accrediting agency to which the institution plans to apply for accreditation; and~~
 3. ~~Documents specified in R4-39-104(B)(2) through (B)(15).~~
- ~~D. Before issuing a conditional license to operate degree programs or grant degrees to a new, private, non-accredited, degree-granting institution, the Board shall conduct an onsite verification as described in R4-39-104(C).~~
- ~~E. During its one-year of conditional licensure to operate degree programs or grant degrees, a new, private, non-accredited, degree-granting institution shall not use terms such as "licensed", "approved", or "accredited" in conjunction with the institution or the Board. If the institution wishes to refer to its licensure during this time, it shall use the term "conditional license".~~
- ~~F. In addition to the grounds for disciplinary action described in A.R.S. § 32-3051, the Board shall take disciplinary action against a new, private, non-accredited, degree-granting institution that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.~~
- A. A person shall not operate a new private non-accredited degree-granting institution without a conditional license granted by the Board.
- B. The Board shall not grant a conditional license to an applicant, if:
 1. Within 10 years before the date of filing an application packet required in subsection (D), an individual with 20% or more ownership or business interest in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
 2. Within 10 years before the date of filing an application packet required in subsection (D), a person with 20% or more ownership or business interest in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in Arizona or in any state or jurisdiction; or
 3. The applicant provides false or misleading information on or with an application required by this Section.
- C. The Board shall grant a conditional license to an applicant if:
 1. The applicant provides the information required in subsection (D); and
 2. The information provided demonstrates:
 - a. Compliance with A.R.S. § 32-3022(C); and
 - b. The ability to provide educational services as represented to the public.
- D. An applicant for a conditional license shall submit to the Board an application packet including:

1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2) through (D)(17);
3. The name of each accrediting agency to which the applicant will apply for accreditation of the applicant's programs or the institution through which the programs are operated;
4. For each accrediting agency named under subsection (D)(3), attestation by the individual signing the application required in R4-39-104(D)(2) that the applicant has read and understands documentation published or provided by the accrediting agency that explains the accrediting agency's accreditation process, including eligibility requirements, application procedures, self-evaluation processes and requirements, accreditation criteria or standards, and accrediting team visits;
5. A chronological timeline identifying the applicant's projected progress in gaining accreditation from each accrediting agency named under subsection (D)(3); and
6. On a form provided by the Board, responses to questions regarding the applicant's ability to gain accreditation from each accrediting agency named under subsection (D)(3).

E. A licensee shall:

1. Notify the Board in writing within 24 hours if the licensee:
 - a. Is determined by an accrediting agency named under subsection (D)(3) to be ineligible to apply for accreditation with that accrediting agency;
 - b. Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under subsection (D)(3); or
 - c. Is denied accreditation by an accrediting agency named under subsection (D)(3);
2. Within five days of receipt, submit to the Board a copy of any document from an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
3. Within five days of mailing or sending, submit to the Board a copy of any document mailed or sent by the licensee to an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency.

F. Before granting a conditional license, the Board shall conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).

G. While conditionally licensed, a licensee:

1. Shall not describe or refer to itself using the terms "licensed", "approved", or "accredited."
2. May describe or refer to itself using the terms "conditionally licensed" or "conditional license."

H. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of a licensee's place of business to determine compliance with the requirements of this Article.

I. In addition to the grounds for disciplinary action in A.R.S. §§ 32-3051 and 32-3052, the Board may discipline a licensee that:

1. Fails to comply with requirements in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39;
2. Violates the requirements in subsection (E); or
3. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

R4-39-107. Requirements for ~~Provisional Licensure to Operate an Existing, Private, Non-Accredited,~~ a **Provisional License to Continue to Operate a Private Non-Accredited Degree-Granting Institution in Arizona**

- ~~A.~~ Upon expiration of a conditional license obtained in compliance with R4-39-106, an existing, private, degree-granting institution that is not institutionally accredited and does not have each of its programs accredited with an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation shall apply to the Board for a provisional license to continue to operate degree programs or grant degrees in Arizona.
- ~~B.~~ To be provisionally licensed to operate degree programs or grant degrees, an existing, private, non-accredited, degree-granting institution shall demonstrate reasonable and timely progress toward obtaining accreditation with an accrediting agency recognized by the United States Department of Education or the Council for Higher Education Accreditation. "Reasonable and timely" means the continuous, diligent, and successful pursuit of the various stages of accreditation within the time periods established by the accrediting agency and as determined by the Board.
- ~~C.~~ To be provisionally licensed, an existing, private, non-accredited, degree-granting institution shall demonstrate compliance with A.R.S. § 32-3021(B) and shall submit the following to the Board for verification, review, and administrative action:
 1. A completed, verified license application;
 2. Evidence that the institution is in compliance with subsection (B). Evidence of compliance includes:
 - a. Proof that the institution has applied for accreditation with one or more recognized accrediting agencies;
 - b. A report on the current status of the institution's progress toward accreditation, certified as true and correct by an authorized administrative official of the institution; and
 - e. A letter from each recognized accrediting agency to which the institution has applied confirming the current sta-

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3. Documents specified in R4-39-104(B)(3) through (B)(6), (B)(9) through (B)(11), and (B)(15).
- ~~D.~~ To continue to be provisionally licensed, an existing, private, non-accredited, degree-granting institution shall demonstrate continued compliance with A.R.S. § 32-3021(B) and shall annually submit to the Board for verification, review, and administrative action documents specified in subsections (C)(1), (C)(2)(b), (C)(2)(c), (C)(3), and (C)(4). The Board shall deny provisional licensure to an existing private, non-accredited, degree-granting institution that is not proceeding through the accreditation process in a reasonable and timely manner as determined by the Board.
- ~~E.~~ Before issuing a provisional license to an existing, private, non-accredited, degree-granting institution, the Board shall conduct an onsite verification as described in R4-39-104(C).
- ~~F.~~ During the period of provisional licensure, an existing, private, non-accredited, degree-granting institution shall not use terms such as "licensed", "approved", or "accredited" in conjunction with the institution or the Board. If the institution wishes to refer to its licensure, it shall use the term "provisional license".
- ~~G.~~ In addition to the grounds for disciplinary action described in A.R.S. § 32-3051, the Board shall take disciplinary action against an existing private, non-accredited, degree-granting institution that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.
- A.** The Board shall not grant a provisional license or renewal of a provisional license to an applicant, if:
- Since the start date of the current licensure period, an individual with 20% or more ownership or business interest in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
 - Since the start date of the current licensure period, a person with 20% or more ownership or business interest in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or in any state or jurisdiction; or
 - The applicant provides false or misleading information on or with an application required by this Section.
- B.** The Board shall grant a provisional license or renewal of a provisional license to an applicant if:
- The applicant provides the information required in subsection (C) or (D); and
 - The information provided demonstrates:
 - Compliance with A.R.S. § 32-3022(C);
 - The ability to provide educational services as represented to the public; and
 - Progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3).
- C.** No later than 60 days before the expiration date of the licensee's conditional license, an applicant for a provisional license shall submit to the Board an application packet including:
- The filing fee required under R4-39-201;
 - The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5) through (D)(10), and (D)(14) through (D)(17);
 - A chronological timeline identifying the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);
 - On a form provided by the Board, responses to questions regarding the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3); and
 - Copies of application documents submitted to an accrediting agency named under R4-39-106(D)(3), if applicable.
- D.** No later than 60 days before the expiration date of the applicant's current provisional license, an applicant for renewal of a provisional license shall submit to the Board an application packet including:
- The filing fee required under R4-39-201;
 - The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5) through (D)(10), and (D)(14) through (D)(17);
 - A chronological timeline identifying the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);
 - On a form provided by the Board, responses to questions regarding the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);
 - Copies of application documents submitted to an accrediting agency named under R4-39-106(D)(3), if applicable; and
 - Documentation from each accrediting agency named under R4-39-106(D)(3) that demonstrates that the applicant is actively seeking accreditation.
- E.** A licensee shall:
- Notify the Board in writing within 24 hours if the licensee:
 - Is determined by an accrediting agency named under R4-39-106(D)(3) to be ineligible to apply for accreditation with that accrediting agency;
 - Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under R4-

39-106(D)(3); or

c. Is denied accreditation by an accrediting agency named under R4-39-106(D)(3);

2. Within five days of receipt, submit to the Board a copy of any document from an accrediting agency named under R4-39-106(D)(3), that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
3. Within five days of mailing or sending, submit to the Board a copy of any document mailed or sent to an accrediting agency named under R4-39-106(D)(3), that pertains to the licensee's progress in gaining accreditation from the accrediting agency.

E. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.

G. In addition to the grounds for disciplinary action in A.R.S. §§ 32-3051 and 32-3052, the Board may discipline a licensee that:

1. Fails to comply with requirements in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39;
2. Violates the requirements in subsection (E); or
3. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

R4-39-108. License Renewals Surety Bond, Cash Deposit, or Equivalent Security Requirements; Insurance Requirements, Financial Statement Requirements

A. A private vocational or degree granting institution shall submit a complete, verified license renewal application to the Board no later than 45 days prior to the expiration of the license. The license renewal application shall include the following:

1. An accredited private vocational institution shall demonstrate compliance with A.R.S. § 32-3021(B) and annually submit to the Board for verification, review and administrative action, documents specified in R4-39-103(C), or
2. An accredited private degree granting institution shall demonstrate compliance with A.R.S. § 32-3022(B) and annually submit to the Board for verification, review and administrative action, documents specified in R4-39-103(C), or
3. A non-accredited private vocational institution shall demonstrate compliance with A.R.S. § 32-3021(B) and annually submit to the Board for verification, review and administrative action, documents specified in R4-39-105(D), or
4. An existing non-accredited private degree granting institution shall demonstrate compliance with A.R.S. § 32-3021(B) and shall annually submit to the Board for verification, review and administrative action, documents specified in R4-39-107(D).

B. Failure to submit the annual license renewal application and required documents may result in disciplinary action. If Board staff determines there is cause to bring the question of license renewal to the Board, Board staff shall set the matter on the Board agenda for a public meeting. The Board may require, as a condition of license renewal, submission of additional reports or other relevant information and the personal appearance of representatives of the institution before the Board.

