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December 29, 2015

David Fredrickson
Chief Counsel and Associate Director
Division of Corporate Finance
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Request for Interpretive Guidance Regarding Section 4(2) of the
Securities Act of 1933 (Rule 144A and Regulation D)

Dear Mr. Fredrickson:

We are writing on behalf of our client, the College Savings Plans Network (CSPN), to request interpretative guidance from the Staff of the Division of Corporate Finance of the United States Securities and Exchange Commission (the "Commission") that all prepaid tuition programs established by CSPN members pursuant to Internal Revenue Code ("IRC") section 529 qualify as entities described as: (1) a "qualified institutional buyer" or "QIB" within the meaning of subsection 144A(a)(1)(i)(H) of Rule 144A, 17 C.F.R. § 230.144A(a)(1)(i)(H); and (2) an "accredited investor" within the meaning of subsection 501(a)(3) of Regulation D, 17 C.F.R. § 230.501(a)(3).

CSPN, an affiliate of the National Association of State Treasurers, represents §529 qualified tuition programs and requests this interpretative guidance specifically on behalf of the eleven state-maintained §529 prepaid tuition programs.¹ While §529 prepaid tuition programs are creatures of each state's statute, their structures share sufficient common characteristics to request this guidance on behalf of all states with a prepaid tuition program instead of through individual state-by-state requests.

Absent the guidance being sought by this request, some CSPN members administering §529 prepaid tuition programs are reluctant to certify that they qualify as QIBs or accredited investors and thus do not have access to markets for unregistered securities and many private placements, adversely impacting their programs' ability to diversify investments and reduce costs. This limitation directly and adversely impacts the cost to many families purchasing tuition credits or certificates under these prepaid tuition programs.

¹ The states that maintain §529 prepaid tuition programs and a compilation of state laws citations under which these programs operate are listed in attached **Exhibit 1**.

I. Rule 144A and Regulation D Under the Securities Act of 1933

Section 4(a)(2) of the 1933 Act provides registration exemptions for sales not involving public offerings of securities. The Commission adopted rules to provide safe harbors for certain entities to qualify under this exemption. Regulation D adopted a safe harbor for the direct purchases of private placements to “accredited investors.” Similarly, Rule 144A permits the resale of unregistered securities to certain types of institutional investors defined as “qualified institutional buyers.” These safe harbor rules are intended to allow entities that do not need the protections associated with registered offerings to participate in either the direct offering of a private placement or a secondary purchase of such securities.

These rules enumerate certain specific types of entities that qualify under the definitions. Both rules include in their definitions organizations that (i) own and invest a minimum specified dollar amount (\$100 million in the case of a QIB and \$5 million in the case of an accredited investor) and (ii) are either described in §501(c)(3) of the Internal Revenue Code, a corporation, a partnership, or a Massachusetts or similar business trust. From time-to-time the Commission has provided “no action” or interpretive guidance to include entities in the safe harbors that are not specifically listed in either Rule 144A or Regulation D but that have substantially similar characteristics.²

IRC §529 was added to the tax code after the Commission adopted the current “QIB” and “accredited investor” safe harbor definitions and thus the Commission never had an opportunity to consider specifically identifying them in the definitions. However, we assert that the definitions of “QIB” and “accredited investor” are broad enough to encompass the structures of all eleven §529 prepaid tuition programs which are established pursuant to state statute and generally are organized as a form of “corporation” or “business trust” and engage in business activities that are commonly associated with corporations. In addition, the existing §529 prepaid tuition programs do not need the protections associated with registration, and thus all should be recognized as entities that qualify for treatment both as a QIB and accredited investor as long as they meet the applicable minimum asset thresholds.

II. Background on §529 Prepaid Tuition Programs

Under the Internal Revenue Code, there are two types of §529 programs: prepaid tuition programs and savings programs. There are currently §529 prepaid tuition programs

² Wolf, Block, Schorr and Solis-Cohen, SEC No-Action Letter, 1996 WL 714670 (Dec. 11, 1996)(limited liability companies); Voluntary Hospitals of America, Inc., SEC No-Action Letter, 1982 WL 30509 (Dec. 30, 1982)(governmental entities which own hospitals of the type described in IRC §501(c)(3); Revisions of Limited Offering Exemptions in Regulation D, SEC Release No. 33-8828 (Aug. 3, 2007) at footnote 112 (college endowments); Alaska Permanent Fund, SEC No-Action Letter, 2011 WL 2760557 (July 14, 2011) (sovereign wealth investment fund).

