

HB

254

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 18, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/27/97

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 254

HOUSE BILL NO. 254

UNIVERSITY TUITION PAYMENT PROGRAM

"An Act relating to disclosure of public records identifying a participant in the advance college tuition payment program; relating to the composition and assets of the Alaska advance college tuition payment fund; relating to administration of the advance college tuition payment program; relating to advance college tuition payment contracts; and providing for an effective date."

recommends it be replaced the same title
 with the following committee substitute _____ a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) University

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Paul Hays</i>	✓			
<i>Car Beards</i>	✓			✓
<i>Thomas Porter</i>	✓			
<i>Mezey</i>	✓			

CHAIR'S SIGNATURE

Car Beards

FISCAL NOTE

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

BILL NO. HB 254

Revision Date:
Title: An Act relating to disclosure of public records...of the
Alaska advance college tuition payment fund.

Department Affected: **University of Alaska**
BRU: **All**
Component:

Sponsor: Representative Kelly

Requestor:

COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FD SOURCE						
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FUNDING: (Thousands of Dollars)						
1002 FEDERAL FUNDS						
1003 GF MATCH						
1004 GENERAL FUND						
1006 GF/MHTLA						
OTHER						
TOTAL FUNDING	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Marvlou Burton
 Division: Statewide Budget Office
 Approved by:  Marvlou Burton, Director
 Agency: Statewide Budget Office

Phone: 463-3086
 Date: 4/21/97
 Date: 4/21/97

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



University of Alaska
Statewide System of Higher Education

THE ALASKA ADVANCE COLLEGE TUITION PAYMENT FUND

The Alaska Advance College Tuition (ACT) Payment Fund, as established in 1990 under AS 14.40.803, was created by the legislature to provide an incentive for Alaskans of all ages to continue and complete their secondary and post-secondary education. The ACT plan provides for future redemption or refund of ACT credits for payment of tuition and other qualified higher education expenses at the University of Alaska or any eligible college, university or vocational/technical institution.

The ACT fund consists of permanent fund dividend (PFD) and cash contributions under the terms of an advance college tuition payment contract. Under the PFD program, half of a participating individual's annual PFD dividend can be deposited directly into the ACT fund. Currently, there are over 6,300 pre-paid tuition contracts in place totaling approximately \$17.6 million. The Commissioner of Revenue is the custodian of the fund and the University of Alaska Board of Regents administers the program.

P.L. 104-188, signed into law on August 20, 1996, included a provision of the Internal Revenue Code (Section 529) that defined the federal tax treatment of qualified state tuition programs, thereby clarifying the tax-exempt status of the ACT fund and the tax-deferred status of a participant's earnings on any increase in value of ACT credits prior to actual use. Congress has given states with pre-paid tuition programs until August 1997 to bring their plans into conformance with the new law. The University Board of Regents has revised the ACT plan to conform with federal legislation; however, state statute changes are also necessary to better assure full compliance. Although the Internal Revenue Service will make any final determination, failure to pass conforming state legislation could result in retroactive taxation of the ACT program and its participants back to 1991 and virtually eliminate the financial viability of the program.

House Bill 254
Sectional Analysis
Advance College Tuition (ACT) Program

Purpose of the bill:

The bill is intended primarily to conform the state statutes related to the Advance College Tuition payment plan with federal tax legislation passed by Congress with the help of Senators Murkowski and Stevens as part of the Small Business Job Protection Act in August 1996. On February 14, 1997, the Board of Regents adopted a revised ACT Plan which was intended to conform the Plan and operation of the program to the new requirements. Congress has given prepaid tuition programs until August 1997 to bring their plans into conformance with the new law. The Internal Revenue Service (IRS) will make all determinations regarding compliance and have not yet issued any regulations or guidelines on the issues. Although the university believes that the revised ACT Plan adopted by the Board of Regents in February is adequate to comply with the new law, the proposed changes to the statute included herein will be of substantial assistance in making that argument with the IRS. Failure to comply with the new tax law in a timely manner could result in retroactive taxation of the program back to 1991 and destroy the financial viability of the program.

Section 1

AS 09.25.120(a) is amended to limit access of public records requests for personal identifying information of participants in the ACT program. The ACT records include social security numbers of purchasers and beneficiaries and personal financial information regarding amounts deposited with the Fund and the values of any participants interest in the program.

Section 2

AS 14.40.803(b)(2) is amended to eliminate unnecessary wording regarding contributions to the fund, if any.

House Bill 254, Sectional Analysis
Advance College Tuition Program

Section 3

AS 14.40.803(c) is amended to authorize payments to other eligible educational institutions, if payments to other institutions are required. Internal Revenue Service (IRS) regulations are expected to provide certain safe harbor provisions to qualified state tuition programs if payments are made directly to an eligible educational institution. An "eligible educational institution" is a defined term under the Internal Revenue Code (Code).

Section 4

AS 14.40.805(11) is amended to add the word "awards" in order to make the terminology the same as that used in AS 14.40.803(c).

Section 5

AS 14.40.809(a) is amended to clarify that ACT credits can be used for payment of "qualified higher education expenses," which are defined in the Code (basically tuition, fees, books, supplies, and potentially room and board at some future time). This change is beneficial to participants in that it allows tax deferred savings for certain expenses in addition to pure tuition. It also limits the sale of tax deferred ACT credits to purposes of funding "qualified higher education expenses" as required by federal law. In order for a prepaid tuition plan to be exempt from federal income tax, redemptions must be limited to use for "qualified higher education expenses" at an "eligible educational institution."

AS 14.40.809(a) is amended to clarify that students can utilize ACT credits for tuition and qualified expenses at other "eligible institutions." This change is beneficial to participants in that credits can be redeemed for use at institutions other than the University of Alaska. It also limits the sale of tax deferred ACT credits to use at an eligible institution as required by federal law. In order for a prepaid tuition plan to be exempt from federal income tax, redemptions must be limited to use for "qualified higher education expenses" at an "eligible educational institution."

AS 14.40.809(b)(2) is amended to indicate that the formal Plan adopted by the Board of Regents is part of the contract with the purchaser. This is intended to emphasize the fact that the terms and conditions of the ACT Plan will be deemed part of the ACT contract.

House Bill 254, Sectional Analysis
Advance College Tuition Program

AS 14.40.809(b)(4) is amended to allow the Board of Regents to enter into reciprocal agreements with other eligible educational institutions or qualified state tuition programs as considered beneficial by the Board of Regents. The Code provides for rollover provisions which are yet to be defined in IRS regulations. The university believes that it may be advantageous for participants or for qualified state programs to allow reciprocal transfers of participants between contracts, institutions, or between state programs. Although reciprocal agreements with Sheldon Jackson University and Alaska Pacific University have been authorized by statute, uncertain tax treatment of the program itself and the benefits to participants has made consideration of any such agreement unfeasible.

AS 14.40.809(b)(5) is deleted as unnecessary. This provision was added to the statutes in an effort to seek exemption of the ACT program income tax as an integral part of a tax exempt instrumentality of the state. Passage of Section 529 of the Internal Revenue Code last year eliminated the need for this provision. The commitments under the ACT Plan are, and will continue to be, a contractual obligation of the university in accordance with the terms and conditions of the ACT Plan; however, the university does not intend to make ACT participants a special or preferred class of creditors.

Section 6

AS 14.40.811(a)(1) is amended to delete the provisions related to installment contracts. This provision was included in the law prior to development of the ACT program. It was intended to apply to a situation where a purchaser would agree to payment for four years of education to be paid in installments in advance of coming to school. This provision is currently nonfunctional because the ACT program developed into a unitized program, where a purchaser receives the number of units of education that were paid for rather than making a contractual commitment to make payments in the future. Under the ACT program, there is no commitment to purchase or pay for any specified number of additional units or credits.

AS 14.40.811(a)(2),(3), and (5) are amended to clarify some of the essential information which is required for a prepaid tuition contract including name and date of birth of the purchaser and the beneficiary (prospective student), the number of credits purchased, and the commitment by the Board of Regents to provide education to the beneficiary in accordance with the terms and conditions of the Plan.

House Bill 254, Sectional Analysis
Advance College Tuition Program

AS 14.40.811(a)(7) is amended to clarify the Board of Regents will make whatever terms and condition are required by the Internal Revenue Code part of the contract with participants of the program.