A. A person applying for a license or a person licensed under R4-39-104, R4-39-105, R4-39-106, R4-39-107, or R4-39-110(E) shall have a surety bond, cash deposit, or equivalent security as required pursuant to A.R.S. § 32-3023. The Board shall determine the dollar amount of the surety bond, cash deposit, or equivalent security pursuant to subsection (C).

B. The Board may require that a person applying for a license or a person licensed under R4-39-103 or R4-39-110(D) have a surety bond, cash deposit, or equivalent security as required pursuant to A.R.S. § 32-3023. The Board shall determine if a surety bond, cash deposit, or equivalent security required and the dollar amount of the surety bond, cash deposit, or equivalent security pursuant to subsection (C).

C. In determining surety bond, cash deposit, or equivalent security requirements or dollar amounts, the Board shall consider the following:

1. The applicant's or licensee's actual or projected annual gross tuition revenue;
2. The applicant's or licensee's management capability and financial responsibility;
3. The length of time the applicant or licensee has operated in this state or in any other state or jurisdiction;
4. The number, type, and length of programs operated or to be operated; and
5. Other matters determined by the Board to be relevant to the determination of surety bond, cash deposit, or equivalent security requirements.

D. A person applying for a license or a person licensed under this Article shall:

1. Have and maintain with an insurance company authorized to transact business in this state:
 - a. A minimum single occurrence malpractice or professional liability coverage of \$1,000,000; and
 - b. A minimum single occurrence general liability coverage of \$1,000,000 for the operation of the institution; or
2. Be self-insured for the amounts in subsection (D)(1).

E. A person applying for a license or renewal of a license or a person licensed under this Article shall comply with federal and state statutes or rules governing workers' compensation insurance.

F. A person applying for a license or renewal of a license shall submit:

1. Financial statements that are prepared and signed by an independent, certified public accountant currently licensed by

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the Arizona State Board of Accountancy, or by the accountancy board in the state of the applicant's or licensee's headquarters;

2. Financial statements that are prepared and compiled, reviewed, or audited in accordance with generally accepted accounting principals; and
3. Additional financial information if required by the Board.

G. The Board shall require that a person applying for a license or renewal under this Article submit additional financial documentation:

1. If the financial statements are for a reporting period that ended more than six months before the date of license application; or
2. If the financial statements fail to demonstrate management capability and financial responsibility.

H. The Board may require that a person applying for a license or renewal under this Article submit additional financial documentation:

1. Based upon the applicant's responses to questions on a license application regarding the applicant's distribution of ownership, business type, and legal structure; or
2. Based upon the length of time the applicant has operated in Arizona or in any state or jurisdiction.

R4-39-110. Change of Ownership or Control

A. In this Section, "change of ownership or control" means:

1. For a privately held corporation whose control is vested in those who control the voting stock of the corporation, 50% or more of the voting stock changes within a five year period;
2. For a publicly traded corporation whose control is vested in the voting members of the board of directors:
 - a. Fifty percent or more of the voting members of the board of directors change within a 12 month period, or
 - b. The chief executive officer of the corporation changes;
3. For a non-profit corporation whose control is vested in the voting members of the board of directors:
 - a. Fifty percent or more of the voting members of the board of directors change within a 12 month period, or
 - b. The chief executive officer of the corporation changes;
4. For a limited partnership whose control is vested in the corporate general partner, if under subsections (A)(1), (A)(2), or (A)(3), the corporate general partner has a change of ownership or control;
5. For a limited liability company whose control is vested in members who control a majority of the interest in the company, if 50% or more interest changes within a 12 month period; or
6. For a sole proprietor, if 50% or more interest changes within a five year period.

B. In determining if a change of ownership or control has occurred, the Board shall deem that a change of ownership or control has not occurred if the interest is transferred to a parent, grandparent, spouse, or child by operation of law or inheritance.

C. A licensee shall:

1. No later than seven days after change of ownership or control, notify the Board in writing of the change of ownership or control; and
2. No later than seven days after any change of interest or beneficiary interest of more than 20% but less than 50%, notify the Board in writing of the change.

D. No later than 60 days after a change of ownership or control, a private accredited vocational institution or a private accredited degree-granting institution shall submit to the Board a supplemental license application packet including:

1. The filing fee required under R4-39-201;
2. Either:
 - a. Information, documentation, and fees specified in R4-39-103(D)(5), (D)(8), (D)(9) and (D)(10) and R4-39-104(D)(2), (D)(3), (D)(5), (D)(7) through (D)(11), (D)(14) and (D)(15); or
 - b. If required by an accrediting agency that accredits the licensee's programs or the institution through which the programs are operated, a copy of change of ownership documents submitted by the licensee to the accrediting agency;
3. Attestation that the applicant will assume financial responsibility for the payment of all student tuition refunds for which the institution has an obligation; and
4. Other information determined by the Board to be relevant to the determination of the applicant's compliance with licensing requirements under this Article.

E. No later than 60 days after a change of ownership or control, a licensed private non-accredited institution shall submit to the Board a supplemental license application packet, including:

1. The filing fee required under R4-39-201;
2. For a non-accredited private vocational institution, information, documentation, and fees specified in R4-39-104(D)(2), (D)(3), (D)(5), (D)(7) through (D)(11), and (D)(14) through(D)(16);
3. For a non-accredited private degree-granting institution, information, documentation, and fees specified in R4-39-107(C)(4) and R4-39-104(D)(2), (D)(3), (D)(5), (D)(7) through (D)(11), and (D)(14) through(D)(16);

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4. Attestation that the applicant will assume financial responsibility for all student refunds for which the institution has a financial obligation; and
 5. Other information determined by the Board to be relevant to the determination of the applicant's compliance with licensing requirements under this Article.
- F.** The Board shall not grant a supplemental license for a change of ownership or control to an applicant, if:
1. Within 10 years before the date of filing an application packet required in subsections (D) or (E) or since the start date of the current licensure period, an individual with 20% or more ownership or business interest in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
 2. Within 10 years before the date of filing an application packet required in subsections (D) or (E) or since the start date of the current licensure period, a person with 20% or more ownership or business interest in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in Arizona or in any state or jurisdiction; or
 3. The applicant provides false or misleading information on or with an application required by this Section.
- G.** The Board shall grant a supplemental license for a change of ownership or control to an applicant, if the applicant:
1. Demonstrates compliance with A.R.S. §§ 32-3021 through 32-3051; and
 2. Meets the application requirements in subsection (D) or (E).
- H.** The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.
- A.** ~~No later than 60 days after a change of ownership, a private vocational or degree-granting institution shall submit an application for a supplemental license.~~
- B.** ~~For an accredited private vocational or an accredited private degree-granting institution, an application for a supplemental license for a change of ownership shall include the following:~~
1. ~~A complete, verified application for a supplemental license; and~~
 2. ~~Documents specified in R4-39-103(B)(2), (3), and (4) and R4-39-104(B)(5), (6), (9), (11), and (15).~~
- C.** ~~For a non-accredited private vocational institution, an application for a supplemental license for a change of ownership shall include the following:~~
1. ~~A complete, verified application for a supplemental license; and~~
 2. ~~Documents specified in R4-39-105(B)(2) and (3).~~
- D.** ~~For a non-accredited private degree-granting institution, an application for a supplemental license for a change of ownership shall include:~~
1. ~~A complete, verified application for a supplemental license; and~~
 2. ~~Documents specified in R4-39-107(C)(2) through (C)(4).~~
- E.** ~~The Board shall grant a supplemental license for a change of ownership to a private vocational institution or a private degree-granting institution if the private vocational institution or the private degree-granting institution demonstrates that the application for a supplemental license for a change of ownership submitted under subsection (B), (C), or (D) is in compliance with A.R.S. §§ 32-3021 through 32-3051.~~
- F.** ~~Ownership of an institution shall be considered changed if:~~
1. ~~In the case of ownership by a sole proprietor, more than a 20% interest or a beneficial interest in an institution is sold or transferred;~~
 2. ~~In the case of ownership by a partnership or a corporation, more than 20% of the stock, interest, or beneficial interest is sold or transferred; or~~
 3. ~~If the Board of Directors, officers, shareholders or controlling influence changes to such an extent as to significantly alter the management and control of the institution.~~
- G.** ~~A private vocational or degree-granting institution shall file a written notice of a change of ownership with the Board no later than seven days after the change in ownership.~~
- H.** ~~Notwithstanding subsection (F), a private vocational institution or a private degree-granting institution shall notify the Board of any transfer of an ownership or beneficial interest of more than 10% but less than 20% in a private vocational or degree-granting institution within seven days. The notice shall include a resume of each new owner or beneficial interest holder.~~

ARTICLE 3. OPERATION OF NON-ACCREDITED INSTITUTIONS

R4-39-301. Catalog

- A.** ~~Catalogs shall include the following information:~~
1. ~~Name and address of the institution and publication date of the catalog.~~
 2. ~~Names and titles of the administrative officials of the institution who are duly authorized to act for it in all matters relating to state approval and licensing.~~
 3. ~~For institutions with full-time students, a calendar for the institution showing vacation periods, holidays, and begin-~~