(sometimes called guaranteed savings plans) offered by eleven states³ and one not-for-profit organization⁴. IRC §529(b) defines a qualified tuition program as a program “established and maintained by a State or agency or instrumentality” of a State “under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary...” and satisfy other requirements in IRC §529. Alternatively, the program can be maintained by one or more eligible educational institutions if the assets are held in a qualified trust. These programs allow for the pre-purchase of tuition based at a current prescribed price and then paid out at the future cost when the beneficiary is in college. The pricing of these tuition credits, semesters or certificates is based on such factors as current and projected tuition costs and long-term investment returns from the assets managed by each plan.

The additional requirements imposed by IRC §529 include requirements that: (1) the program provide a separate accounting for each designated beneficiary; (2) neither contributors nor beneficiaries may directly or indirectly make investment decisions; and (3) the interest in the program may not be pledged as security for a loan. These requirements are frequently associated with entities that are trusts or that have fiduciary obligations.

III. State Enabling Laws

Each of the eleven states that have established §529 prepaid tuition programs has adopted enabling legislation that creates the entity that maintains the program and imposes certain terms and conditions regarding its administration consistent with the requirements of IRC §529. In addition, each state program has adopted bylaws and/or operating rules that govern how the program’s funds are managed and invested. Overall, as further described below, these statutes and the entities they create reflect the mission of the 529 programs – prudently investing participant money for the benefit of the accounts’ beneficiaries to help make college education more affordable. In addition, these programs are maintained by entities that are responsible for marketing, pricing, and other activities described below that are consistent with a business enterprise. This structure and activity is very different, and requires different governance, than the more traditional governmental functions that rely on states’ taxing and spending authority. And, importantly, they are

³ Massachusetts maintains a prepaid tuition program that is not a §529 program and that has no occasion to invest in securities that require a transactional registration exemption under Rule 144A or Regulation D. This request for guidance is limited to §529 plans.

⁴ Section 529(b) was amended in 2001 to permit one or more eligible educational institutions that holds assets in a qualified trust and obtains a ruling from the IRS that it meets the requirements of the section to qualify as a §529 program. The Private College 529 Plan is the only such non-state §529 qualified tuition plan. The plan was established and is maintained by Tuition Plan Consortium, LLC and is managed by OFI Private Investments Inc., a subsidiary of OppenheimerFunds, Inc. The plan was formed for the purpose of establishing a prepaid tuition program by and for private colleges and universities. The plan, as an LLC with more than \$100 million in assets, qualifies as a QIB and accredited investor.

engaged in business activities that are expected of entities described in Rule 144A and Regulation D.

1. Entity Maintaining the Program -- Structure

Each state has created an entity to manage and operate its §529 prepaid tuition program. Exhibit 2 provides a description of the entity in each state that manages and operates a §529 Prepaid Program.

Two states offer prepaid tuition programs that are organized and described as corporate entities. Florida describes its Florida Prepaid College Board “as a body corporate with all the powers of a body corporate...” Fla. Stat. §1009.971(1). Similarly, in Virginia, “there is hereby established as a body politic and corporate... the Virginia College Savings Plan.” Va. Code Ann. § 23-38.76. As corporations, these two plans appear on their face to qualify as QIBs under the language of both 144A and Regulation D quoted above. Other states, while not using the expressed language found in Virginia and Florida, have characteristics that are commonly associated with corporations as further discussed below.

However, other states have established entities that resemble trusts or constructive trusts. These entities usually include the word “trust” in their name and frequently impose trust-like obligations on their trustees. For example, the Maryland Prepaid College Trust states that each board member is a fiduciary and requires each to act “with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use...” Md. Code Ann., Educ. §18-1907(b)(3).