Section 7

AS 14.40.817(1) is amended to clarify that "contract" as used in AS 14.40.803 - 14.40.817 means an ACT Contract.

AS 14.40.817(2) is amended to make the definition of a beneficiary under state statute the same as the definition under the Internal Revenue Code. The concept of residency for eligibility is unchanged and is retained in the formal Plan adopted by the Board of Regents.

AS 14.40. 817(4) and (8) are added to adopt the same meaning for an "eligible educational institution" and "qualified higher education expenses" as provided by the Internal Revenue Code. These definitions are critical to federal tax treatment under the Code.

AS 14.40. 817(7) is amended to clarify who is the contracting party or purchaser and to accommodate situations where payments under a contract are made by persons, such as grandparents, who are not the formally named as a purchaser or participant under a contract.

University of Alaska

Advance College Tuition Payment Plan

As Amended and Restated Effective January 1, 1997

**Approved and Adopted by the University of Alaska Board of Regents
February 14, 1997**

P R E A M B L E

This amended and restated advance college tuition payment plan (hereinafter referred to as the "Plan" and known as the "University of Alaska Advance College Tuition Payment Plan") is adopted to be effective January 1, 1997, except as provided herein, by the University of Alaska (hereinafter referred to as the "University").

W I T N E S S E T H:

WHEREAS, the University by resolution of the Board of Regents established this Plan effective April 1, 1991 for the primary purpose of enhancing the University's ability to provide for the education of the people of Alaska; and

WHEREAS, the Plan is intended to provide an incentive for younger Alaskans to achieve higher academic standards of performance in middle and high school; and

WHEREAS, the Plan is intended to provide an incentive for Alaskans of all ages to continue and complete their secondary and postsecondary education; and

WHEREAS, the Plan is intended to provide affordable access to postsecondary education at the University of Alaska; and

WHEREAS, the Plan is expected to make the benefit of guaranteed tuition at the University of Alaska available to all Alaskans; and

WHEREAS, the Plan is expected to provide prepaid tuition scholarship benefits for Alaskan youths; and

WHEREAS, the Plan is established pursuant to Alaska Statutes, including AS 14.40.803 *et seq.* as currently adopted or as may subsequently be amended; and

WHEREAS, to effectuate the Plan, the Board of Regents established a Plan Administrative Committee to carry out the day-to-day administration of the Plan at the direction of the President; and

WHEREAS, the Plan is intended to be exempt from income tax under the Internal Revenue Code, Section 529, as a qualified state tuition program, and Section 115, as an integral program of the University of Alaska, an instrumentality of the State of Alaska,

NOW, THEREFORE, effective January 1, 1997, except as provided herein, the University of Alaska Board of Regents does hereby approve and adopt this amendment and restatement of the Plan established April 1, 1991.

SECTION 1 Definitions

The terms and phrases defined in this section have the following meanings throughout the Plan.

- 1.1 **ACT Credit or Credit** - means a unit of Tuition equivalent to one academic upper division resident credit hour charge at the University of Alaska purchased under an Advance College Tuition Payment Contract.
- 1.2 **Advance College Tuition Payment Contract or Contract** - means a contract entered into by the Board and a Purchaser for a Beneficiary in accordance with the Plan. Contracts entered into on or after January 1, 1997 shall be deemed effective upon written notice sent by the Plan Administrator to the Purchaser acknowledging receipt and acceptance of the Purchase Price. The written notice shall constitute the Contract and shall specify that the Plan is an integral part of the Contract.
- 1.3 **Alternate Beneficiary** - means an individual designated to receive benefits under a Contract if the Primary Beneficiary is ineligible to receive benefits or a refund under the Plan or has executed a Waiver of Rights.
- 1.4 **Beneficiary** - means an individual designated to receive benefits under a Contract issued in accordance with the Plan.
- 1.5 **Board** - means the Board of Regents of the University of Alaska.
- 1.6 **Cancellation Value** - means an amount equal to the Refund Value of an ACT Credit less a 5 percent (5%) cancellation penalty; however, such value shall not be less than the remaining Cost Basis of the respective ACT Credits canceled.
- 1.7 **Cash Value** - means an amount equal to the Refund Value.
- 1.8 **Code** - means the Internal Revenue Code of the United States, as it exists and may subsequently be modified, or interpreted by related regulations, revenue rulings, and official announcements or statements of the Internal Revenue Service.
- 1.9 **Conclusive or Conclusive Determination** - means a determination which shall be presumed correct unless clear and convincing evidence is provided to refute such determination.
- 1.10 **Contract Earnings** - means the annual change in value assigned to a Contract based on published investment index rates selected by the Board and adjusted for actuarial excesses/deficiencies or other adjustments as approved by the Board. The current approved index is the Lipper US Treasury Money Market Index.
- 1.11 **Contracting Party** - means the Purchaser of a Contract or, if the Purchaser is an Unemancipated Minor, the person acting on behalf of the minor in contracting with the University to provide educational benefits to a Beneficiary and making payments to the Fund for that purpose.
- 1.12 **Cost Basis** - means an amount equal to the payments under a Contract, adjusted for the portion of such payments applied to fees, redemptions, refunds, and transfers.

University of Alaska
Advance College Tuition Payment Plan
As Amended and Restated Effective January 1, 1997

- 1.13 **Eligible Institution** - means an accredited nonprofit postsecondary higher education or vocational/technical education institution which meets the criteria described in Section 135(c)(3) of the Code. [In general, most traditional accredited nonprofit colleges, universities, and vocational/technical institutions meet the qualifications for an Eligible Institution.]
- 1.14 **Fund** - means the Advance College Tuition Payment Fund established under AS 14.40.803.
- 1.15 **Graduation Incentive Award** - means a redemption premium payable by the Fund to or on behalf of a specified Beneficiary upon notice of attainment of a degree or certificate as provided in Section 6 of the Plan.
- 1.16 **Member Of The Family** - shall have the same meaning as given such term in Section 2032(A)(e)(2) of the Code, as follows: with respect to any individual, only (1) an ancestor of such individual, (2) the spouse of such individual, (3) a lineal descendant of such individual, of such individual's spouse, or of a parent of such individual, or (4) the spouse of any lineal descendant of such individual, of such individual's spouse, or of a parent of such individual.
- 1.17 **Plan** - means the University of Alaska Advance College Tuition Payment Plan.
- 1.18 **Plan Administrator** - means the individual(s) designated by the Plan Administrative Committee to make certain determinations and perform certain duties as specified in the Plan or delegated by the Committee.
- 1.19 **Primary Beneficiary** - means an individual designated to receive benefits under a Contract prior to any other named Beneficiaries.
- 1.20 **Purchase Price** - means the amount established by the Board to be paid for the purchase of ACT Credits.
- 1.21 **Purchaser** - means the person (or entity) who is named as Purchaser in the Contract or is deemed to be the Purchaser under Section 2.1 of the Plan.
- 1.22 **Qualified Beneficiary** - means a Beneficiary who, at the date of the initial purchase of ACT Credits, the date of redemption, or during some intervening period, is or was (1) a Resident or (2) a child or legal ward of a Resident or a graduate of the University.
- 1.23 **Qualified Higher Education Expenses** - means tuition, fees, books, supplies and equipment as described under Section 529(e)(3) of the Code.
- 1.24 **Redemption Period** - means the period from the Redemption Period Start Date to the Redemption Period End Date.
- 1.25 **Redemption Period End Date** - means the later of the fifteenth (15th) anniversary of the Redemption Period Start Date or such other date as approved by the Plan Administrator.
- 1.26 **Redemption Period Start-Date** - means the earlier of January 1 of the year the Primary Beneficiary enrolls at an Eligible Institution, or January 1 of the year following the Primary Beneficiary's 18th birthday, but in no event earlier than January 1 of the year ACT Credits under the Contract become redeemable.