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- ning and ending dates for each semester, quarter, term, or session observed by the institution.
 4. Policies and regulations regarding student attendance, including leave, absences, class cuts, make-up work, tardiness, and causes for suspending or expelling a student for these reasons. These policies shall also contain a description of any probationary period and conditions for re-entrance for those students expelled for these reasons.
 5. Enrollment prerequisites for each course offered.
 6. Policies and regulations of the institution regarding credit for previous education, training, work and life experience.
 7. Amount of tuition, estimated fees, and costs of books, supplies, tools, and instructional aids to be used and purchased by students.
 8. Policies and regulations regarding refunds of the unused portions of tuition, fees, materials and supplies.
 9. A topical outline of each program for which approval is requested, indicating a statement of purpose, objectives, subjects, units, skills, and jobs to be learned in the program, and the approximate number of clock, credit or semester hours to be spent by the student in each phase of the program.
 10. Policies and regulations regarding standards of progress required of the student by the institution. These policies shall define the grading system of the institution, the minimum grade average considered satisfactory for continued enrollment, and causes for suspending or expelling a student for unsatisfactory grades or progress. These policies shall also contain a description of any probationary period and conditions for re-entrance for those students expelled for unsatisfactory grades or progress.
 11. Policies and regulations regarding student conduct and causes for suspending or expelling a student for unsatisfactory conduct. These policies shall also contain a description of any probationary period and conditions for re-entrance for those students expelled for unsatisfactory conduct.
- B.** A copy of each new or revised catalog shall be promptly submitted to the Board upon publication.
- A.** An institution shall have a catalog that includes the following information, as applicable:
1. The institution's name, street address, mailing address, telephone number, facsimile number, e-mail address, and web-site address;
 2. If the institution has a headquarters in another state or jurisdiction, the headquarters' street address, mailing address, telephone number, facsimile number, e-mail address, and web-site address;
 3. The effective date of the catalog;
 4. The names and titles of:
 - a. All members of the board of directors or board of trustees.
 - b. All individuals responsible for managing the institution in this state, and
 - c. All persons with 20% or more ownership or business interest in the institution;
 5. A list of all programs operated by the institution;
 6. For each program to be operated:
 - a. A topical outline, including a statement of purpose, objectives, subjects, units, skills, jobs to be learned in the program, and the number of clock, credit, or semester hours to be spent by the student in each phase of the program;
 - b. Program prerequisites and completion requirements;
 - c. Tuition and student fees;
 - d. Any required textbooks or program learning materials.
 - e. Any equipment or technology requirements or competencies.
 - f. Library resources;
 - g. Clinical training, practicum, externships, internships, or special features;
 - h. Graduate employment opportunities; and
 - i. Requirements for a graduate to practice;
 7. Allowable student tuition reductions, tuition discounts, tuition scholarships, and educational loans that comply with R4-39-308;
 8. Available student payment schedules and financing options that comply with R4-39-308;
 9. Student eligibility requirements for tuition reductions, tuition discounts, tuition scholarships, educational loans, payment schedules, and financing options;
 10. Institutional refund policies that comply with R4-39-308 and R4-39-404;
 11. Educational services to be provided by the applicant;
 12. A description of each educational delivery system available, including classroom-based instruction, directed study, distance education, and on-line computer-based learning.
 13. For institutions operating on an academic calendar, identification of:
 - a. Start and end dates for each semester, quarter, term, or session offered; and
 - b. Vacation periods and holidays; and
 14. Policies and regulations governing:
 - a. Admission requirements or program registration;
 - b. Program or course cancellation;

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- c. Grading procedures or progress tracking;
- d. Change in student status;
- e. Student re-entry;
- f. Student probation, suspension, or expulsion;
- g. Grade reports and transcripts; and
- h. As applicable:
 - i. Student attendance; and
 - ii. Credit for previous education, training, work, or life experience.

B. An institution shall make a catalog available to students and prospective students in a written format or electronic format.

C. Within 10 days from the date a licensed non-accredited institution revises a catalog or publishes a new catalog, the licensed non-accredited institution shall submit to the Board a written or electronic copy of the revised or new catalog.

R4-39-302. Facilities and Equipment

A private non-accredited private vocational institution or a private non-accredited degree-granting institution shall ensure that the:

1. ~~The building~~ Building, classrooms, equipment, furniture, grounds, instructional devices, and other physical facilities of the institution are appropriate to achieve the educational objectives of the institution;
2. ~~The physical~~ Physical facility and equipment meet all safety requirements and health standards of the city, county, state, or authority in which the facility is located;
3. ~~The physical~~ Physical facility and equipment ~~shall~~ comply with local and state laws for planning, building, zoning, and fire codes;
4. ~~Maintain in force all insurance necessary~~ Insurance required under R4-39-108 is adequate to protect the assets of the institution in the event of damage or a finding of liability; and
5. ~~The Board is notified of a change of location as specified~~ required in R4-39-109.

R4-39-303. Control and Personnel Staff

A. ~~A non-accredited private vocational or degree-granting institution's administrator, director, owner, beneficial owner, and faculty shall be of good moral character and shall obey the statutes and regulations of the Board.~~

B. ~~The Board shall not issue a license if an owner, beneficial owner, or other person having direct or indirect control over the program or institution has been convicted of a felony or misdemeanor of any state or federal law relating to education.~~

C. ~~The Board shall not issue a license if an owner, beneficial owner, or other person having direct or indirect control over the program or instruction has committed any act considered grounds for disciplinary action.~~

D. ~~The director or manager of the institution shall be responsible for the following:~~

1. ~~Developing curriculum capable of preparing students for an occupational objective, an academic credential, or a specific entry-level job.~~
2. ~~Selecting faculty competent in the subject matter to be taught and possessing teaching technique necessary to implement the applicable curriculum.~~

E. ~~Faculty shall meet the following minimum educational and experience requirements:~~

1. ~~A faculty member of a non-accredited private degree-granting institution shall possess at least the degree awarded to a graduate of the program. The degree must have been awarded by an institution accredited by an accrediting agency recognized by the U.S. Department of Education.~~
2. ~~A faculty member of a non-accredited private vocational institution shall demonstrate competency through education or experience in the assigned subject area. The faculty member shall submit a resume on a form provided by the Board. The accuracy of information submitted shall be verified by the institution's personnel and the Board.~~

F. ~~A non-accredited private vocational or degree-granting institution shall ensure the faculty to student ratio is appropriate to meet the educational objective of the program.~~

G. ~~A private non-accredited vocational or degree-granting institution shall:~~

1. ~~Notify the Board in writing of any termination or change of director, manager, or faculty member within 30 days of the last day of employment.~~
2. ~~Notify the Board in writing of any new director, manager, or faculty member within 30 days of hiring.~~

A. A private non-accredited vocational institution or a private non-accredited degree-granting institution shall:

1. Have a local, designated administrator;
2. Ensure that each staff member communicates information regarding the institution, the institution's programs, and the institution's educational services that is true and is as represented in the institution's catalog, required under R4-39-301, or in any brochures, promotional materials, or advertisements provided to or intended for students or potential students;
3. Have sufficient staff to provide instruction and educational services as represented in the institution's catalog, required under R4-39-301, and in any brochures, promotional materials, or advertisements provided to or intended for students or potential students; and

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4. Ensure that instruction and services are provided to a student as represented in the institution's catalog, required under R4-39-301, and any brochures, promotional materials, or advertisements provided to the student.
- B.** An administrator designated under subsection (A)(1) shall:
 1. Supervise the day-to-day operation of the institution;
 2. For each program to be operated by the institution, develop and implement a curriculum capable of preparing a student enrolled in the program for the program degree, the program credential, the program's occupational objective, or a specific entry-level job covered in the program; and
 3. Ensure that all faculty members meet the requirements in subsection (C) or (D).
- C.** A faculty member for a private non-accredited vocational institution shall have at least:
 1. Two years of practical work experience in the subject the faculty member is teaching; and
 2. Postsecondary education in the subject the faculty member is teaching from an accredited institution or an institution licensed to operate as a postsecondary educational institution by the state in which the postsecondary education was received.
- D.** A faculty member for a private non-accredited degree-granting institution shall have at least:
 1. Two years of practical work experience in the subject the faculty member is teaching; and
 2. A degree equal to or exceeding the degree awarded to a graduate of the program in which the faculty member is teaching from an accredited institution.
- E.** A private non-accredited vocational or degree-granting institution shall:
 1. Within 10 days from the date the institution's administrator resigns, is terminated, or is otherwise unable to fulfill all responsibilities established under subsection (B), notify the Board in writing;
 2. Within 10 days from the date the institution employs a new administrator, submit to the Board a form provided by the Board describing the individual's professional and educational background; and
 3. Within 10 days from the date the institution employs a new faculty member, submit to the Board a form provided by the Board describing the individual's professional and educational background.

R4-39-305. Recruitment

- A.** ~~The non-accredited private vocational or degree-granting institution shall recruit in a professional and ethical manner.~~
- B.** ~~The non-accredited private vocational or degree-granting institution shall be responsible for training admissions personnel. A sales agent shall not directly or indirectly act as a guidance counselor, advisor, or as any other position to disguise the sales function of the agent.~~
- C.** ~~The non-accredited private vocational or degree-granting institution shall not use a loan, grant, scholarship, discount, and other such items as an inducement to enroll, which may result in an unfair or unethical trade practice. "Scholarship" as used in this rule means any form of assistance extended to a prospective student which, in effect, amounts to a reduction in tuition. The non-accredited private vocational or degree-granting institution may grant a tuition scholarship if rules about the scholarship are published by the institution and available to all students and prospective students.~~
- A.** A private non-accredited vocational institution or a private non-accredited degree-granting institution shall ensure that all information contained in the institution's catalog, required under R4-39-301, or in any brochures, promotional materials, or advertisements provided to or intended for students or potential students is true.
- B.** During student recruitment or student admission, a private non-accredited vocational institution or a private non-accredited degree-granting institution:
 1. May allow a student tuition reduction, tuition discount, tuition scholarship, or educational loan only as authorized under R4-39-308; and
 2. Shall not guarantee employment to a prospective student.
- C.** A private non-accredited vocational institution or a private non-accredited degree-granting institution shall ensure that a staff member responsible for student recruitment or student admission:
 1. Uses only those titles that accurately reflect the staff member's actual duties and responsibilities;
 2. Is not designated as a counselor or advisor; and
 3. Does not make final decisions regarding tuition, student fees, tuition reduction, tuition discounts, tuition scholarships, educational loans, payment schedules, financing options, or refund policies.