Whether established as a corporation or trust, the programs are not structured as a traditional governmental agency or department. For example, unlike traditional state agencies each state’s enabling statute provides that the entity created shall include a specified number of outside directors or trustees, paralleling the structure of a corporation or trust and not that of a traditional government agency. In addition, unlike traditional state agencies, the day-to-day operating budgets of each of these entities are not derived from state general funds but are self-funded from fees and other revenues. Finally, many of the state statutes impose fiduciary obligations on the entities and/or their trustees or directors and other standards of care that are not typically imposed by statute on state agencies and their personnel.

2. Entity Maintaining the Program -- Operational

Operationally the §529 prepaid programs are engaged in an active business venture:

- They create their own operating budgets without legislative control.
- They price their product -- tuition credits, semesters or certificates -- using such factors as current and projected tuition and long-term investment returns from the assets managed by their plan.
- They engage in their own marketing campaigns.

- Their day-to-day operations are not financed with any state appropriated funds.
- They typically operate without the full faith and credit of their state backing the commitments they make⁵.
- They have their own staffs and make their own staffing decisions.
- While there are various relationships with government officials (such as designated trustee positions and different oversight functions) depending on the state, they are separate and distinct organizations from state agencies.⁶

3. Qualifications of Board Members and Trustees

While differing in details, the state enabling statutes generally require that a significant number of appointed board members or trustees have expertise in managing and investing funds. For example, several states require significant experience in finance, accounting, and investment management.⁷ These qualifications mirror the requirements that generally would be found on the board of a well-structured financial sector corporation.

4. Fiduciary Standards

A number of state statutes impose a specific fiduciary obligation on trustees/directors.⁸ State statutes do not usually subject state agencies to a specific statutory fiduciary obligation. Rather, such a fiduciary standard would more frequently be associated with the obligations of traditional corporations. In addition, the standard is similar to the obligation imposed by IRC §529(b) on programs established by universities and colleges.

5. Accounting and Oversight

In order to prudently invest participant money, many states require board members or trustees to draft an investment plan, conduct an annual accounting of plan assets, and

⁵ The original Texas prepaid plan which is now closed to new enrollment is backed by the full faith and credit of the state based on a constitutional amendment adopted in 1997. However, the new Texas prepaid program that is open for new enrollment has no such backing. In addition, the Florida statute provides that the State shall appropriate amounts to cover any shortfall.

⁶ Some of the entities that manage the programs are associated with another state agency (such as the office of the Comptroller or Treasurer), but as described herein they are managed by a Board of Directors/Trustees with the powers and authorities that reflect the business activity in which they are engaged.

⁷ For example, members of the Alabama Prepaid Affordable College Tuition (PACT) board "shall be an expert in the field of investments, market analysis, or financial planning, or on similar matters commensurate with the duties and responsibilities of the plan." Ala. Code § 16-33C-4.1(c). In Texas, the appointed members of the board "must possess knowledge, skill, and experience in higher education, business, or finance." Tex. Educ. Code Ann. § 54.606(b). In Virginia, the citizen members of the board should have "significant experience in finance, accounting, law, or investment management." Va. Code Ann. § 23-38.76(B).

⁸ For example, in Alabama, all members of the PACT board "have the fiduciary responsibility to devise and implement an investment strategy designed to maximize investment returns in a manner that correlates with future projected benefit payouts." Ala. Code § 16-33C-4.1(c). In Maryland, the board members are called "fiduciaries" and must act "with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims." Md. Code Ann., Educ. § 18-907(b)(3).

contract with outside financial professionals. Some state statutes allow fiduciaries to contract for actuarial assistance in order to maintain the soundness of the fund.⁹ Most states require that some kind of accounting be submitted annually and usually require it to be conducted by an outside firm.¹⁰ Some states require the fund to be certified actuarially sound, or require a report to be submitted to the legislature, or a few states require both. Several states require the board or trustees to develop and document an investment plan, with or without guidance from outside professionals, to specify the policies to be used in the administration of the fund.¹¹

A statutory mandate to use an outside accounting firm for annual audits is not typically imposed on government agencies. The annual reporting, accounting, and transparency requirements that are imposed by these state statutes resemble the types of requirements imposed on corporations or trusts not government agencies. Finally, these requirements reflect a desire by the states to establish entities to maintain §529 prepaid tuition programs having the requisite professional and financial sophistication.