**University of Alaska
Advance College Tuition Payment Plan
As Amended and Restated Effective January 1, 1997**

- 1.27 **Redemption Value** - means the total of the accumulated payments under a Contract, adjusted for Contract Earnings, redemptions, refunds, fees and other adjustments as may be approved by the Plan Administrator. The Redemption Value for an individual ACT Credit is equal to the Redemption Value of a Contract divided by the number of outstanding ACT Credits.
- 1.28 **Refund Value** - means an amount equal to the Redemption Value of an ACT Credit under a Contract less a 7.5 percent (7.5%) discount; however, such value shall not be less than the remaining Cost Basis of the respective ACT Credits refunded.
- 1.29 **Resident** - means an individual who is living in the state of Alaska and has declared the intent to remain in Alaska indefinitely.
- 1.30 **Scholarship Credit** - means a unit of credit for Tuition awarded as a prepaid tuition scholarship under Section 7 of the Plan.
- 1.31 **Statement of Nonparticipation** - means a certification by a Primary Beneficiary, in a form acceptable to the Plan Administrator, that he or she does not plan on attending or continuing to attend an Eligible Institution.
- 1.32 **Tuition** - means the basic charge established by the Board of Regents that students are required to pay as a condition of enrollment at the University of Alaska for courses offered for credit. It does not include student fees, administrative fees, course fees, use fees, self-support fees, or other fees.
- 1.33 **Tuition Guarantee Supplement** - means an amount equal to the excess of the per credit Tuition Value over the average Redemption Value of the Beneficiary's ACT Credits, times the number of ACT Credits redeemed for Tuition at the University of Alaska for the subject registration period. If ACT Credits are redeemed for graduate tuition, the number of ACT Credits redeemed, for purposes of this computation, shall be calculated at two ACT Credits for each graduate tuition credit hour charge to the extent that the calculated number of ACT Credits redeemed for Tuition does not exceed the total ACT Credits redeemed by the Beneficiary for the subject registration period.
- 1.34 **Tuition Value** - means the value of an ACT Credit, as determined by the Board, based on the redemption of such Credit at the then current upper division resident undergraduate tuition rate at the University of Alaska for the subject registration period.
- 1.35 **Unemancipated Minor** - means a person under the age of 18, but excluding (1) a married person of age 16 or older, and (2) a person of age 16 or older who has been emancipated by court order.
- 1.36 **University** - means the University of Alaska.
- 1.37 **Waiver or Waiver of Rights** - means a written statement by a Beneficiary, in a form acceptable to the Plan Administrator, that he or she has relinquished all rights to unused ACT Credits issued under a Contract.

SECTION 2 ACT Credits

2.1 Issuance

ACT Credits shall be issued at the Purchase Price established by the Board. Payments to the Fund under this Plan shall be considered an offer by the Purchaser to enter into a Contract for the purchase of educational services at the Purchase Price established by the Board in accordance with the terms of the Plan. Upon acceptance of the offer through written notice sent pursuant to Section 1.2 of the Plan, ACT Credits shall be issued in the name of the Purchaser, unless another individual is specifically named as Purchaser in the written Contract. The Purchaser will be deemed to be the Primary Beneficiary, unless another individual is specifically named as Purchaser in the Contract.

Prior to January 1, 1997, Alaska permanent fund dividend and other receipts for which a Contract had not been completed and accepted were considered under the Plan to be non-interest bearing deposits subject to refund upon receipt of a request for withdrawal. For all unapplied payments and deposits received prior to January 1, 1997, a Contract will be considered to have been issued under the Plan, as amended, as of December 31 of the initial year of receipt of funds and ACT Credits issued at the Purchase Price for the respective year of receipt under the criteria established in this subsection of the Plan.

2.2 Minimum Purchase

The minimum purchase of ACT Credits under a Contract is three (3) ACT Credits for an initial purchase and one (1) ACT Credit for any subsequent purchase, unless otherwise approved by the Plan Administrator.

2.3 Maximum ACT Credit Purchases

The maximum number of ACT Credits which can be purchased by or on behalf of a Beneficiary shall not exceed the greater of 240 ACT Credits or such other number of ACT Credits, as determined by the Plan Administrative Committee, based on the estimated number of ACT Credits generally required to fund Tuition and other Qualified Higher Education Expenses at the University of Alaska for a period of five years.

SECTION 3 Redemption

3.1 Redemption For Qualified Higher Education Expenses

ACT Credits may be redeemed by the Primary Beneficiary at their Redemption Value for payment of tuition and other Qualified Higher Education Expenses at the University of Alaska or any Eligible Institution. Such redemptions shall be limited to the estimated amount required to fund Tuition and other Qualified Higher Education Expenses described in Section 1.23 of the Plan, as determined for each semester or registration period by the Plan Administrative Committee. The maximum redemption amounts shall be published for each semester or general registration period by the Plan Administrator.

The Primary Beneficiary must certify, in a form satisfactory to the Plan Administrator, that the proceeds of such redemptions shall be used exclusively for tuition and other Qualified Higher Education Expenses.

3.2 University of Alaska Tuition Guarantee Supplement

The University of Alaska guarantees that, subject to the terms and conditions of the Plan, the Primary Beneficiary will be entitled to redeem ACT Credits for Tuition at the University of Alaska regardless of the amount paid for such ACT Credits, the Redemption Value, or the cost of Tuition at the time of redemption. The guarantee applies only to ACT Credits redeemed for Tuition at the University of Alaska.

The Primary Beneficiary shall receive a Tuition Guarantee Supplement as defined in Section 1.33 of the Plan as a supplemental award provided for the payment or waiver of Tuition at the University of Alaska when the average Redemption Value of the Beneficiary's ACT Credits is less than the then current Tuition Value of an ACT Credit.

Until procedures necessary for the processing of a Tuition Guarantee Supplement can be implemented (estimated to be fall 1997), the Plan Administrator shall redeem ACT Credits for Tuition at the University of Alaska at one ACT Credit for each upper division credit hour charge, or at a prorated equivalent based on the then current tuition rates for lower division or graduate credit hour charges (for example, if one upper division credit hour charge at \$77 is equivalent to one ACT Credit, then one lower division credit hour charge at \$70 would be equivalent to 0.9 ACT Credits). This interim procedure is intended to result in a redemption similar in value to a redemption under a Tuition Guarantee Supplement.

3.3 Qualification of a Beneficiary to Receive Benefits

Only a Qualified Beneficiary is eligible to redeem ACT Credits or to receive a Tuition Guarantee Supplement. A Qualified Beneficiary is also eligible for resident Tuition for all ACT Credits redeemed for Tuition at the University of Alaska, regardless of his or her then current residency status.

3.4 Waiting Period

ACT Credits issued after December 31, 1996 may not be redeemed for at least two full calendar years after the effective date of issuance as determined on a first-in, first-out basis. ACT Credits issued prior to January 1, 1997 may not be redeemed for at least two full years after the effective date of issuance. The effective date of issuance shall be the date assigned by the Plan Administrator, based on date of receipt of funds, proper execution of a Contract, or other considerations.

3.5 Order of Redemptions

To the extent eligible for redemption, ACT Credit redemptions shall be applied sequentially to applicable Contracts of the Primary Beneficiary beginning with the Contract with the earliest effective date and the lowest numbered Contract if two or more Contracts have the same effective date. The Plan Administrator may approve an alternate

order of redemption. Determinations made by the Plan Administrator under this subsection are conclusive.

3.6 Advance Notice of Redemption Requests

All requests for redemption must be made in writing in a form satisfactory to the Plan Administrator. Applications for redemption will be processed as soon as practicable after receipt by the Plan Administrator; however, application must be made sixty (60) days in advance of the expected payment date to allow adequate time for processing.

3.7 Alternate Beneficiary Redemption

An Alternate Beneficiary may not redeem ACT Credits under a Contract, unless he or she replaces or is substituted for the Primary Beneficiary in accordance with Section 5 of the Plan.

3.8 Redemption Period Extension

ACT Credits may only be redeemed during the applicable Redemption Period. The Redemption Period End Date shall be automatically extended to December 31 of the sixth calendar year after appointment or substitution of a new Primary Beneficiary under a Contract, if such date is later than the original Redemption Period End Date. The Plan Administrator may approve an extension of the Redemption Period End Date when the circumstances causing the delay in utilization are clearly beyond the control of the Beneficiary.

3.9 Expiration

ACT Credits expire if not redeemed or refunded prior to the Redemption Period End Date as defined in Section 1.25 of the Plan. An expired ACT Credit shall have no value.