R4-39-308. Pricing and Refund Policy-Tuition, Pricing and Refund Policies

- A.** ~~The non-accredited private vocational or degree-granting institution shall disclose an accurate price of a specific course or program of study in any contract to be signed by a prospective student. Prices for the same course or program of study shall be the same for every student, except for group arrangements or following a published notice of a price change.~~
- B.** ~~The non-accredited private vocational or degree-granting institution shall not require a prospective student to make a non-refundable payment until the prospective student has been accepted for enrollment.~~
- C.** ~~The non-accredited private vocational or degree-granting institution shall disclose the refund policy of the institution in any contract signed by a student or prospective student.~~
- D.** ~~The institution shall fully disclose all charges and fees to a prospective student or his parent or guardian in writing.~~

- E.** The non-accredited private vocational or degree-granting institution shall disclose all scholarships and fee reductions in writing to a student or prospective student at the time of enrollment.
- A.** A private non-accredited vocational institution or a private non-accredited degree-granting institution shall charge all students enrolling in the same program the same tuition and student fees, except:
1. Following a published notice of a program price change to be effective on a specified date for all students enrolling in that program on or after the specified date.;
 2. For students who have chosen to modify programs or services, so that a tuition reduction is warranted;
 3. For students incurring additional charges or tuition reductions associated with payment schedules, financing options, or educational loans;
 4. For students meeting tuition discount eligibility requirements in subsection (B); and
 5. For students receiving tuition scholarships under subsection (C).
- B.** A private non-accredited vocational institution or a private non-accredited degree-granting institution that offers tuition discounts shall:
1. Establish and publish allowable tuition discounts and student eligibility requirements for allowable tuition discounts, including tuition discounts for students:
 - a. Enrolling as part of a group,
 - b. Who are similarly situated or circumstanced, or
 - c. Enrolling under a specified program schedule or course schedule; and
 2. Make tuition discounts available to all students who meet eligibility requirements.
- C.** A private non-accredited vocational institution or a private non-accredited degree-granting institution that offers full or partial tuition scholarships shall:
1. Establish and publish in the institution's catalog available tuition scholarships and student eligibility requirements for available tuition scholarships, including terms, conditions, application procedures, deadline dates, basis for selection, range of award amounts, and aggregate award amounts; and
 2. Objectively evaluate all applicants for tuition scholarships, and award tuition scholarships only to students who meet student eligibility requirements.
- D.** A private non-accredited vocational institution or a private non-accredited degree-granting institution that offers full or partial educational loans shall:
1. Establish and publish in the institution's catalog available full or partial educational loans and student eligibility requirements for available full or partial educational loans, including terms, conditions, application procedures, deadline dates, range of loan amounts, aggregate loan amounts, interest rates, and loan repayment requirements;
 2. Make the full or partial educational loans available to all students who meet student eligibility requirements, and
 3. Offer and administer the full or partial educational loans as required under R4-39-406.
- E.** A private non-accredited vocational institution or a private non-accredited degree-granting institution that offers payment schedules or financing options shall:
1. Establish and publish in the institution's catalog payment schedules and financing options and student eligibility requirements for payment schedules and financing options, including terms and conditions, application procedures, interest rates, and monthly payments; and
 2. Make the payment schedules and financing options available to all students who meet student eligibility requirements.
- F.** A private non-accredited vocational institution or a private non-accredited degree-granting institution:
1. Shall not require a prospective student to make a non-refundable payment until the prospective student has signed an enrollment agreement and has been accepted for enrollment, and
 2. Shall ensure that a prospective student understands the prospective student's rights under R4-39-404.
- G.** A private non-accredited vocational institution or a private non-accredited degree-granting institution shall have a refund policy that:
1. Is applicable to all students, and
 2. Meets the requirements in R4-39-404.
- H.** A private non-accredited vocational institution or a private non-accredited degree-granting institution shall ensure that all student tuition, student fees, tuition reductions, tuition discounts, tuition scholarships, educational loans, payment schedules, financing options, and refund policies applicable to a student are:
1. Fully disclosed in writing on a student's enrollment agreement or applicable financial documents;
 2. Consistent with information in the institution's catalog, required under R4-39-301, or in any brochures, promotional materials, or advertisements provided to or intended for students or potential students; and
 3. Authorized pursuant to this Section.
- I.** A private non-accredited vocational institution or a private non-accredited degree-granting institution shall:
1. Charge a student tuition and student fees as identified in writing on or as part of the student enrollment agreement;
 2. Collect tuition and student fees from a student according to a payment schedule or financing option identified in writing on or as part of the student enrollment agreement; and

3. Refund tuition and student fees charged to a student according to the refund policy identified in writing on or as part of the student enrollment agreement.

ARTICLE 4. OPERATION OF ALL LICENSED INSTITUTIONS

R4-39-402. Preservation of Records

~~When an institution or program which is licensed by this Board ceases operation, whether voluntarily or involuntarily, all educational records, or legible true copies of all educational records if originals are unavailable, shall be filed with the Board within 60 days of ceasing educational operations.~~

~~No more than 15 days after a licensed private vocational institution or a licensed private degree-granting institution ceases operation, the institution shall submit to the Board legible copies of all student records required in R4-39-401.~~

R4-39-404. Tuition Refund Policy

- A.** Within three calendar days of signing an enrollment agreement, a student or prospective student may cancel the enrollment agreement with a licensed institution if the student or prospective student submits a written notice of cancellation to the licensed institution before the end of the three calendar days.
- B.** No later than thirty days after a licensed institution receives a written notice of cancellation described in subsection (A), the licensed institution shall provide to the student or to the person who paid the student's tuition and fees a refund of 100% of all tuition and student fees paid by or on behalf of the student.
- C.** A private accredited vocational institution or a private accredited degree-granting institution shall develop and implement policies and procedures for cancellations and tuition refunds that:
 1. Are published in the institution catalog or enrollment agreement;
 2. Are applicable to all students; and
 3. Comply with:
 - a. Accreditation standards established by each accrediting agency the institution named under R4-39-103(D)(3) or (F)(3)(a);
 - b. United States Department of Education requirements governing each federal student financial aid program the institution named under R4-39-103(D)(6) or (F)(3)(b).
- D.** A private non-accredited vocational institution or a private non-accredited degree-granting institution shall develop and implement policies and procedures for cancellations and tuition refunds that:
 1. Are published in the institution catalog or enrollment agreement;
 2. Are applicable to all students;
 3. Establish charge periods for each program that:
 - a. Determine student tuition obligation and student tuition refund calculations, and
 - b. Do not exceed the full length of the program or one calendar year, whichever is less;
 4. Allow an institution to retain an administrative fee or registration fee not to exceed a total of \$200.00 if the fee is published in the institution catalog or enrollment agreement;
 5. Provide for the following refunds for a student who withdraws from or is terminated by an institution:
 - a. A refund required in subsection (B);
 - b. Before beginning classes in a charge period, a refund of 100% of the tuition charges for the charge period;
 - c. If 10% or less of the charge period has expired, a refund of at least 90% of the tuition charges for the charge period;
 - d. If more than 10% but less than or equal to 20% of the charge period has expired, a refund of at least 80% of the tuition charges for the charge period;
 - e. If more than 20% but less than or equal to 30% of the charge period has expired, a refund of at least 70% of the tuition charges for the charge period;
 - f. If more than 30% but less than or equal to 40% of the charge period has expired, a refund of at least 60% of the tuition charges for the charge period;
 - g. If more than 40% but less than or equal to 50% of the charge period has expired, a refund of at least 50% of the tuition charges for the charge period; and
 - h. If more than 50% of the charge period has expired, no refund or a refund in an amount determined by the institution.
- E.** When calculating refunds under subsection (D)(5), an institution shall:
 1. Use the last date of attendance as the date of withdrawal or termination;
 2. Determine that a student has withdrawn from an institution if the student has not attended any class for 30 calendar days; and
 3. Base the percentage of the charge period expired on the time elapsed in the charge period or on the number of semester, quarter, trimester, or clock hours completed in the charge period.
- F.** A program is exempt from subsection (D)(5), if the program:
 1. Is less than 100 clock hours,

2. Has a total cost of less than \$1000, and
3. Is provided by a private non-accredited vocational institution or a private non-accredited degree-granting institution.

R4-39-405. Student Loans and Financial Aid

- A.** In this Section, an “academic year” means at least 30 weeks of instruction.
- B.** An institution that receives on behalf of a student, monies from a student loan or financial aid funds provided by a federal, state, or local government or from a federal student financial assistance program governed by Title IV of the Higher Education Act of 1965, 20 USC 1070 et seq. as amended, shall collect and apply the monies in the manner prescribed by the applicable federal, state, or local regulations.
- C.** A private non-accredited institution that promotes or makes available to a student, monies from a student loan or other financial aid funds provided by a private entity including but not limited to a bank, financing company, credit card company, or other lending source shall ensure that the monies are collected and disbursed in the following manner:
1. Amounts equal to or less than \$5,000 may be disbursed as a single disbursement, regardless of program length.
 2. Amounts greater than \$5,000 shall:
 - a. Be disbursed in two or more equal disbursements, and
 - b. Have the second disbursement occur after the midpoint of the academic year for clock hour institutions or after the beginning of the second semester, quarter, trimester, or other term for term-based institutions.