6. Segregation and Protection of Program Assets

While using different language, many states provide that amounts deposited into the §529 programs are not the assets of the state and/or may not be diverted by the states for other purposes. For example, Illinois provides that “all such moneys shall be deposited in the Illinois Prepaid Tuition Trust Fund and held by the State Treasurer as ex-officio custodian thereof, outside of the State Treasury, separate and apart from all public moneys or funds of this State.”¹² Furthermore, the statute goes on to limit the authority of the Governor and other officials from transferring funds for other purposes. Similarly, Alabama provides that “The amounts on deposit in the PACT Trust Fund shall not constitute property of the state, and the state may have no claim or interest in them.”¹³ Other states such as Nevada¹⁴, Maryland¹⁵ and Virginia¹⁶ include similar forms of restrictive language. These limitations and protections further support the notion that these programs are structured as corporations or business trusts, and not as a form of government agency.

⁹ Ala. Code §16-33C-6(e); 24 Pa. Cons. Stat. § 6901.306(b)(2).

¹⁰ E.g., Ala. Code §16-33C-6(e); ILC 979/30(f); Md. Code Ann., Educ. §§18-1916(b)(1).

¹¹ E.g., Fla. Stat. 1009.971; MCL 390.1425(1); Va. Code Ann. § 23-38.76.

¹² 110 Ill. Comp. Stat. Ann. 979 / 35(a).

¹³ Ala. Code §16-33C-6(b).

¹⁴ Nev. Rev. Stat. § 353B.340(4) (“Money in the Trust Fund: (a) Is not the property of this state, and this state has no claim to or interest in such money; and (b) Must not be commingled with money of this state”).

¹⁵ Md. Code Ann., Educ. §18-1903(e) (“Money remaining in the Trust at the end of the fiscal year shall remain in the Trust and may not revert to the General Fund of the State”).

¹⁶ Va. Code Ann. § 23-38.76(A) (“Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.”).

IV. Analysis

1. §529 Program Structures are Trusts and Corporations and Engage in Business Activities Associated with QIBs and Accredited Investors.

Section 529 prepaid programs have been organized, as described above, with the features of corporations or business trusts. These programs have either directors or trustees with the authorities normally associated with such positions in traditional corporations or trusts. In addition, the enabling statutes identify their authorities as being created as “a body corporate” or as a “trust”. The prescribed obligations of the directors or trustees similarly include the fiduciary and fiduciary-like standards that apply to corporate directors and trustees. While neither Rule 144A nor Regulation D further defines either “corporation” or “similar business trust” such status is generally established and regulated under state law¹⁷. Thus, it is reasonable to interpret Rule 144A and Regulation D to encompass §529 prepaid programs.

As described above, Congress in enacting IRC §529 imposed requirements on prepaid tuition programs that require the programs to include characteristics frequently associated with trusts and corporations. In particular, IRC §529(b) requires separate accounting, precludes individual investment direction, and prohibits the pledging of interests by participants or beneficiaries.

The organizations that maintain §529 prepaid tuition programs are engaged in managing a business enterprise. As described above, these organizations budget, staff, market, price, and otherwise engage in traditional business activities. These activities are the types of business activities that would be expected of an entity described in Rule 144A and Regulation D.

2. §529 Programs for Public Colleges and Universities Should not be Treated Less Generously than those for Private Colleges and Universities

When Congress amended IRC §529(b) to extend qualified tuition program status to programs maintained by one or more universities it required assets to be held in a “qualified trust.” The requirements for treatment as a qualified trust are identical to those imposed on state maintained §529 programs other than the IRC requirement specifying there be a trust organized for the exclusive benefit of designated beneficiaries. As described above states generally had already adopted enabling statutes that parallel this requirement.