SECTION 4 Refunds

4.1 Disability

A refund of the Redemption Value of unused ACT Credits under a Contract shall be made to the Primary Beneficiary upon submission of evidence, to the satisfaction of the Plan Administrator, that the Primary Beneficiary has become so disabled that he or she can no longer complete his or her education. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.2 Death

Unless an Alternate Beneficiary is named in the Contract, a refund of the Redemption Value of unused ACT Credits under the Contract shall be made to the estate of the Primary Beneficiary upon submission of evidence, to the satisfaction of the Plan Administrator, of the death of the Primary Beneficiary.

4.3 Attendance at an Eligible Institution Other than the University of Alaska

A refund of the Redemption Value of ACT Credits shall be made to the Primary Beneficiary for payment of Qualified Higher Education Expenses during periods of attendance at an Eligible Institution other than the University of Alaska. Such refunds shall be treated as redemptions under Section 3.1 of the Plan.

4.4 Attendance Under Scholarships, Tuition Waivers, or Tuition Allowances

A refund of the Redemption Value of ACT Credits shall be made to the Primary Beneficiary, upon submission of evidence satisfactory to the Plan Administrator that the Primary Beneficiary has received a scholarship, tuition waiver, or tuition allowance described in Code Section 135(d)(1)(B) or (C), to the extent such refund amount does not exceed the amount of the scholarship or tuition allowance. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.5 Attendance During a Prior Period

A refund of the Refund Value for unredeemed ACT Credits at an equivalency of 1.6 ACT Credits per academic credit hour attempted shall be made to a Primary Beneficiary upon submission of evidence, satisfactory to the Plan Administrator, of regular attendance at an Eligible Institution during the Redemption Period. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.6 Attainment of a Degree During a Prior Period

For Contracts issued prior to January 1, 1997, a refund of the Refund Value for any unredeemed ACT Credits shall be made to a Primary Beneficiary upon submission of evidence, satisfactory to the Plan Administrator, of regular attendance and attainment of a degree or certificate at an Eligible Institution during the Redemption Period. For Contracts issued after December 31, 1996, a refund of the Refund Value for any unredeemed ACT Credits shall be treated as a refund for nonparticipation under Section 4.7 of the Plan. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.7 Failure to be Admitted

A refund of the Refund Value for any unredeemed ACT Credits under a Contract shall be made to the Purchaser, unless an Alternate Beneficiary is named in the Contract, upon submission of evidence, to the satisfaction of the Plan Administrator, of the Primary Beneficiary's failure to be admitted to the University of Alaska after making proper application. For Contracts issued prior to January 1, 1997, refunds for failure to be admitted shall be made to the Primary Beneficiary rather than the Purchaser. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.8 Nonparticipation

A refund of the Refund Value for any unredeemed ACT Credits under a Contract shall be made to the Purchaser, unless an Alternate Beneficiary is named in the Contract, if the Primary Beneficiary has reached the age of eighteen and decides not to attend or continue

to attend an Eligible Institution or to participate in the Plan. The Primary Beneficiary must submit a Statement of Nonparticipation to the Plan Administrator. For Contracts issued prior to January 1, 1997, refunds for nonparticipation shall be made to the Primary Beneficiary rather than the Purchaser, and payment shall be deferred as provided in Section 4.15. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.9 ACT Credit or Contract Cancellation

A refund of the Cancellation Value of any unused ACT Credits may be made to the Purchaser. All requests for cancellation must be made in writing, in a form satisfactory to the Plan Administrator, include Waivers of Rights by all Beneficiaries, and the consent of the Contracting Party, if the Purchaser is an Unemancipated Minor, unless such consent is waived by the Plan Administrator. If the Purchaser, the Primary Beneficiary, or an Alternate Beneficiary is an Unemancipated Minor, a legal guardian of the respective minor must execute the required forms or Waiver. Cancellation of the Contract or ACT Credits will be at the sole discretion of the Plan Administrator. For Contracts issued prior to January 1, 1997, refunds for cancellation will be issued to the Primary Beneficiary rather than the Purchaser. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.10 Failure to meet the Requirements of a Qualified Beneficiary

Upon request, a refund of the Cancellation Value for any unredeemed ACT Credits under a Contract shall be made to the Purchaser, unless an Alternate Beneficiary is named in the Contract, if the Primary Beneficiary has reached the age of eighteen and fails to meet the requirements of a Qualified Beneficiary as defined in Section 1.22 of the Plan. The Primary Beneficiary must execute a Waiver of Rights under the Contract. All requests for refunds shall be made in writing in a form satisfactory to the Plan Administrator. For Contracts issued prior to January 1, 1997, refunds for failure to meet the requirements of a Qualified Beneficiary shall be made at the Refund Value to the Primary Beneficiary rather than the Purchaser. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.11 Time of Purchase

A refund of the Cancellation Value of the subject ACT Credits shall be made to the Purchaser, if the refund request is received by the Plan Administrator within 90 days of issuance of notice of receipt and acceptance pursuant to Section 1.2 of the Plan. All requests for such refunds must be made in writing, in a form satisfactory to the Plan Administrator. If the Purchaser is an Unemancipated Minor, the request must include the consent of the Contracting Party, unless waived by the Plan Administrator. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.12 Order of Refund

To the extent eligible for refund, ACT Credit refunds shall be applied sequentially to applicable Contracts beginning with the Contract with the earliest effective date and the lowest numbered Contract if two or more subject Contracts have the same effective date.

However, refunds for cancellation of Contracts under Section 4.10 of the Plan shall be applied on a specific contract basis as approved or determined by the Plan Administrator. The Plan Administrator may approve an alternate order of refund. Determinations made by the Plan Administrator under this subsection are Conclusive.

4.13 Alternate Beneficiaries

An Alternate Beneficiary is not entitled to a refund under a Contract, unless he or she replaces or is substituted for the Primary Beneficiary in accordance with Section 5 of the Plan. The estate of a deceased Alternate Beneficiary or the guardian of a disabled Alternate Beneficiary shall have no right to a refund.

4.14 Refund Requests

All requests for a refund must be made in writing in a form satisfactory to the Plan Administrator and include, where required, Waivers of Rights. Applications for refund will be processed as soon as practicable after receipt by the Plan Administrator; however, application must be made sixty (60) days in advance of the expected payment date to allow adequate time for processing.

4.15 Payment

Refunds shall be paid to the appropriate recipient as soon as practicable after receipt and approval of a request for refund or on such schedule as the Plan Administrator determines is reasonable under the circumstances. For Contracts issued prior to January 1, 1997, refunds for nonparticipation under Section 4.8 of the Plan shall be made in installments for up to forty-eight (48) ACT Credits, or such other number as may be determined by the Plan Administrator. Installment payments for nonparticipation refunds shall commence twelve months following approval of the refund request and continue annually thereafter until all ACT Credits under the Contract are refunded. Any undisbursed installments may be reinstated as ACT Credits without penalty at any time prior to payment.

The Plan Administrator may withhold payment under any Contract for which he or she believes there may be a dispute regarding proper authority to request a refund. Determinations made by the Plan Administrator under this subsection are Conclusive.

SECTION 5 Transfer of Benefits

5.1 Alternate Beneficiaries

Up to three Alternate Beneficiaries could be named to a Contract with an effective date prior to August 20, 1996. Subsequent to that date, no Alternate Beneficiaries may be appointed to new or existing Contracts.

5.2 Substitution or Deletion of Beneficiaries

All requests for changes in Beneficiaries must be in writing, in a form satisfactory to the Plan Administrator. The Purchaser, the Primary Beneficiary, and all Alternate Beneficiaries must consent to the substitution of any Beneficiary under a Contract. Any new Beneficiary must be a Member Of The Family of the Beneficiary being replaced.

Deletion of a Beneficiary requires execution of a Waiver of Rights by the affected Beneficiary.

If the Purchaser is an Unemancipated Minor, the Contracting Party must consent to the substitution. In addition, if the named Purchaser, the Primary Beneficiary or an Alternate Beneficiary is an Unemancipated Minor, a legal guardian of the respective minor must execute the required Waivers or consents.

No change in Beneficiaries shall be effective until it has been approved by the Plan Administrator. Determinations made by the Plan Administrator under this subsection are Conclusive.