R4-39-406. Closure of an Institution or Cessation of a Program

- A.** At least 60 days before a licensed institution closes, ceases to operate a program in which a student is enrolled, or makes an alternative program available to a student enrolled in a program to be closed, the licensed institution shall provide written notice of the closure, cessation of the program, or alternative program to:
1. Each enrolled student, and
 2. The Board.
- B.** Except as provided in subsections (C) and (D), no later than 30 days after a licensed institution closes or ceases to offer a program in which a student is enrolled, the licensed institution shall provide a refund of 100% of all tuition and student fees paid by a student or other funding source on behalf of the student.
- C.** The refund requirement in subsection (B) does not apply if a student enrolled in a licensed institution that closes or in a program that the licensed institution ceases to offer agrees in writing to waive the refund because the student has received training or academic credit that is transferable to another institution.
- D.** The refund requirement in subsection (B) does not apply if a licensed institution that ceases to offer a program in which a student is enrolled provides the student an alternative program that demonstrates equivalency, as determined by the Board, in:
1. Program content;
 2. Program length and schedule;
 3. Tuition, student fees, payment schedules, and financing options;
 4. Accreditation status, if applicable;
 5. Award of credentials;
 6. Instruction and equipment;
 7. Placement assistance and student services, if applicable; and
 8. Facilities.
- E.** This Section applies to a licensed institution regardless of whether the closure or the cessation of a program is the fault of the licensed institution.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

[R04-537]

PREAMBLE

1. Sections Affected

R4-46-101
R4-46-201
R4-46-202
R4-46-203
R4-46-204
R4-46-206

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend

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R4-46-207
R4-46-208

Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 32-3605(B), 32-3612, 32-3613, 32-3614, 32-3619, 32-3625

Implementing statutes: A.R.S. §§ 32-3605(B)2(2), 32-3605(B)3, 32-3605(B)4, 32-3605(B)5, 32-3605(B)6, 32-3605(B)8, 32-3625(D), 32-3625(E)

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 2320, June 11, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Deborah G. Pearson, Executive Director
Address: Arizona Board of Appraisal
1400 W. Washington, Suite 360
Phoenix, AZ 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598
E-mail: deborah.pearson@appraisal.state.az.us

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The rules amendments comply with the Board's approved Five-Year Rule Review. The rules amendments are to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires state licensing boards to recognize and ensure that state licensed and certified appraisers meet the minimum criteria issued by the Appraiser Qualifications Board of The Appraisal Foundation, and A.R.S. § 32-3605(B)2 and A.R.S. § 32-3605(B)3, which require the Board to adopt criteria for licensing and certification of appraisers that at a minimum are equal to the minimum criteria for licensing adopted by the Appraiser Qualifications Board. *All Interpretations and Supplementary Information as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003*, have been incorporated into the *Real Property Appraiser Qualification Criteria adopted February 16, 1994, and effective January 1, 1998*, by the Appraisers Qualifications Board (AQB) to clarify its intent and to provide guidance to users of the Criteria. The key features of the Supplementary Information as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003, are:

- A. Trainee Real Property Appraiser Classification of the Appraiser Qualification Criteria:
- (1) Although criteria for a trainee classification has been established, the AQB has no statutory authority to develop criteria for the trainee classification and states are not required to adopt the criteria. The Board has not established a trainee classification. The proposed rules will regulate supervising appraisers. The rules provide that the supervising appraiser shall instruct and directly supervise a trainee; sign and certify the appraisal report is in compliance with the *Uniform Standards of Professional Appraisal Practice (USPAP)*; approve and sign all final appraisal documents; and personally supervise the entire physical inspection of each appraised property with the trainee. The rules further provide that a supervising appraiser shall not supervise more than three trainees at any one time; sets forth the minimum information to appear on a trainee's experience log; provides that a supervising appraiser and trainee shall work in the same geographic area and cannot work in different states; establishes a trainee notification process; and sets out the eligibility requirements to be a supervising appraiser.
- B. Licensed Real Property Appraiser Classification of the Appraiser Qualification Criteria, Certified Residential Real Property Appraiser Classification of the Appraiser Qualification Criteria, and Certified General Real Property Appraiser Classification of the Appraiser Qualification Criteria (Interpretations):
- (1) Examination
- (a) The certified general examination is not equivalent to the certified residential real property appraiser examination. (Adopted June 1997)
- (b) Applicants have a reasonable period of time (up to 24 months after state approval) to take the examination. Successful completion of the examination is valid for a period of 24 months. (Adopted July 2000)
- (2) Education
- (a) "Education Criteria" should be understood as qualifying education criteria. (Adopted June 1997)
- (b) A classroom hour is defined as 60 minutes, of which 50 minutes are instruction. (Adopted June 1997)
- (c) Open book examinations are not acceptable in qualifying education courses for appraisal licensing and certification. (Adopted June 1997)
- (d) For qualifying education, distance education is defined as any educational process based on the geographical separation of learner and instructor (for example CD ROM, on-line learning, correspondence courses, video conferencing). For qualifying education, distance education must provide interaction between the learner and

instructor and include testing. (Adopted June 1997)

(e) Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the state certification/licensing authority, the learner successfully completes a written examination proctored by an official approved by the presenting entity, college or university, the course meets the requirements for qualifying education established by the AQB, the course is equivalent to the minimum of 15 classroom hours; and meets one of the following conditions:

1. The course is presented by an accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines; or (Adopted June 1991)
2. The course has received the American Council on Education's Program on Non-collegiate Sponsored Instruction (ACE/Credit Program) approval for college credit; or (Adopted November 1992)
3. The course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either a) the approval of the AQB through the AQB Course Approval Program, or b) the approval of the licensing or certifying jurisdiction where the course is being offered, for the content of the course. (Adopted June 1997. Revised October 2001, effective November 1, 2001)

(f) Experience may not be substituted for education. (Adopted November 1990)

(g) Credit awarded for the classroom hour requirement when an individual seeks a different classification than that held may also be awarded for the continuing education requirement of the classification held. (Adopted June 1991)

(h) Courses taken in satisfying the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should represent a progression in which the appraiser's knowledge is increased. (Adopted November 1993)

(3) Experience

(a) There need not be a client in order for an appraisal to qualify for an appraisal to qualify for experience. (Adopted October 1999)

(b) Experience documentation in the form of reports or file memoranda, or if unavailable, other evidence at the credentialing authority's discretion, must be provided to support the experience claimed. (Adopted June 1997)

(c) Experience obtained after January 1, 1991 shall comply with the *Uniform Standards of Professional Appraisal Practice* (USPAP). (Adopted February 1995)

(d) The appraisal process consists of an analysis of factors that bear upon value; definition of the problem; gathering and analyzing data; applying the appropriate value approaches and methodology; arriving at an opinion of value and reporting the opinion of value. (Adopted June 1997)

(e) 2,500 hours of experience and 24 months are required (certified residential). Three thousand hours of experience and 30 months are required (certified general). The hours may be cumulative, but the required number of months of real estate appraisal experience must accrue before an individual can be certified. (Adopted February 1995)

(f) The time spent driving to and from an appraisal assignment ("drive time") may qualify as appraisal experience if it is considered to be a part of the appraisal process. (Adopted February 1997)

(g) Mass appraisal experience must conform to USPAP Standard 6 subsequent to January 1, 1991. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1. (Adopted June 1997)

(h) Real estate or real property consulting services, including market analysis, cash flow and/or investment analysis, and feasibility analysis must conform to USPAP Standards 4 and 5 subsequent to January 1, 1991. Experience credit for these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1. (Adopted June 1997)

(i) Real property appraisal experience credit should be awarded for appraisals of real estate components or interests unless the appraiser has not complied with USPAP Standards 1 and 2. (Adopted June 1997)

(4) Continuing Education

(a) The period preceding the renewal is defined to mean the continuing education term established by the state. (Adopted November 1997)

(b) For continuing education, distance education is defined as any educational process based on the geographical separation of instructor and learner (e.g., CD ROM, on-line learning, correspondence courses, video conferencing, etc.). (Adopted June 1997)

(c) Distance education courses may be acceptable to meet the continuing education requirement provided that the course is approved by the state certification/licensing authority, the course is a minimum of 2 classroom hours and meets the requirements for continuing education courses established by the AQB, and meets one of the following conditions: (Adopted June 1997)

1. The course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, or (Adopted June, 1997)

2. The course has been presented by an accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation which demonstrates mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable), or (Adopted June 1997)
 3. The course has received approval for college credit by the American Council on Education through its ACE/Credit Program and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation which demonstrates mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable), or (Adopted June 1997)
 4. the course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either a) the approval of the AQB through the AQB Course Approval Program, or b) the approval of the licensing or certifying jurisdiction where the course is being offered, for the content of the course and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation which demonstrates mastery and fluency (said mechanisms) must be present in a course without an exam in order to be acceptable. (Adopted June 1997. Revised October 2001, effective November 1, 2001)
- (d) Real estate appraisal related field trips are acceptable for continuing education credit. However, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur. (Adopted February 1996)
- C. Licensed Real Property Appraiser Classification of the Appraiser Qualification Criteria, Certified Residential Real Property Appraiser Classification of the Appraiser Qualification Criteria, and Certified General Real Property Appraiser Classification of the Appraiser Qualification Criteria (Supplementary Information). Supplementary Information (Supplements) explain, describe, and/or further interpret *The Real Property Appraiser Qualification Criteria* and Interpretations of the Criteria. As such, they are binding:
- (1) Experience
 - a. There need not be a client in order for an appraisal to qualify for experience.
 - b. The credentialing authority must audit a significant sample of appraisals made without clients for quality and conformance with USPAP.
 - c. Greater weight should be given to complete appraisals reported in self contained or summary formats.
 - d. Lesser weight should be given to limited appraisals reports in restricted formats.
 - e. Appraisals made without clients can fulfill up to one-third of the total experience requirement, depending on the quality of the experience.
- D. Appendix I—Real Property Appraiser Qualification Criteria (effective January 1, 2003)
- (1) Education (Qualifying Education)
 - a. 15 of the required qualifying education hours must include the successful completion of the National USPAP Course, or its equivalent, approved by the AQB Course Approval Program.
 - b. USPAP qualifying education credit shall only be awarded when the class is instructed by an AQB Certified Instructor.
 - c. USPAP qualifying education credit shall only be awarded when the class is instructed by at least one residential or general state certified appraiser.
 - (2) Continuing Education
 - a. The equivalent of 14 classroom hours of instruction in courses or seminars for each year during the period preceding the renewal is required. (For example, a two-year continuing education term would require 28 hours).
 - b. Appraisers must successfully complete the 7-hour National USPAP Update Course, or its equivalent, approved by the AQB Course Approval Program, at a minimum of every two years.
 - c. USPAP continuing education credit shall only be awarded when the class is instructed by an AQB Certified Instructor.
 - d. USPAP continuing education credit shall only be awarded when the class is instructed by at least one residential or general state certified appraiser.
 - e. The 2-year USPAP continuing education term may be either:
 1. Every two calendar years, commencing on January 1, 2003, or

Notices of Proposed Rulemaking

2. In conjunction with a jurisdiction's continuing education cycle that commences after the effective date of January 1, 2003, as long as 7 hours of USPAP continuing education have been taken by December 31, 2005.