The Private College 529 Plan is the only non-state §529 qualified tuition plan and was established and is maintained by Tuition Plan Consortium, LLC (“TPC”). It was formed for the purpose of establishing a prepaid tuition program by and for private colleges and universities. TPC, as an LLC with more than \$100 million in assets, qualifies for treatment as a QIB and accredited investor.

¹⁷ Some corporations and organizations have been chartered by acts of Congress.

It would be incongruous to qualify a §529 plan created by and serving primarily private colleges and universities as an accredited investor and QIB with access to the investment opportunities available as a result of such status, while denying such treatment to state-sponsored §529 programs that serve (although not exclusively) public colleges and universities and that engage in comparable activities. This is especially true given the similar if not identical structures of such programs.

3. §529 Programs are Maintained by Unique Entities

Unlike most other entities established by a state, the entities that manage §529 prepaid tuition plans have at least two distinguishing characteristics.

First, they are established by states pursuant to a provision of federal law for the purpose of making investments of plan assets. The federal law imposes a number of obligations and restrictions on these programs such as reporting requirements, prohibitions on pledging interests in the program, and required separate accounting.

Second, these programs are not managing or investing money for the purpose of financing one or more governmental functions. Instead, they are managing and investing money for the benefit of a contributor's designated beneficiary, and engaging in a host of private commercial activities that support the mission of promoting college savings.

The combination of these two characteristics is reflected in the terms and conditions imposed by the state-created entities that maintain the programs. These are entities that are generally designated as, and have the principal characteristics of, "corporations" or "business trusts."

As stated above, from time-to-time the Commission has provided "no action" or interpretive guidance to include entities in the safe harbors that are not specifically listed in either Rule 144A or Regulation D but that have substantially similar characteristics.¹⁸ While §529 prepaid tuition programs are not expressly listed in either Rule 144A or Regulation D they have separate legal status and engage in the types of business activities that are analogous to those that are enumerated within such Rule and Regulation.

4. §529 Programs Do Not Need the Securities Law Protections of Registered Offerings

The registration protections of federal securities law are not needed by §529 programs. These programs are managed by board members and trustees that have expertise in financial management. States have established these entities to operate as sophisticated market participants. Furthermore, they generally are subject to fiduciary obligations and accounting and reporting regimens that foster sound financial management practices associated with sophisticated investors.

¹⁸ See footnote 2 above.

V. Conclusion

Section 529 prepaid tuition programs operate either in fact as, or in a sufficiently similar fashion to, corporations or business trusts to qualify as a "qualified institutional buyer" within the meaning of Rule 144A and "an accredited investor" within the meaning of Regulation D to the extent that they manage at least \$100 million in the case of a QIB and \$5 million in the case of an accredited investor. The College Savings Plans Network would appreciate receiving interpretive guidance that the staff of the Commission agrees with our conclusion so that all member plans may invest in unregistered securities and private placements that such designation permits.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Starr", written over a horizontal line.

David A. Starr

EXHIBIT 1

STATE STATUTES

Alabama - Alabama's Prepaid Affordable College Tuition was established in Section 16-33C-6, [Code of Alabama](#).

Florida - The Florida Prepaid College Program was established by the [Stanley G. Tate Florida Prepaid College Program](#) in 1987.

Illinois - The College Illinois! Program was established by the [Illinois Prepaid Tuition Act 110 ILCS 979/1](#).

Maryland - The Maryland Prepaid College Trust was established under Md. Code. Ann. [§18-1903](#) and is administered by a Board.

Michigan - The Michigan Education Trust was created by the [Michigan Education Trust Act of 1986](#).

Mississippi - Mississippi Prepaid Affordable College Tuition (MPACT) Program was established by MS Code [§37-155 \(2013\)](#).

Nevada - The Nevada Prepaid Tuition Program was established by [NRS Chapter 353B](#).

Pennsylvania - Pennsylvania's Tuition Account Guaranteed Savings Program was established under [1992 Act 11](#).

Texas - The Texas Prepaid Tuition Program and Prepaid Higher Education Tuition Board were established by [Tex. Educ. Code, Chapter 54, Subchapters F, G, and H](#).

Virginia - The Virginia College Savings Plan was established under Va. Code Ann. [§23-38.76](#).