5.3 Replacement of a Primary Beneficiary

The next named Alternate Beneficiary shall be substituted for the Primary Beneficiary under a Contract at such time as the Primary Beneficiary dies, submits a Statement of Nonparticipation, is denied admittance to the University after proper application, or completes a Waiver of Rights.

The next named Alternate Beneficiary shall also be substituted for the Primary Beneficiary under a Contract, if there has been no activity under the Contract for any six-year period subsequent to the Redemption Period Start Date, and the Primary Beneficiary does not initiate use of the ACT Credits within one year after a notice is issued by the Plan Administrator of the intent to substitute the next named Alternate Beneficiary for the Primary Beneficiary. The notice shall be sent at the request of the Alternate Beneficiary to the last reported address on file with the ACT Office. The date of substitution may be extended at the discretion of the Plan Administrator. Determinations made by the Plan Administrator under this subsection are conclusive.

5.4 Transfers by Beneficiaries

Beneficiaries may waive their rights under a Contract and the Plan but shall have no right based on their status as Beneficiary to transfer ACT Credits or to designate other Beneficiaries.

5.5 Substitution of a Named Purchaser

All requests for a change in the named Purchaser must be in writing, in a form satisfactory to the Plan Administrator, and approved by the named Purchaser being replaced. If the Purchaser is an Unemancipated Minor, the Contracting Party must consent to the replacement, and a legal guardian for the minor must execute the required approval. No change in the named Purchaser shall be effective until it has been approved by the Plan Administrator. Determinations made by the Plan Administrator under this subsection are Conclusive.

5.6 Death of the Purchaser

The Primary Beneficiary shall be substituted for the named Purchaser under the Contract, upon submission of evidence, to the satisfaction of the Plan Administrator, of the death of

the Purchaser, unless evidence, to the satisfaction of the Plan Administrator, is submitted in writing, within one year after the Purchaser's date of death, to the Plan Administrator indicating that the Purchaser's interest in the Contract was bequeathed or otherwise transferred upon death to another individual or entity. Determinations made by the Plan Administrator under this subsection are Conclusive.

SECTION 6 Graduation Incentive Awards

6.1 General

As an incentive for Alaskans to complete their postsecondary education, a Graduation Incentive Award Account may be established within the Advance College Tuition Payment Fund. The Board of Regents may allocate a portion of the actuarial excesses of the Fund, if any, to such account.

6.2 Award

A Beneficiary may receive a Graduation Incentive Award for each ACT Credit redeemed under Section 3 of the Plan in accordance with procedures to be adopted by the Board. Issuance of Graduation Incentive Awards is subject to allocation of actuarial excesses to the Graduation Incentive Award Account.

6.3 Redemption

Upon submission of evidence, to the satisfaction of the Plan Administrator, of attainment by the Beneficiary of a degree or equivalent certificate at an Eligible Institution, the Beneficiary may request redemption of Graduation Incentive Awards for direct payment to the Beneficiary or for application to Tuition at the University of Alaska. The request for redemption shall be in writing in a form satisfactory to the Plan Administrator. A refund to the Beneficiary will be subject to a 7.5 percent (7.5%) discount, if such refund is not used for tuition or other Qualified Higher Education Expenses at an Eligible Institution. The qualifying degree or equivalent certificate must have been received within six calendar years after the initial redemption of ACT Credits by the Beneficiary. Determinations made by the Plan Administrator under this subsection are Conclusive.

6.4 Transfers

Graduation Incentive Awards are not transferable.

6.5 Expiration

All Graduation Incentive Awards for a specified Beneficiary shall expire if not redeemed or refunded within six calendar years after the initial redemption of ACT Credits by the Beneficiary. An expired Graduation Incentive Credit shall have no value.

SECTION 7 Prepaid Tuition Scholarships

7.1 General

As an incentive for younger Alaskans to achieve higher academic standards of performance in middle and high school and to complete their secondary education, a Prepaid Tuition Scholarship Account may be established within the Advance College Tuition Fund. The Board of Regents may allocate a portion of the actuarial excesses of the Fund, if any, to the Prepaid Tuition Scholarship Account. In addition, receipts from appropriations and donations for tuition scholarships may be deposited to the account.

7.2 Award

Scholarship Credits may be awarded to students who attend school in Alaska in accordance with procedures to be adopted by the Board.

7.3 Redemption

Scholarship Credits shall be redeemable in the same manner as ACT Credits under Section 3 of this Plan, except that Scholarship Credits are exempt from the waiting period described in Section 3.4 of this Plan, must be redeemed prior to purchased ACT Credits, and may only be used for attendance at the University of Alaska.

The scholarship recipient must initiate use of the Scholarship Credits by December 31 of the year following his or her eighteenth birthday, or such later date as may be approved by the Plan Administrator, and continue active use (at least six Scholarship Credits per year) of the credits each calendar year.

7.4 Refunds

Scholarship Credits are not refundable, except upon termination of the Plan.

7.5 Transfers

Scholarship Credits are not transferable.

7.6 Expiration

Scholarship Credits, which are inactive for a full calendar year subsequent to the year following the scholarship recipient's eighteenth birthday, shall expire as of December 31 of the calendar year of inactivity (use of less than six Scholarship Credits). An expired Scholarship Credit shall have no value. The Plan Administrator may approve an extension of the expiration date of Scholarship Credits based on circumstances clearly beyond the control of the recipient.

SECTION 8 Other Provisions

8.1 Required Information

The Purchaser or Contracting Party shall be responsible for providing the following information to the Plan Administrator:

- (a) The name, address, date of birth, and social security or tax ID number of the named Purchaser;
- (b) The name, address, date of birth, and social security number of the Primary Beneficiary;
- (c) The name, address, date of birth, social security number, and relationship to the next preceding Beneficiary for all Alternate Beneficiaries, if any; and
- (d) The name, address, and social security numbers of the legal guardians or others authorized to act on behalf of an Unemancipated Minor named in the Contract as the Purchaser, the Primary Beneficiary, and/or an Alternate Beneficiary.

If the Purchaser or the Contracting Party fail to provide such information, the Plan Administrator, at his or her sole discretion, may make determinations as to the status of participants as Purchasers, Contracting Parties, or Beneficiaries, and to the proper application of payments to Contracts. The Purchaser shall be deemed to be the Primary Beneficiary, unless another individual is named in the Contract. Determinations made by the Plan Administrator under this subsection are Conclusive.

8.2 Miscellaneous

- (a) For purposes of the Contract and the Plan, if the Purchaser is an Unemancipated Minor, a parent or legal guardian shall be considered the Contracting Party and may be required to sign all forms and relevant documents.
- (b) Each Contract shall have, and be limited to, one named Purchaser, and to one Contracting Party if the Purchaser is an Unemancipated Minor.
- (c) A Contract shall have no more than one named Primary Beneficiary at any one time.
- (d) A Purchaser and/or Beneficiary may have more than one Contract under the Plan.
- (e) Purchase of ACIT Credits may only be made in cash, including dividend distributions from the Alaska Permanent Fund.
- (f) Neither the Purchaser, the Contracting Party, nor any Beneficiary shall have control of the investment of any funds under this Plan.
- (g) Transaction processing and other authorized fees may be deducted from the Redemption Value of a Contract, in accordance with procedures approved by the Plan Administrative Committee.

8.3 Expenses and Assistance

All reasonable expenses which are necessary to operate and administer the Plan as determined by the Plan Administration Committee may be paid from earnings of the Fund.

8.4 Limitations on Assignments

Benefits under the Plan and a Contract may not be assigned, sold, transferred, or encumbered except as provided by law and the Plan, and any contrary attempt to do so shall be void. The interest of a Beneficiary in benefits under the Plan or Contract shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment, or other legal process, except as provided by Alaska Statute or federal law.

8.5 Masculine and Feminine, Singular and Plural

Whenever used herein, the masculine pronouns shall include the feminine, and the singular shall include the plural whenever the context shall plainly so require.