Notwithstanding the incorporated material, the rules provide for more stringent criteria concerning education. The key features of the more stringent criteria concerning education are:

- A. Course will not be approved that are less than three hours long.
- B. The American Council on Education's Program on Noncollegiate Sponsored Instruction (ACE/Credit Program) is not approved for distance education courses.
- C. Not more than 75% of required qualifying or continuing education may be obtained through distance education.
- D. The 15-hour National USPAP course and the 7-hour National USPAP update course cannot be obtained through distance education.
- E. The 7-hour National USPAP update course shall not be taken from the same instructor for two consecutive courses.

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

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business and consumer impact:

The rules are being amended to incorporate by reference the minimum criteria for the licensed real property appraiser classification, the certified residential real property appraiser classification, and the certified general real property appraiser classification established by *The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994, effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003*, adopted by the Appraiser Qualifications Board (AQB). Notwithstanding the incorporated material, the rules establish parameters for regulation of supervising appraisers in lieu of creating a Trainee Real Property Appraiser Classification, and more stringent criteria concerning distance education and the minimum length of a continuing education course. The major economic impact of the rules will be the indirect beneficial effect for the public and regulated community due to specific interpretation of the criteria, including acceptance of distance education, and the establishment of parameters for regulation of supervising appraisers. The cost, if any, to the regulated community, trainees and course providers will be minimal. There will be no cost to the public. The Board will bear the cost of incorporating and enforcing the rules.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Deborah G. Pearson, Executive Director
Address: Arizona Board of Appraisal
1400 W. Washington, Suite 360
Phoenix, AZ 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598
E-mail: deborah.pearson@appraisal.state.az.us

10. The time, place and nature of the proceedings for the making, amendment or repeal of the rules, or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rules:

Date: February 17, 2005
Time: 9:00 a.m.
Location: Arizona Board of Appraisal
1400 W. Washington
Basement Conference Room B-2
Phoenix, AZ

Nature: The Board will hold an open meeting to hear opinions and suggestions, and to adopt, amend or repeal the rules. The Agenda for this Board meeting will be available to the public the day before the meeting. It may be obtained by contacting the Board office at (602) 542-1539. In addition, written comment will be accepted at the Board office, 1400 West Washington, Suite 360, Phoenix, Arizona 85007 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday through January 19, 2005.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rules or class of

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rules:

None

12. Incorporation by reference and their location in the rules:

The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994, effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003, adopted by the Appraiser Qualifications Board (AQB). The locations in the rules are R4-46-201 and R4-46-207.

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 1. GENERAL PROVISIONS

Section
R4-46-101. Definitions

ARTICLE 2. LICENSING AND CERTIFICATION

Section
R4-46-201. Appraiser Qualification Criteria
R4-46-202. Application for License or Certificate
R4-46-203. Procedures for Processing Applications
R4-46-204. Appraiser Examinations
R4-46-206. Hearing on Denial of a License or Certificate
R4-46-207. Renewal of a License or Certificate
R4-46-208. Renewal of an Expired License or Certificate

ARTICLE 1. GENERAL PROVISIONS

R4-46-101. Definitions

“Arizona or State Certified General Appraiser” No change
“Arizona or State Certified Residential Appraiser” No change
“Arizona or State Licensed Appraiser” No change
“Appraisal Foundation” No change
“Appraiser” No change
“Board” No change
“Course Provider” No change
“Direct supervision” means that a supervising appraiser is physically present to direct and oversee the production of each appraisal assignment.
“Distance education” means any educational process based on the geographical separation of learner and instructor (for example, CD ROM, on-line learning, correspondence courses, video conferencing). For qualifying education, distance education must provide interaction between learner and instructor and include testing.
“Formal Complaint” No change
“Party” No change
“Practicing appraiser” means a state licensed or certified appraiser who is actively engaged in performing appraisal assignments.
“Respondent” No change
“Rules” No change
“Supervising appraiser” means a state licensed or certified appraiser in good standing with a minimum of four years of experience within the last four years as a practicing appraiser who engages in direct supervision of a trainee pursuing a state license or certificate and provides training for work included within the supervising appraiser’s classification.
“Trainee” means an individual who is being taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.
“USPAP” No change

ARTICLE 2. LICENSING AND CERTIFICATION

R4-46-201. Appraiser Qualification Criteria

- A. Except as provided in subsections (B) and (C), (C), (D), (E) and (F), an applicant for the applicable classification of license or certificate should meet that classification's ~~Appraiser Qualification Criteria, established by the Appraisal Foundation and dated February 16, 1994, criteria, established by the Appraiser Qualifications Board (AOB), in *The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994, effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003,* which are incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference by reference incorporated material~~ includes no future additions or amendments. A copy of the ~~Appraiser Qualification Criteria incorporated material~~ may be obtained from the Board or ~~the~~ The Appraisal Foundation.
- B. The ~~incorporation by reference incorporated material~~ in subsection (A) does not govern an Appraiser's scope of practice. The scope of practice for each classification of license or certificate is ~~set forth~~ provided in A.R.S. § 32-3612(A). The ~~incorporation by reference incorporated material~~ in subsection (A) does not govern the minimum amount of experience, measured in hours or years, necessary for certification. The minimum experience required for certification is ~~set forth~~ provided in A.R.S. § 32-3615(A).
- C. An applicant for any classification of a license or certificate shall complete at least ~~two~~ three hours of course work covering A.R.S. Title 32, Chapter 36 and these rules.
- D. Regardless of whether a transaction is federally related:
1. A State Licensed Residential Appraiser is limited to ~~transactions involving one to four family residential real property having a value of less than 1 million dollars and not involving complex one to four family residential real property.~~ the scope of practice in A.R.S. § 32-3612(A)(3), and
 2. A State Certified Residential Appraiser is limited to the scope of practice ~~set forth~~ in A.R.S. § 32-3612(A)(2).
- E.** Notwithstanding the criteria incorporated by reference in subsection (A),
1. The American Council on Education's Program on Noncollegiate Sponsored Instruction (ACE/Credit Program) is not an approved organization for distance education course reviews.
 2. An applicant shall not obtain more than 75% of required qualifying education through distance education, and
 3. An applicant shall not obtain the 15-hour National USPAP Course, or its equivalent, approved through the AQB Course Approval Program, through distance education.
- F.** Notwithstanding the criteria incorporated by reference in subsection (A), there is no Trainee Real Property Appraiser Classification.
1. A supervising appraiser shall instruct and directly supervise a trainee for any classification of a license or certificate in the entire preparation of each appraisal. The supervising appraiser shall approve and sign all final appraisal documents. To demonstrate responsibility for the instruction, guidance and direct supervision of the trainee, the supervising appraiser shall:
 - a. Sign the appraisal report and certify the report is in compliance with the *Uniform Standards of Professional Appraisal Practice*;
 - b. Personally supervise the entire physical inspection of each appraised property with the trainee; and
 - c. Review and sign each trainee appraisal report.
 2. A trainee may have more than one supervising appraiser, but a supervising appraiser shall not supervise more than three trainees at any one time. A trainee shall maintain an appraisal log for each supervising appraiser and, at a minimum, include the following in the log for each appraisal:
 - a. Type of property;
 - b. Date of report;
 - c. Property description;
 - d. Description of work performed by the trainee and scope of review and supervision by the supervising appraiser;
 - e. Number of actual work hours by the trainee on the assignment, and
 - f. The signature and state license or certificate number of the supervising appraiser.
 3. A supervising appraiser and trainee shall work in the same geographic area, and in no event shall the supervising appraiser and trainee work in different states.
 4. A supervising appraiser shall provide to the Board in writing the name and address of each trainee within ten days of engagement, and notify the Board in writing immediately upon termination of the engagement. A state licensed or certified Appraiser is not eligible to be a supervising appraiser unless the Appraiser's license or certificate is in good standing and the Appraiser's license or certificate has not been subject to suspension, probation or mentorship within the last two years.
- G.** Subsection (F) shall become effective January 1, 2006.

R4-46-202. Application for License or Certificate

- A. An applicant for a state certificate or license shall submit a completed application accompanied by the ~~appropriate~~ required application fee. Once the application has been filed, fees are ~~non-refundable~~ nonrefundable.

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- B. To be eligible for a license or certificate, an applicant shall:
 - 1. Meet the qualification criteria contained in A.R.S. Title 32, Chapter 36, Article 2 and these rules;
 - 2. Achieve a passing score on the applicable examination required by R4-46-204(D), unless exempted under A.R.S. § 32-3626;
 - 3. Pay all required application and examination fees;
 - 4. Pay the biennial federal registry fee; and
 - 5. Comply with the requirements of A.R.S. § 32-3611.
- C. In addition to the requirements listed above in subsection (B), an applicant for licensure shall demonstrate 2,000 hours of experience earned in not less than 18 months.
- D. An applicant shall meet all requirements for a license or certificate within one year of filing the application or the applicant's file will be closed and the applicant shall reapply, meeting the requirements of R4-46-202(B). The Board shall notify an applicant whose application has been closed by certified mail or personal service at the applicant's last known address of record. Notice is complete upon deposit in the U.S. mail or by service as permitted under the Arizona Rules of Civil Procedure.

R4-46-203. Procedures for Processing Applications

- A. To comply with A.R.S. Title 41, Chapter 6, Article 7.1, the Board establishes the following time-frames for ~~all licenses and certificates; processing license and certificate applications, including renewal applications:~~
 - 1. The Board shall notify the applicant within 45 days of receipt of the application that it is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
 - 2. The Board shall not substantively review an application until the applicant has fully complied with the requirements of R4-46-202. The Board shall render a final decision not later than 45 days after the applicant successfully completes all requirements of R4-46-202.
 - 3. Although the applicant may have up to one year to comply with requirements of R4-46-202, the overall time-frame for Board action is 90 days, 45 days for administrative completeness review and 45 days for substantive review.
- B. If the Board denies a license, the Board shall send the applicant written notice explaining:
 - 1. The reason for denial, with citations to supporting statutes or rules;
 - 2. The applicant's right to seek a hearing to challenge the denial; and
 - 3. The time periods for appealing the denial.