Washington - Washington's GET prepaid tuition program was established by [RCW 25B.95](#).

EXHIBIT 2 - Page 1

| State | Maintaining Entity | Outside Board Members? | Qualifications of Trustees/Board | Investment Plan | Fiduciary Duty/Actuarial Soundness Obligation |
|--|---|------------------------|---|--|---|
| <p>Alabama - Alabama's Prepaid Affordable College Tuition Trust Fund was established in Section 16-33C-6, Ala.Code</p> | <p>Prepaid Affordable College Tuition (PACT) Trust fund and 15-member PACT Board of Directors</p> | <p>Yes</p> | <p>§16-33C-4.1(c) – An appointed Board member shall be an expert in the field of investments, market analysis, or financial planning or on similar matters commensurate with the duties and responsibilities of PACT.</p> | <p>All members of the Board shall have the fiduciary responsibility to devise and implement an investment strategy designed to maximize investment returns in a manner that correlates with future projected benefit payouts.</p> | |
| <p>Florida - The Florida Prepaid College Board is hereby created as a body corporate with all the powers of a body corporate for the purposes delineated in this section. Fla. Stat. 1009.971</p> | <p>Florida Prepaid College Board</p> | <p>Yes</p> | <p>1009.971 Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of accounting, actuary, risk management, or investment management.</p> | <p>1009.973 The Florida Prepaid College Board shall establish separate comprehensive investment plans for the prepaid program and for the savings program, each subject to the approval of the State Board of Administration. Each comprehensive investment plan shall specify the investment policies to be utilized by the board in its administration of each respective program.</p> | <p>The Board shall have the power and duty to administer the trust fund in a manner that is sufficiently actuarially sound to defray the obligations of the prepaid program and the savings program, considering the separate purposes and objectives of each program. (Fla. Stat. 1009.971(4)(f))</p> |
| <p>Illinois - Illinois Prepaid Tuition Trust Fund is created as the repository of all moneys received by the Commission in conjunction with the Illinois prepaid tuition program. 110 ILCS 979/35</p> | <p>Illinois Student Assistance Commission</p> | <p>Yes</p> | <p>110 ILCS 979/20 - Each panel member shall possess knowledge, skill, and experience in at least one of the following areas of expertise: accounting, actuarial practice, risk management, or investment management.</p> | <p>110 ILCS 979/30(b) The Commission annually shall adopt a comprehensive investment plan for purposes of this Section. The comprehensive investment plan shall specify the investment policies to be utilized by the Commission in its administration of the Illinois Prepaid Tuition Trust Fund created by Section 35.</p> | <p>The Commission shall invest such assets with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims, and the Commission shall diversify the investments of such assets so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. (110 ILCS 979/30)</p> |