8.6 No Additional Rights

No person shall have any right in or to a Beneficiary's interest in a Contract, or any part thereof, or under the Plan, except as and only to the extent expressly provided for in the Plan. Neither the establishment of the Plan, the granting of a tuition or scholarship benefit, nor any action of the University related to the Plan or of the Plan Administrative Committee shall be held or construed to confer upon any person any right to be or continue to be a student at the University. Nothing in the Plan or the Contract shall be construed to expand a student's rights beyond those provided in University policies, regulations and other applicable documents.

8.8 Governing Law

This Plan was adopted pursuant to Alaska Statutes and the Internal Revenue Code which are subject to modification and changes in interpretation from time to time. The provisions of law and authoritative interpretations shall take precedence over any provisions of the Plan. The Plan, as may be amended from time to time, shall take precedence over any provisions of the Contract or written representations, and the Plan, as so amended, and the provisions of law and authoritative interpretations thereof are expressly made part of the Contract. Representations which are not expressly made part of the Contract and promotional and informational materials are non-authoritative and shall have no precedence over any provision of the Plan or Contract. The Plan shall be construed in accordance with applicable federal law and the laws of the state of Alaska. Jurisdiction for any litigation arising out of the Plan shall be solely in District or Superior Court in Anchorage or Fairbanks, Alaska.

8.9 Income Tax Withholding Requirements

Benefit payments made under the Plan may well be subject to income tax reporting or withholding requirements. No representations, expressed or implied, are made herein as to the taxability of benefits or tax status of any aspect of the Plan.

8.10 Severability

If any provision of the Plan shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Plan which shall be construed as if said illegal or invalid provision had never been included.

8.11 Correction of Errors

In the event an incorrect amount is paid to or on behalf of a Purchaser or Beneficiary, such amount may be recovered from the respective Purchaser or Beneficiary, or any remaining balances or payments may be adjusted to correct the error. The processing of adjustments resulting from clerical errors or other causes which are *de minimis* in amount may be waived at the discretion of the Plan Administrator.

8.12 Reports

Records for each Contract and Beneficiary under the Plan shall be maintained on a calendar-year basis. As of December 31 each year, the University will send each Primary Beneficiary and each Purchaser a report summarizing the status of their ACT Credits, Graduation Incentive Awards, and Scholarship Credits at the address on file with the Plan Administrator. If, within 90 days after issuance of such reports, the Beneficiary or Purchaser makes no written objection to the Administrative Administrator, the report shall be deemed correct.

8.14 Plan Year

The plan year shall be the twelve consecutive month period beginning January 1 and ending December 31. There shall be a short plan year from April 1, 1991 to December 31, 1991.

8.15 Notices to Purchasers and Beneficiaries

Notices and other communications to the Purchaser, the Beneficiaries, or the legal guardians of Beneficiaries, required or contemplated under the Contract or the Plan shall be effective when mailed, postage prepaid, to the address of the Purchaser or the Beneficiary on file with the Plan Administrator. It shall be the responsibility of the Purchaser and the Beneficiary, or his or her legal guardian, to notify the Plan Administrator of all changes in name, address or legal guardian.

8.16 Notices to the Plan Administrator

Notices and other communications to the Plan Administrator or Plan Administrative Committee required or contemplated under the Contract or the Plan shall be effective when received at the Office of The Plan Administrator, Advance College Tuition Payment Plan, University of Alaska, Butrovich Building, P.O. Box 755120, 910 Yukon Drive, Fairbanks, AK 99775-5120 or such other address as provided by the Plan Administrator.

SECTION 9 Administration Of The Plan

9.1 Advance College Tuition Payment Plan Committee

The Advance College Tuition Payment Plan Administrative Committee (Committee) is established to carry out the day-to-day administration of the Plan at the direction of the President of the University. The Committee, through the President, is delegated the responsibilities and duties as set out in the Plan. The President shall appoint three or more persons to be members of the Committee. Any member may resign by delivering written resignation to the President and to the Committee chair. The President may remove or replace any member of the Committee at any time. No member of the Committee who is an employee of the University shall receive additional compensation with respect to such service.

9.2 Organization and Procedures

The President shall designate a Committee chair from the members of the Plan Administrative Committee. The chair of the Committee shall be the agent of the Plan for service of legal process. All reports required by law may be signed by the chair on behalf of its members.

The Committee shall appoint a secretary, who may or may not be a member of the Committee. The secretary shall have the primary responsibility for keeping a record of all meetings and acts of the Committee and shall have custody of all documents, the preservation of which shall be necessary or convenient to the efficient functioning of the Committee.

9.3 Authority of the Plan Administrative Committee

The Plan Administrative Committee shall have all powers necessary or appropriate to carry out its duties. Any interpretation or action by the Committee with respect to the Plan and its administration shall be conclusive and binding upon any and all parties and persons affected hereby, subject to the exclusive review procedures set forth in Section 9.5 of the Plan.

9.4 Duties of the Plan Administrative Committee

The Plan Administrative Committee shall administer the Plan in accordance with law and the terms of the Plan and Contracts. The Committee shall perform all such duties as are necessary to supervise the administration of the Plan and to control its operation in accordance with the terms thereof, which may include, but not be limited to, the following:

- (a) adopt by-laws for the regulation of its affairs and administrative rules for the operation of the Plan;
- (b) accept Contracts;
- (c) interpret the Plan and determine any question arising under the Plan, or in connection with the administration or operation thereof;
- (d) determine the eligibility for participation in the Plan;

- (e) determine the eligibility of any Beneficiary for benefit redemption, refund or transfer;
- (f) approve or deny deletions or substitutions of Beneficiaries under Contracts;
- (g) establish fees and transaction charges for the administration of Contracts and the Plan;
- (h) establish an amount which represents a reasonable allowance for Qualified Higher Education Expenses for a full-time undergraduate student at the University based on a 15 academic credit hour workload;
- (i) solicit nominations for and make recommendations on the award of Scholarship Credits under Section 7 of the Plan;
- (j) separately account for ACT Credits, Graduation Incentive Awards and Scholarship Credits for each Beneficiary under the Plan;
- (k) review and report to the Board the finances and the actuarial soundness of the Plan on a periodic basis;
- (l) respond to inquiries from the President and the Board regarding the Plan and related activities;
- (m) recommend to the President or the Board, amendments to the Plan it deems necessary;
- (n) appoint a Plan Administrator(s) to perform certain duties as specified in the Plan or delegated by the Committee; and
- (o) in accordance with University budget, employment, and procurement policies, regulations and procedures employ and engage such persons, counsel and agents, and obtain such administrative, clerical, legal, auditing, and actuarial services as it may deem necessary in carrying out the provisions of the Plan.

9.5 Dispute Procedure

(a) Requests for Determination

Any time a determination of eligibility for participation, transfer, refund, redemption, receipt of benefits, or an interpretation of Plan provisions is disputed, or a Purchaser or Beneficiary is adversely affected by an action of the University, the Plan Administrator or the Plan Administrative Committee, the individual so affected (hereinafter "Claimant") may submit a claim in writing to the Plan Administrator. Such claim must be made within a reasonable time, but in any event within one year of the subject determination, challenge, interpretation, or action. The Claimant must fully explain the basis for the request, all pertinent facts, and the proposed remedy. The claim shall be assigned to a claim reviewer, who may or may not be a member of the Committee, appointed by the Plan Administrative Committee Chair. The claim reviewer shall make such inquiries as he or she deems necessary under the circumstances. The Claimant and the Plan Administrator shall be notified of the claim reviewer's decision within 90 days after receipt of the claim or such longer period as the Plan Administrator determines appropriate under the circumstances. If the Plan Administrator fails to provide notice within such time period,

the claim will be deemed denied. Such notice will indicate the basis for the decision or interpretation and an explanation of the procedure for requesting any further review.

(b) Request for Final Review

A Claimant or the Plan Administrator who has received an adverse decision from a claim reviewer under paragraph (a) of this subsection, shall have the right to request a final review by the Plan Administrative Committee of the decision. Such request must be submitted in writing to the Plan Administrator (Committee Chair, if submitted by the Plan Administrator) within 30 days after issuance of the adverse decision by the claim reviewer. The request must fully explain the basis for the request, all pertinent facts, and the proposed remedy. If a written request for final review is not received within such 30-day period, the requesting party shall forfeit his or her right to further review and the decision of the claim reviewer shall be final and binding upon the Claimant, the University, the Committee, the Plan Administrator, and all other persons involved to the maximum extent permitted by law. The Claimant, or a duly authorized representative of the Claimant, may examine all documents pertinent to the claim.