R4-46-204. Appraiser Examinations

- A. The Board shall not ~~schedule~~ allow an applicant ~~for~~ to schedule an examination until the applicant has completed all of the prerequisite education requirements.
- B. If the test provider does not allow for a test on demand, an applicant shall file an application to take an examination at least 45 days ~~prior to~~ before the examination date.
- C. Rescheduling; excused absence; forfeiture
 - 1. Except as provided in subsections (C)(2) and (3), the Board shall not provide an applicant scheduled for an examination date with a later examination date unless the applicant files a new application and pays a reexamination fee.
 - 2. The Board may grant an excused absence from a scheduled examination if the applicant provides evidence satisfactory to the Board that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. An applicant shall promptly make a request for an excused absence in writing and support the request with documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the examination date will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from taking the examination.
 - 3. An applicant may request that the ~~applicant's~~ applicant's examination date be rescheduled if the request is made at least 15 days before the originally scheduled examination date.
- D. Subject Matter. Each applicant shall take an examination for the applicable classification of license or certificate that covers the subject matter ~~set forth in the National Uniform Examination Content Outline, dated November 4, 1993, which is incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the outline may be obtained from the Board or the~~ The Appraisal Foundation; in the real property appraiser examination for the applicable classification endorsed by the Appraiser Qualifications Board.
- E. Reexamination. An applicant for a license or certificate who fails to pass an examination or fails to appear for a scheduled examination may schedule another examination by filing a new application and paying the reexamination fee.

R4-46-206. Hearing on Denial of a License or Certificate

Pursuant to A.R.S. § 41-1065; A.R.S. § 41-1092.03, any applicant denied a license or certificate by the Board may file a written request for hearing, within 30 days after issuance of the notice of denial. Any hearing shall be conducted under the formal hearing procedures prescribed in Article 3 of these rules; A.R.S. Title 41, Chapter 6, Article 10; and 2 A.A.C. 19.

R4-46-207. Renewal of a License or Certificate

- A. ~~No~~ Not later than 30 days before expiration of an Appraiser's license or certificate, an Appraiser seeking to renew the license or certificate shall submit a completed application accompanied by the ~~appropriate~~ required renewal application fees. Once the application has been filed, fees are ~~non-refundable~~ nonrefundable. To be eligible for a renewal of a license or certificate, an applicant shall:
1. Meet the requirements of A.R.S. Title 32, Chapter 36, and these rules;
 2. Meet the continuing education requirements ~~set forth in the Appraiser Qualification Criteria in The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria adopted February 16, 1994, effective January 1, 1998, All Interpretations and Supplementary Information as of January 1, 2002, and Appendix I, Criteria Revisions effective January 1, 2003, which is~~ incorporated by reference in R4-46-201(A); ~~except:~~
 - a. The Board shall not grant credit toward the classroom hour requirement unless the length of the educational offering is at least three hours.
 - b. The American Council on Education's Program on Noncollegiate Sponsored Instruction (ACE/Credit Program) is not an approved organization for distance education course reviews.
 - c. A renewal applicant shall not obtain more than 75% of required continuing education through distance education.
 - d. A renewal applicant shall not obtain the 7-hour National USPAP Update Course, or its equivalent, approved through the AOB Course Approval Program, through distance education, and
 - e. A renewal applicant shall not obtain the 7-hour National USPAP Update Course from the same instructor for two consecutive courses. The renewal applicant shall provide the name of the instructor for each 7-hour National USPAP Update Course taken.
 3. Pay the renewal and biennial federal registry fees.
- B. ~~In addition to the requirements in subsection (A), effective October 1, 2000, To clarify the requirements in subsection (A),~~ a renewal applicant shall demonstrate completion of a minimum of 14 hours of course work ~~in USPAP consisting of two 7-hour National USPAP Update Courses, or their equivalent, approved through the AOB Course Approval Program,~~ within four years ~~prior to before~~ expiration of the license or certificate. ~~Courses~~ A course used to satisfy this requirement cannot be used to satisfy the continuing education requirements ~~of in~~ subsection (A)(2) unless the course was completed within ~~the two years prior to before~~ the expiration of the license or certificate. ~~Each Appraiser shall successfully complete the 7-hour National USPAP Update Course, or its equivalent approved through the AOB Course Approval Program, at least every two years. A renewal applicant shall not substitute the 15-hour National USPAP Course, or its equivalent, approved through the AOB Course Approval Program, for the 7-hour National USPAP Update Course, or its equivalent, approved through the AOB Course Approval Program.~~
- C. If the last day for filing falls on a Saturday, Sunday, or legal holiday, the Appraiser may file the renewal form on the next business day.

R4-46-208. Renewal of an Expired License or Certificate

- A. An Appraiser may renew a license or certificate which has expired within 90 days of expiration. If the last day falls on a Saturday, Sunday, or legal holiday, the Appraiser may file a renewal on the next business day.
- B. To apply for renewal of an expired license within the 90 day period, an Appraiser shall comply with the requirements of R4-46-207 ~~and submit the delinquent renewal fee prescribed by R4-46-207 and submit the delinquent renewal fee prescribed by R4-46-106.~~ Once an application for renewal of an expired license or certificate has been filed, fees are ~~non-refundable~~ nonrefundable.
- C. An Appraiser who fails to seek renewal within the time prescribed by this rule shall re-apply, ~~meeting and meet~~ the requirements of R4-46-202(B).

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R04-538]

PREAMBLE

1. Sections Affected
R12-5-534

Rulemaking Action
New Section

Notices of Proposed Rulemaking

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 37-102(A): *The State Land Department shall administer all laws relating to lands owned by, belonging to and under the control of the state.*

A.R.S. § 37-102(B): *The Department shall have charge and control of all lands owned by the State, and timber, stone, gravel and other products of such lands, except lands under the specific use and control of state institutions and the products of such lands.*

Implementing statutes: A.R.S. § 37-132(A)(1): *The Commissioner shall exercise and perform all powers and duties vested in or imposed upon the Department, and prescribe such rules as are necessary to discharge those duties.*

A.R.S. § 37-132(B)(8): *The Commissioner may close urban lands to specific uses as prescribed by rule if necessary for dust abatement to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.*

A.R.S. § 37-132(A)(11): *Withdraw State land from surface or subsurface sales or lease applications if the Commissioner deems it to be in the best interest of the Trust. This closure of State lands to new applications for sale or lease does not affect the rights which existing lessees have under law for renewal of their leases and reimbursement for improvements.*

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 4601, November 12, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Chuck Hudson, Manager
Environmental Section

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-2657

Fax: (602) 542-3507

E-mail: chudson@land.az.gov

or

Name: Lillian Moodey, Manager
Land Conservation and Transfer Section

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-2643

Fax: (602) 542-5223

E-mail: lmoodey@land.az.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The State Land Department manages more than 9 million acres of Trust land and resources and has a fiduciary responsibility to enhance value and optimize economic return to its 14 Trust beneficiaries. While public use of State Trust lands is not prohibited, it is regulated to ensure protection of the land and its resources, and to compensate the Trust beneficiaries for its use.

A.R.S. § 37-102(B)(8) specifically authorizes the Commissioner to close urban lands to specific uses for dust abatement, reducing risk of environmental hazards to public health and safety, or for land and resource remediation. These same issues occur on the Trust's rural lands. The Agency considers it necessary to initiate a rule that closes both urban and rural Trust lands to recreational activities when those Trust lands are subject to conditions conducive to increased dust problems, i.e., heavy recreational vehicular use or post-fire situations, where natural or human caused environmental conditions pose a risk to public safety and welfare, or for resource protection or remediation, to ensure future resource quality, value, and usefulness are maintained or improved.

The proposed rule will enable the State Land Commissioner, under A.R.S. 37-132(B)(8), to close urban lands to specific uses for remediation purposes, dust abatement, and other public health and safety reasons. Such closures will provide for land and resource protection to the Trust's assets, thus ensuring that the quality, value and usefulness of

those lands will be maintained and improved. Arizona's law enforcement officers will also have greater impetus to cite those persons wrongfully using Trust land.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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

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 preliminary summary of the economic, small business, and consumer impact:

The Arizona State Land Department was established in 1915 and is responsible for administering approximately 9.3 million acres of Arizona's State Trust land, an asset whose value is estimated in the billions of dollars. Fourteen institutional beneficiaries, established by the State's Enabling Act, receive the revenues the Department earns from leasing and selling the land or its resources. The primary beneficiaries are the common schools (K-12), which have been apportioned more than 90 percent of the land.

The proposed rule allows the State Land Commissioner to restrict recreational access to State Trust land so as to provide a measure of public safety, natural resource and environmental protection on State Trust land, and protection to improvements owned by State lessees and permittees whose livelihoods depend on the use of State land and its resources.

Much of the state's 9.3 million acres of Trust land is located in rural areas. Large tracts surround the major metropolitan areas of Phoenix and Tucson with varying amounts lying adjacent to many other Arizona towns and communities. With its open and varied land form, State land attracts many recreational enthusiasts, especially near the metropolitan areas. One does not need to go far from Phoenix, however, to see the damage to the terrain, vegetation, and improvement on State Trust land resulting from uncontrolled use. An increasing number of public complaints have been received regarding dust and other environmental impacts on undeveloped Trust lands adjacent to developing residential and other urban areas.