EXHIBIT 2 - Page 2

| State | Maintaining Entity | Outside Board Members? | Qualifications of Trustees/Board | Investment Plan | Fiduciary Duty/Actuarial Soundness Obligation |
|--|---|------------------------|---|--|--|
| <p>Maryland - Md. Code. Ann. §18–1903 (a) There is a Maryland Prepaid College Trust.</p> | <p>Maryland Prepaid College Trust administered by a Board</p> | <p>Yes</p> | <p>§18–1904(c) The Board consists of 10 members including (3) The State Treasurer; (4) The State Comptroller; and (6) Five members of the public who shall be appointed by the Governor and shall have significant experience in finance, accounting, investment management, or other areas that can be of assistance to the Board.</p> | <p>§18–1906(a) The Board shall adopt a comprehensive investment plan for the administration of the Trust.</p> | <p>§18–1907 (a)(1) defines members of the board as fiduciaries; and (b) a fiduciary shall discharge his duties (3) With the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims</p> |
| <p>Michigan - MCL 390.1425 (1) There is created a public body corporate and politic to be known as the Michigan education trust.</p> | <p>390.1425 The purposes, powers, and duties of the Michigan education trust are vested in and shall be exercised by a board of directors</p> | <p>Yes</p> | <p>390.1430 (1) The board shall consist of the state treasurer, and 8 other members with knowledge, skill, and experience in the academic, business, or financial field....</p> | <p>Yes, approved via a Board Resolution..</p> | <p>390.1433(a) The trust shall be administered in a manner reasonably designed to be actuarially sound such that the assets of the trust will be sufficient to defray the obligations of the trust.</p> |
| <p>Mississippi - MS Code § 37-155-15 (2013)(1) There is hereby created a Mississippi Prepaid Affordable College Tuition Program Trust Fund to be administered by the State of Mississippi Treasury Department</p> | <p>The program is administered through the Mississippi Prepaid Affordable College Trust Fund by the Treasury Department</p> | <p>Yes</p> | <p>The appointed members of the board of directors must possess knowledge, skill, and experience in business or financial matters commensurate with the duties and responsibilities of the trust fund.</p> | <p>§ 37-155-9(v) To establish a comprehensive investment plan for the purposes of this section. The comprehensive investment plan shall specify the investment policies to be utilized by the board in its administration of the fund.</p> | <p>§ 37-155-15 (5) The board shall obtain appropriate actuarial assistance to establish, maintain and certify a fund sufficient to meet the obligation of the trust fund, and shall annually evaluate or cause to be evaluated, the actuarial soundness of the trust fund. If the board perceives a need for additional assets in order to preserve actuarial soundness, it may adjust the terms of subsequent prepaid tuition contracts to ensure such soundness.</p> |

EXHIBIT 2 - Page 3

| State | Maintaining Entity | Outside Board Members? | Qualifications of Trustees/Board | Investment Plan | Fiduciary Duty/Actuarial Soundness Obligation |
|--|--|------------------------|---|--|--|
| <p>Nevada - NRS 353B.140(1) The Nevada Higher Education Prepaid Tuition Trust Fund is hereby created within the State Treasury</p> | <p>Nevada Higher Education Prepaid Tuition Trust Fund, administered by the State Treasurer</p> | <p>Yes</p> | <p>All appointed members to the Board must have experience in accounting, finance, investment management, or marketing.</p> | <p>NRS 353B.160(1)The Board shall create a comprehensive plan that specifies the policies for investment which the State Treasurer shall follow in administrating the Trust Fund.</p> | <p>The Treasurer must exercise prudence, discretion and intelligence in its care of the Fund.</p> |
| <p>Pennsylvania - 1992 Act 11 §303 The State Treasurer is directed to establish ...the Tuition Account Programs Bureau, for the purpose of establishing and administering two programs for postsecondary educational savings, a guaranteed savings program and an investment program.</p> | <p>Tuition Account Guaranteed Savings Program Fund, which is managed by the Tuition Account Programs Bureau and Tuition Account Programs Advisory Board.</p> | <p>Yes</p> | <p>Appointed members of the Advisory Board should have knowledge, skill and expertise in financial affairs.</p> | <p>§309.1 The department shall establish an investment plan that defines the Tuition Account Investment Program structure and sets forth investment policies and guidelines to be utilized in administering the program and may, in its discretion, obtain the services of investment managers, program managers and trustees as described in section 307(b) to assist in establishing and administering the plan.</p> | <p>§307(a) The policies governing the investment of the Tuition Account Investment Program Fund shall be directed to providing for an appropriate balance of risk, liquidity and return commensurate with the management of a prudent investor.</p> |
| <p>Texas - Texas has two prepaid tuition funds established under §§54.634 and 54.751, Tex. Educ. Code (the first of which is constitutionally guaranteed), of which the Board members are trustees, <i>however</i> the plans are not trusts governed by the Texas Trust Code. The members of the Board do not have the powers and duties prescribed by the Trust Code for trustees. Nor does the Board have the powers and duties specified in the Texas Business Organizations Code for boards of directors of a corporation or the governing authority of other types of Texas business entities. The powers and duties of the members of the Board are unique to the Board and are spelled out in the Texas laws establishing the plans (54.601-808)</p> | <p>established and maintained by the Texas Prepaid Higher Education Tuition Board</p> | <p>Yes</p> | <p>Board members must have knowledge, skill, and experience in higher education, business, or finance.</p> | <p>54.636 (c) The board shall develop written investment objectives concerning the investment of the assets of the fund. The objectives may address desired rates of return, risks involved, investment time frames, and any other relevant considerations. (d) The comptroller shall develop a comprehensive plan for the investment of the assets of the fund consistent with the objectives developed by the board.The plan shall specify the policies under which the board shall invest the assets of the fund. The board must approve the plan. §54.766 gives the board the same authority to invest and oversight in developing investment objectives for the second prepaid tuition fund as it does for the first cited above.</p> | <p>54.6085(a) In addition to any other requirements provided by law, the board shall adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment decisions of the board. 54.636 (e) In making investments of the assets of the fund, the board shall exercise the judgment and care, under the circumstances at the time of the investment, that a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation but for making a permanent disposition of funds, considering the probable income from the disposition and the probable safety of capital.</p> |