(c) Final Review of a Claim

The Plan Administrative Committee shall consider any decision upon which a request for final review is received in accordance with paragraph (b) of this subsection. If the claim reviewer for the original claim was a member of the Committee, he or she shall abstain from deliberating and voting on the issue. The Committee may consider such information as it considers necessary and may hold a hearing, if it considers a hearing necessary, and shall issue a final written decision affirming, modifying, or setting aside the decision of the claim reviewer within 120 days after receipt of the written request for review or 180 days if special circumstances, such as the need for a hearing, require an extension. The Claimant shall be notified in writing of any such extension within 60 days following the request for final review. The decision of the Committee shall set forth the supporting rationale, the pertinent Plan provisions, and other factors upon which the decision is based. A copy of the final decision shall be furnished to the Claimant and the Plan Administrator. The decision shall be final and binding upon the Claimant, the University, the Committee, the Plan Administrator, and all other persons involved to the maximum extent permitted by law. There are no further appeals available under the Plan or within the University. Further review may only be obtained by filing an appeal with the superior court of Alaska within 30 days of the final decision in accordance with Alaska Appellate Rule 602(a)(2). Decisions of the Plan Administrative Committee shall be upheld, unless arbitrary and capricious.

(d) Exclusive Remedy

The procedure established in this Section 9.5 of the Plan is the exclusive remedy with respect to any claims for money, credits, benefits or other relief in connection with the Plan.

SECTION 10 Amendment And Termination

10.1 Amendment

Subject to any advance notice or other requirements of law, the University President is delegated authority to amend the Plan at any time, except for provisions which delegate the duties and responsibilities of the Board under law and the Plan, or may result in full or partial termination of the Plan.

Proposed amendments may be prepared at the direction of the Administrative Committee and submitted for approval to the President and the Board of Regents as applicable. Amendments under the Plan may be applied on a retroactive basis.

10.2 Rights of Purchasers and Beneficiaries

Notwithstanding the provisions of Section 10.1 of the Plan, no amendment will derogate or reduce any benefit or deprive, take away, or adversely alter any accrued right of any Purchaser or Beneficiary under a Contract issued prior to the effective date of the amendment, except as may be, in the opinion of the Plan Administrator, required by law or required to achieve or preserve the status of the Plan as a qualified state tuition program under Section 529 of the Code.

10.3 Termination of the Plan

The Board of Regents shall have the right to fully or partially terminate or discontinue the Plan or merge or consolidate the Plan with another plan at any time, subject to any legal requirements. Upon termination of the Plan, the Plan Administrative Committee shall continue to act for the purpose of complying with the prior paragraph and shall have all powers necessary or convenient to the winding up and dissolution of the Plan. While so acting, it shall be in the same status and position with respect to other persons as if the Plan remained in existence.

10.4 Distribution of the Fund on Discontinuance or Termination of Plan

In the event of discontinuance or suspension of the Plan, the University or its successor shall honor all Contracts, Graduation Incentive Awards, and Scholarship Credits previously issued under the Plan. If the University or its successor cannot meet its obligations under the Contracts or the Plan or the Plan is terminated or cannot be carried out for any reason, the Redemption Value of all ACT Credits shall be remitted to the appropriate Beneficiaries at the addresses on file with the Plan Administrator, after completion of any appropriate documentation or proceedings. Distributions for Beneficiaries who cannot be located and any unencumbered funds including funds in the Graduation Incentive Award and Prepaid Tuition Scholarship Accounts shall be forfeited to the University or its successor for the purpose of awarding scholarships to Alaska Residents. If the assets of the Fund are inadequate to make the distributions described in this subsection, such distributions shall be reduced by the amount of the deficiency on a pro rata basis after deduction of all costs of administration, and the University shall have no further liability.

SECTION 11 Indemnification

11.1 Limitation of Liability of the University and Others

The Board of Regents, the University, its officers, employees, agents, representatives, Plan Administrator, or the Plan Administrative Committee shall not incur any liability to any person for any action taken or suffered or omitted by them under the Plan, unless taken or suffered or omitted in bad faith.

11.2 Indemnification of Fiduciaries

In order to facilitate the recruitment of competent fiduciaries, the University agrees to provide the indemnification as described herein. This provision shall apply to the Board of Regents, officers of the University, the Plan Administrator, the Plan Administrative Committee, and other individuals who may be considered Plan fiduciaries. Notwithstanding the preceding, this provision shall not apply and indemnification will not be provided for any paid consultant, independent contractor, or other agent appointed under the Plan nor for the Department of Revenue, its employees, agents, or representatives.

11.3 Scope of Indemnification

The University agrees to indemnify the fiduciaries as described above for all acts taken in carrying out their responsibilities under the terms of the Plan to the fullest extent provided by law. This indemnification is intentionally broad but shall not provide indemnification for embezzlement or diversion of Plan funds for the benefit of the fiduciary. The University agrees to indemnify the fiduciaries described herein for all expenses of defending an action, including all legal fees and other costs of such defense. The University shall also indemnify the fiduciary for any monetary recovery in any court or arbitration proceeding. In addition, if the claim is settled out of court with the concurrence of the University, the University shall indemnify the fiduciary for any monetary liability under said settlement.

This provision as to indemnification, except as it applies to the Board of Regents, the University, its officers, employees, agents, representatives, Plan Administrator, or the Plan Administrative Committee serving without compensation (excluding the Department of Revenue, its employees, agents and representatives), shall only be effective if embodied in an appropriate agreement with a fiduciary.

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1 for purposes of determining total assets under clause
2 (iv) of section 368(a)(2)(F).”

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to transfers after December 31,
5 1995.

6 SEC. 1808. QUALIFIED STATE TUITION PROGRAMS.

7 (a) IN GENERAL.—Subchapter F of chapter 1 (relat-
8 ing to exempt organizations) is amended by adding at the
9 end the following new part:

10 "PART VIII—QUALIFIED STATE TUITION
11 PROGRAMS

"Sec. 529. Qualified State tuition programs.

12 "SEC. 529. QUALIFIED STATE TUITION PROGRAMS. .

13 "(a) GENERAL RULE.—A qualified State tuition pro-
14 gram shall be exempt from taxation under this subtitle.
15 Notwithstanding the preceding sentence, such program
16 shall be subject to the taxes imposed by section 511 (relat-
17 ing to imposition of tax on unrelated business income of
18 charitable organizations).

19 "(b) QUALIFIED STATE TUITION PROGRAM—For
20 purposes of this section—

21 "(1) IN GENERAL.—The term 'qualified State
22 tuition program' means a program established and
23 maintained by a State or agency or instrumentality
24 thereof—

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1 “(A) under which a person—

2 “(i) may purchase tuition credits or
3 certificates on behalf of a designated bene-
4 ficiary which entitle the beneficiary to the
5 waiver or payment of qualified higher edu-
6 cation expenses of the beneficiary, or

7 “(ii) may make contributions to an
8 account which is established for the pur-
9 pose of meeting the qualified higher edu-
10 cation expenses of the designated bene-
11 ficiary of the account, and

12 “(B) which meets the other requirements
13 of this subsection.

14 “(2) CASH CONTRIBUTIONS.—A program shall
15 not be treated as a qualified State tuition program
16 unless it provides that purchases or contributions
17 may only be made in cash.

18 “(3) REFUNDS.—A program shall not be treat-
19 ed as a qualified State tuition program unless it im-
20 poses a more than de minimis penalty on any refund
21 of earnings from the account which are not—

22 “(A) used for qualified higher education
23 expenses of the designated beneficiary,

24 “(B) made on account of the death or dis-
25 ability of the designated beneficiary, or

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1 “(C) made on account of a scholarship (or
2 allowance or payment described in section
3 135(d)(1) (B) or (C)) received by the des-
4 ignated beneficiary to the extent the amount of
5 the refund does not exceed the amount of the
6 scholarship, allowance, or payment.

7 “(4) SEPARATE ACCOUNTING.—A program shall
8 not be treated as a qualified State tuition program
9 unless it provides separate accounting for each des-
10 ignated beneficiary.