The Land Department has a duty to maximize the financial benefits from the Trust lands it manages, and the rule is necessary to offer a measure of protection to it and its resources from further damage thus maintaining its usefulness and value. The Land Department also has a duty to assist lessees of State Trust land when circumstance beyond the lessee's control devalue their leasehold interests.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Chuck Hudson, Manager
Environmental Section

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-2657

Fax: (602) 542-3507

E-mail: chudson@land.az.gov

or

Name: Lillian Moodey, Manager
Land Conservation and Transfer Section

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-2643

Fax: (602) 542-5223

E-mail: lmoodey@land.az.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Notices of Proposed Rulemaking

No public proceeding is scheduled. A person may submit written comments to or request that an oral proceeding be held on the proposed rules by submitting the comments or a written request for hearing no later than 5:00 p.m., February 7, 2005, to the following person:

Name: Lillian Moodey, Manager
Land Conservation and Transfer Section

Address: Arizona State Land Department
1616 West Adams
Phoenix, AZ 85007

Telephone: (602) 542-2643

Fax: (602) 542-5223

E-mail: lmoodey@land.az.gov

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:

None

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 5. LEASES

Section

R12-5-534. ~~Repealed~~ Land Closures to Recreational Uses

ARTICLE 5. LEASES

R12-5-534. ~~Repealed~~ Land Closures to Recreational Uses

A. The Commissioner may close any State Trust land to recreational uses for the following purposes:

1. Dust Abatement Purposes: Dust caused by the unauthorized use of motorized or non-motorized off-road vehicles on Trust land.
2. Hazardous Environmental Conditions: Conditions that may be hazardous to the public health, safety, and welfare resulting from human caused environmental hazards. Examples would include illegal dumping of toxic and hazardous materials, leaking and abandoned underground storage fuel tanks, abandoned or rogue landfills; abandoned air-fields used for pesticide or herbicide storage, abandoned mine workings, and other sites of similar characteristics that are determined by the Commissioner as posing a hazardous condition.
3. Naturally Occurring Hazardous Conditions: Naturally occurring conditions that may pose a risk to human health or safety. Examples would include fissures, sink holes, and flood damaged areas.
4. Mitigation of Damaged Resources: The protection, restitution, and remediation of Trust lands that have been damaged by toxic or hazardous materials, mining, fires, off-road vehicles, over-grazing, and other human caused and natural occurrences.

B. The Commissioner shall specify the period of time deemed necessary for a Trust land closure.

C. Public notice of Trust land closures to recreational uses will be recorded in the records of the Department, posted in the Department's Public Records Room at 1616 West Adams, Phoenix, AZ 85007, and in the Department's District Offices.

D. For the purpose of this rule, the following definitions shall apply:

1. Dust abatement means to minimize the amount of particulate matter entrained into the ambient air as a result of the impact of human activities by requiring measures to prevent, reduce, or mitigate particulate matter emissions.
2. Environmental hazard means chemical, physical agents, biological toxins, or other pollutants that are present in the environment and which may cause human illness or injury.
3. Mitigation means the elimination, reduction, or control of adverse environmental effects. This includes restitution, through replacement, restoration, or any other means.
4. Remediation means an environment cleanup or other methods used to remove or contain hazardous materials.

NOTICE OF PROPOSED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

[R04-539]

PREAMBLE

1. Sections Affected Rulemaking Action
R19-3-601 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. § 5-504(B)
Specific statute: A.R.S. § 5-513(A)(3)(c)
3. A list of all previous notices appearing in the Register addressing the proposed rules:
Notice of Rulemaking Docket Opening: 10 A.A.R. 4197, October 15, 2004
4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Katie Pushor, Executive Director
Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034
Telephone: (480) 921-4505
Fax: (480) 921-4488
E-mail: kpushor@azlottery.gov
or
Name: Pam Scharon, Budget Manager
Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034
Telephone: (480) 921-4489
Fax: (480) 921-4425
E-mail: pscharon@azlottery.gov
5. An explanation of the rules, including the agency's reason for initiating the rules:
This rulemaking responds to the recommendation made by the Auditor General in its last performance audit of the Arizona Lottery. The report found that the Lottery should adopt rules as required under A.R.S. § 5-513(A)(3)(c) to determine fees regarding the voluntary assignment of Lottery prizes to another party. The proposed rulemaking establishes a new Article 6 that addresses the subject matter of annuity assignments. The proposed rule sets forth provisions regarding the voluntary assignment of prizes paid in installments and establishes a fee of \$235 due to the Lottery when a prize winner requests an assignment of all or a portion of the remaining installments on a prize. The fee will serve to defray costs incurred by the Lottery to process the assignment.
6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the proposed 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:
The Lottery is named as a defendant in lottery prize annuity actions when a winner desires to assign annuity payments to another party. The Lottery studied its costs related to annuity prize assignments and requested a cost study from the Attorney General. The Lottery contracts with the Attorney General to provide legal services at the rate of \$47.55 per hour for an attorney and \$20.83 for a legal assistant. This cost information is outlined in Table 1 and Table 2.

Notices of Proposed Rulemaking

TABLE 1

Lottery Time Allocation for Assignment Cases

<p><u>Duties performed by Administrative Services Officer:</u></p> <ul style="list-style-type: none"> • Verifies information requests and faxes reply to Assistant Attorney General. • Upon receiving final judgment from court, composes and mails instruction letter to insurance company. • Prepares new file folder for winner, updates computer information, and adds to winner notebook. • Upon receipt of confirmation letters from insurance companies, faxes copies to Attorney General’s Office and representing attorneys, then files letters. <p><u>Cost Calculation:</u></p> <p>Estimated average time to perform duties: 1.5 hours Administrative Services Officer hourly salary: \$20.29 Average Lottery cost per allocation case: \$30.43</p> <p>(Note: supply costs such as letterhead, paper copies, and envelopes are considered minimal and are not included).</p>

TABLE 2

Attorney General Time Allocation for Assignment Cases

Case No.	Assistant Attorney General	Legal Assistant	Total
ALS02-0013	0.3	6.9	7.2
ALS02-0039	0.5	8.5	9.0
ALS02-0089*	34.0	92.0	126.0
ALS02-0203	2.0	9.2	11.2
ALS02-0244	3.8	12.4	16.2
ALS02-0382*	0.4	31.3	31.7
ALS02-0383	0.7	8.0	8.7
ALS02-0431	6.6	8.8	15.4
ALS02-0465	0.3	7.7	8.0
ALS02-0566	0.2	6.6	6.8
ALS02-0616	3.7	8.0	11.7
ALS02-0622	0.4	6.6	7.0
ALS03-0045	1.1	8.1	9.2
ALS03-0066	0.7	12.0	12.7
ALS03-0095	0.5	5.8	6.3
ALS03-0171	0.8	6.0	6.8
ALS03-0172	0.2	7.4	7.6
ALS03-0182	0.8	6.8	7.6

Notices of Proposed Rulemaking

ALS03-0207	0.2	3.7	3.9
ALS03-0254	0.8	5.9	6.7
ALS03-0385	0.7	6.2	6.9
ALS03-0413	1.1	4.0	5.1
ALS04-0004	2.2	3.8	6.0
ALS04-0016	0.9	2.3	3.2
TOTAL HOURS	62.9	278	340.9
AVERAGE	2.62	11.58	14.20
HOURS (Less 2 Unusual Cases)	28.5	154.7	183.2
AVERAGE (Less 2 Unusual Cases)	1.30	7.03	8.33
HOURLY SALARY	\$47.55	\$20.83	
COST PER CASE	\$61.81	\$146.43	\$208.24

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The rulemaking establishes fees associated with the voluntary assignment of Lottery prizes to another party and is in direct response to the Auditor General's 2002 performance audit of the Lottery which recommended establishing such a fee. The Lottery anticipates that this rulemaking will impact the agency and the prize winner (or assignee of the prize winner) requesting a prize annuity assignment.

- A. *The Arizona State Lottery.* Costs to the Lottery related to this rulemaking include time spent by Lottery administrative staff and the Attorney General's Office to process the assignment. These costs will be recouped through this rulemaking. Once established, there will be nominal administrative costs related to processing the fee. The Lottery is named as a defendant in lottery prize annuity actions when a winner desires to assign annuity payments to another party pursuant to A.R.S. § 5-513. The average cost to process each annuity assignment is estimated at \$235, which reflects Lottery staff time to compose and distribute correspondence, and the Attorney General's time to represent the case. The Lottery cost of \$30.43 (Table 1) was determined by estimating the average time spent by staff to process required documentation. The Attorney General cost of \$208.24 (Table 2) was derived by averaging the actual time required to process assignment cases filed since 2002. Of the 24 total cases, two were unusually high with respect to time commitment. These were removed from cost calculations.
- B. *Businesses Directly Affected by this Rulemaking.* Businesses potentially affected by this rule are the assignment companies that buy out the prize winner's annuity. It is the responsibility of either the prize winner or assignee of the prize winner to pay the fee due to the Lottery. If the assignment company pays the fee, the cost will be \$235 as established by this rulemaking. This fee represents a minimal business cost to the assignment company.
- C. *Consumers and the Public.* This rulemaking will impact the prize winner electing to assign a Lottery prize in the event the assignment company does not pay the fee due to the Lottery. The cost will be \$235 to defray expenses to the Lottery to process the assignment.

This rulemaking is not expected to have an economic impact on political subdivisions of the state, private and public employment, or Lottery retailers. The impact on state revenues is expected to be minimal.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Katie Pushor, Executive Director

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Notices of Proposed Rulemaking

Telephone: (480) 921-4505
Fax: (480) 921-4488
E-mail: kpushor@azlottery.gov
or
Name: Pam Scharon, Budget Manager
Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034
Telephone: (480) 921-4489
Fax: (480) 921-4425
E-mail: pscharon@azlottery.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: February 18, 2005
Time: 10:00 a.m.
Location: Arizona Lottery
4740 E. University Drive
Phoenix, AZ 85034
Nature: Oral Proceeding

The close of record is 5:00 p.m. on February 17, 2005 for written comments and at the end of the oral proceeding for verbal comments.

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:

None

13. The full text of the rule follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 6. ANNUITY ASSIGNMENTS

Section

R19-3-601. Voluntary Assignment of Prizes Paid in Installments

ARTICLE 6. ANNUITY ASSIGNMENTS

R19-3-601. Voluntary Assignment of Prizes Paid in Installments

- A.** A prize winner or the assignee of the prize winner will, within ten days of filing an action in Superior Court seeking judicial approval of a voluntary assignment of all or a portion of the remaining installments on a prize, pay a fee of \$235 to the Lottery to defray the expenses incurred by the Lottery in processing the assignment.
- B.** If the fee is not paid as provided in subsection (A), the Lottery will notify the court of the failure to pay the fee.
- C.** The Lottery will not request a payor of the prize to change the entity to which it makes payments until the fee has been received by the Lottery.
- D.** Any person requesting a voluntary assignment under A.R.S. § 5-513(A)(3) will include in its proposed judgment to the Court that the Lottery shall not request a change of the payee until the Lottery receives the fee as provided in subsection (A).