EXHIBIT 2 - Page 4

| State | Maintaining Entity | Outside Board Members? | Qualifications of Trustees/Board | Investment Plan | Fiduciary Duty/Actuarial Soundness Obligation |
|--|---|------------------------|--|--|--|
| <p>Virginia - Va. Code Ann. § 23-38.76 there is hereby established as a body politic and corporate and an independent agency of the Commonwealth, the Virginia College Savings Plan (the Plan). Moneys of the Plan shall be held in the state treasury in a special nonreverting fund</p> | <p>Plan shall be administered by an 11-member Board</p> | <p>Yes</p> | <p>§23-38.79 All nonlegislative board members should have significant experience in finance, accounting, law, or investment management. The board will employ a “chief executive officer” to administer the plan and have extensive experience in management, finance, law, regulatory affairs and/or investments. The Board must appoint an Investment Advisory Committee. Members must have extensive experience in domestic or international equity or fixed-income securities, cause management, alternative investments, institutional real estate investments, or managed futures.</p> | <p>The plan has a 25 page “Statement of Investment Policy and Guidelines for Virginia529 prePAID” posted on its website. Its introductory paragraph states, "the purpose of this Statement of Investment Policy and Guidelines is to identify a set of investment objectives, guidelines and performance standards for the Virginia529 prePAID. This Statement represents the formal investment policy document for prePAID and is to be communicated to the investment managers for their use in developing appropriate investment portfolios." Section 23-38.79:1 of the Code of Virginia of 1950, as amended, provides that the Plan’s Board and the CEO are to be assisted in the directing, managing, and administration of the Plan’s assets by an Investment Advisory Committee and an Audit and Actuarial Committee, the members of which shall have and demonstrate sufficient relevant experience.</p> | <p>Pursuant to §23-38.80 of the Code, tThe Board acts as a trustee and must exercise the same judgment ofand care that a person of prudence, discretion, and intelligence exercises in their own affairsof persons of prudence, discretion, and intelligence..</p> |
| <p>Washington - RCW 28B.95.030 (1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the director of the office. The committee shall be supported by staff of the office.</p> | <p>administered by the committee on advanced tuition payment which shall be chaired by the director of the office</p> | <p>Yes</p> | <p>RCW 28B.95.100 (1) The governing body, in planning and devising the program, shall consult with the investment board, the state treasurer, the office of financial management, and the institutions of higher education.</p> | <p>RCW 28B.95.070(2) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.</p> | <p>See RCW 28B.95.070(2) cited under Investment Plan herein. RCW 28B.95.030(5)The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound. RCW 28B.95.035 No member of the committee is liable for the negligence, default, or failure of any other person or members of the committee to perform the duties of office and no member may be considered or held to be an insurer of the funds or assets of any of the advanced college tuition payment program.</p> |

STATES**HYPERLINKS**

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| Alabama | Code of Alabama |
| Florida | Stanley G. Tate Florida Prepaid College Program |
| Illinois | Illinois Prepaid Tuition Act 110 ILCS 979/1 |
| Maryland | |
| Mississippi | §37-155 (2013) |
| Pennsylvania | |
| Texas | Tex. Educ. Code §54.6001 |
| Virginia | Statement of Investment Policy and Guidelines |
| Washington | RCW 25B.95 |