11 “(5) NO INVESTMENT DIRECTION.—A program
12 shall not be treated as a qualified State tuition pro-
13 gram unless it provides that any contributor to, or
14 designated beneficiary under, such program may not
15 direct the investment of any contributions to the
16 program (or any earnings thereon).

17 “(6) NO PLEDGING OF INTEREST AS SECUR-
18 RITY.—A program shall not be treated as a qualified
19 State tuition program if it allows any interest in the
20 program or any portion thereof to be used as secu-
21 rity for a loan.

22 “(7) PROHIBITION ON EXCESS CONTRIBU-
23 TIONS.—A program shall not be treated as a quali-
24 fied State tuition program unless it provides ade-
25 quate safeguards to prevent contributions on behalf

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1 of a designated beneficiary in excess of those nec-
2 essary to provide for the qualified higher education
3 expenses of the beneficiary.

4 "(c) TAX TREATMENT OF DESIGNATED BENE-
5 FICIARIES AND CONTRIBUTORS.—

6 "(1) IN GENERAL.—Except as otherwise pro-
7 vided in this subsection, no amount shall be includ-
8 ible in gross income of—

9 "(A) a designated beneficiary under a
10 qualified State tuition program, or

11 "(B) a contributor to such program on be-
12 half of a designated beneficiary,

13 with respect to any distribution or earnings under
14 such program.

15 "(2) CONTRIBUTIONS.—In no event shall a con-
16 tribution to a qualified State tuition program on be-
17 half of a designated beneficiary be treated as a tax-
18 able gift for purposes of chapter 12.

19 "(3) DISTRIBUTIONS.—

20 "(A) IN GENERAL.—Any distribution
21 under a qualified State tuition program shall be
22 includible in the gross income of the distributee
23 in the manner as provided under section 72 to
24 the extent not excluded from gross income
25 under any other provision of this chapter.

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1 “(B) IN-KIND DISTRIBUTIONS.—Any bene-
2 fit furnished to a designated beneficiary under
3 a qualified State tuition program shall be treat-
4 ed as a distribution to the beneficiary.

5 “(C) CHANGE IN BENEFICIARIES.—

6 “(i) ROLLOVERS.—Subparagraph (A)
7 shall not apply to that portion of any dis-
8 tribution which, within 60 days of such
9 distribution, is transferred to the credit of
10 another designated beneficiary under a
11 qualified State tuition program who is a
12 member of the family of the designated
13 beneficiary with respect to which the dis-
14 tribution was made.

15 “(ii) CHANGE IN DESIGNATED BENE-
16 FICIARIES.—Any change in the designated
17 beneficiary of an interest in a qualified
18 State tuition program shall not be treated
19 as a distribution for purposes of subpara-
20 graph (A) if the new beneficiary is a mem-
21 ber of the family of the old beneficiary.

22 “(D) OPERATING RULES.—For purposes of
23 applying section 72—

24 “(i) to the extent provided by the Sec-
25 retary, all qualified State tuition programs

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1 of which an individual is a designated ben-
2 eficiary shall be treated as one program,

3 "(ii) all distributions during a taxable
4 year shall be treated as one distribution,
5 and

6 "(iii) the value of the contract, income
7 on the contract, and investment in the con-
8 tract shall be computed as of the close of
9 the calendar year in which the taxable year
10 begins.

11 "(4) ESTATE TAX INCLUSION.—The value of
12 any interest in any qualified State tuition program
13 which is attributable to contributions made by an in-
14 dividual to such program on behalf of any des-
15 ignated beneficiary shall be includible in the gross
16 estate of the contributor for purposes of chapter 11.

17 "(5) SPECIAL RULE FOR APPLYING SECTION
18 2503(e).—For purposes of section 2503(e), the
19 waiver (or payment to an educational institution) of
20 qualified higher education expenses of a designated
21 beneficiary under a qualified State tuition program
22 shall be treated as a qualified transfer.

23 "(d) REPORTING REQUIREMENTS.—

24 "(1) IN GENERAL.—If there is a distribution to
25 any individual with respect to an interest in a quali-

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1 qualified State tuition program during any calendar year,
2 each officer or employee having control of the quali-
3 fied State tuition program or their designee shall
4 make such reports as the Secretary may require re-
5 garding such distribution to the Secretary and to the
6 designated beneficiary or the individual to whom the
7 distribution was made. Any such report shall include
8 such information as the Secretary may prescribe.

9 "(2) TIMING OF REPORTS.—Any report re-
10 quired by this subsection—

11 "(A) shall be filed at such time and in
12 such matter as the Secretary prescribes, and

13 "(B) shall be furnished to individuals not
14 later than January 31 of the calendar year fol-
15 lowing the calendar year in which such report
16 relates.

17 "(e) OTHER DEFINITIONS AND SPECIAL RULES.—
18 For purposes of this section—

19 "(1) DESIGNATED BENEFICIARY.—The term
20 'designated beneficiary' means—

21 "(A) the individual designated at the com-
22 mencement of participation in the qualified
23 State tuition program as the beneficiary of
24 amounts paid (or to be paid) to the program.

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1 “(B) in the case of a change in bene-
2 ficiaries described in subsection (c)(2)(C), the
3 individual who is the new beneficiary, and

4 “(C) in the case of an interest in a quali-
5 fied State tuition program purchased by a State
6 or local government or an organization de-
7 scribed in section 501(c)(3) and exempt from
8 taxation under section 501(a) as part of a
9 scholarship program operated by such govern-
10 ment or organization, the individual receiving
11 such interest as a scholarship.

12 “(2) MEMBER OF FAMILY.—The term ‘member
13 of the family’ has the same meaning given such term
14 as section 2032A(e)(2).

15 “(3) QUALIFIED HIGHER EDUCATION EX-
16 PENSES.—The term ‘qualified higher education ex-
17 penses’ means tuition, fees, books, supplies, and
18 equipment required for the enrollment or attendance
19 of a designated beneficiary at an eligible educational
20 institution (as defined in section 135(c)(3)).

21 “(4) APPLICATION OF SECTION 514.—An inter-
22 est in a qualified State tuition program shall not be
23 treated as debt for purposes of section 514.”.

24 (b) CONFORMING AMENDMENTS.—

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1 (1) Section 135(d)(1) is amended by striking
2 "or" at the end of subparagraph (B), by striking the
3 period at the end of subparagraph (C) and inserting
4 ", or", and by adding at the end the following new
5 subparagraph:

6 (D) a payment, waiver, or reimbursement
7 of qualified higher education expenses under a
8 qualified State tuition program (within the
9 meaning of section 529(b))."

10 (2) The table of parts for subchapter F of
11 chapter 1 is amended by adding at the end the fol-
12 lowing new item:

"Part VIII. Qualified State tuition programs."

13 (c) EFFECTIVE DATES.—

14 (1) IN GENERAL.—The amendments made by
15 this section shall apply to taxable years ending after
16 the date of the enactment of this Act.

17 (2) TRANSITION RULE.—If—

18 (A) a State or agency or instrumentality
19 thereof maintains, on the date of the enactment
20 of this Act, a program under which persons
21 may purchase tuition credits or certificates on
22 behalf of, or make contributions for education
23 expenses of, a designated beneficiary, and

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1 (B) such program meets the requirements
2 of a qualified State tuition program before the
3 later of—

4 (i) the date which is 1 year after such
5 date of enactment, or

6 (ii) the first day of the first calendar
7 quarter after the close of the first regular
8 session of the State legislature that begins
9 after such date of enactment,

10 the amendments made by this section shall
11 apply to contributions (and earnings allocable
12 thereto) made before the date such program
13 meets the requirements of such amendments
14 without regard to whether any requirements of
15 such amendments are met with respect to such
16 contributions and earnings.

17 For purposes of subparagraph (B)(ii), if a State has
18 a 2-year legislative session, each year of such session
19 shall be deemed to be a separate regular session of
20 the State legislature.

21 **SEC. 1807. ADOPTION ASSISTANCE.**

22 (a) **IN GENERAL.**—Subpart A of part IV of sub-
23 chapter A of chapter 1 (relating to nonrefundable personal
24 credits) is amended by inserting after section 22 the fol-
25 lowing new section: