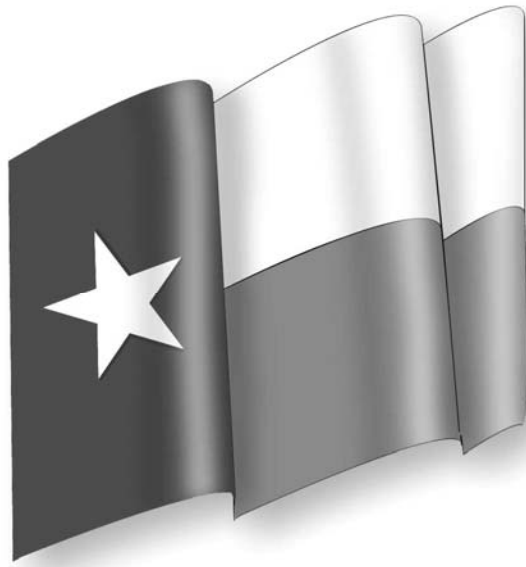


SUNSET COMMISSION DECISIONS



Prepaid Higher Education Tuition Board

January 2007

Board Information

Board at a Glance

The mission of the Prepaid Higher Education Tuition Board (Board) is to help Texas students attend college. The Board accomplishes its mission by overseeing the State's two 529 college savings programs, named after the section of the Internal Revenue Code that authorizes them. The Texas Guaranteed Tuition Plan (Prepaid Plan) allows buyers to lock in future college tuition and required fees at today's prices, and Tomorrow's College Investment Plan (Savings Plan) is a savings program that works much like a 401(k) but with after-tax dollars.

In 2003, the Board temporarily suspended enrollment in the Prepaid Plan because of the uncertain effects of the deregulation of tuition. The Board feared that, because it could not accurately predict future costs of tuition, it could potentially sell new tuition contracts at inadequate prices and jeopardize the Plan's assets. The Savings Plan remains open.

Key Facts

- ◆ **Staffing.** The Board has no staff of its own, but reimburses the Office of the Comptroller of Public Accounts for 21.5 staff to support the day-to-day operations of the Board. Because the Board contracts out administration of the Savings Plan, the 21.5 staff primarily support the Prepaid Plan.
- ◆ **Funding.** The Board receives no appropriation to operate the two plans, but instead relies on prepaid tuition contract payments, investment income, and fees to cover administrative costs and tuition benefits. In fiscal year 2005, the Board spent about \$7.6 million in Prepaid Plan administrative costs, which included staff salaries and payments to fund managers. The Board also received almost \$900,000 from the Savings Plan contractor for reimbursement of administrative and marketing expenses for that program.
- ◆ **Texas Guaranteed Tuition Plan (Prepaid Plan).** From 1996 to 2003, the Board sold more than 158,000 prepaid tuition contracts to Texas families, allowing them to pay for future college tuition and fees at current prices. With \$1.6 billion in assets at the end of fiscal year 2005, the Prepaid Plan Fund is one of the State's largest investment funds and is backed by the full faith and credit of the State. The Plan has paid almost \$151 million in tuition and fees in the last four academic years.
- ◆ **Tomorrow's College Investment Plan (Savings Plan).** By the end of fiscal year 2005, almost 16,000 account holders had invested more than \$131 million in Savings Plan accounts. The Plan has disbursed approximately \$11 million for college costs from its inception in 2002 through fiscal year 2005.

Issues/Recommendations

Issue 1 Statutory Changes Could Help Facilitate the Board's Ability to Reopen the Prepaid Plan Within a Tuition Deregulated Environment.

Recommendations

Change in Statute

1.1 Remove the weighted average requirement for any new prepaid tuition contracts the Board sells.

This recommendation would remove the requirement that any university with tuition and required fees above the weighted average of all four-year, public, Texas universities waive the difference in cost between their tuition and required fees and the weighted average amount. Because this provision is important to the soundness of tuition contracts the Board sold previously, the recommendation would only apply to new contracts issued if the Board reopens the Prepaid Plan in the future. The weighted average requirement would still apply to all Senior College contracts the Board sold from 1996 to 2003.

The Board has documented the tendency for tuition contract beneficiaries to attend more expensive universities, and this trend is likely to continue in the future. If the Plan reopens with the weighted average requirement in place, these universities would be required to bear an increasingly inequitable portion of the Plan's total tuition liabilities. With the changes recommended in this report, the Board would have more opportunities to create a self-sustaining program that is capable of paying universities the actual cost of tuition.

1.2 Authorize the Board to issue refunds for new prepaid tuition contracts if a purchaser pays more for a contract than the actual cost of the beneficiary's tuition.

This recommendation would authorize, but not require, the Board to issue refunds for Junior, Senior, and Junior-Senior College Plans, if necessary. Pricing contracts higher could help protect the Board's assets and enable the sale of new contracts, but a refund provision may be necessary to protect future purchasers' investments. The intent of the recommendation is to give the Board a tool that may help it reopen the Prepaid Plan. Refund authority for new Junior, Senior, and Junior-Senior College contracts could be handled in a similar manner as refunds for the Private College Plan.

1.3 Authorize the Board to require a delay from the contract purchase date to when the student claims benefits, allowing time for investments to grow.

This recommendation would authorize, but not require, the Board to require a maturity period before a beneficiary could use prepaid tuition benefits. Such a delay from the time a contract is purchased would ensure sufficient time for the Board's investments to grow before the beneficiary claims tuition benefits. The intent of the recommendation is to give the Board additional flexibility to protect the Plan's assets, which may help reopen the Prepaid Plan. For example, the Board could phase in new contracts slowly, initially offering plans only for newborns, and then opening enrollment further if possible.

1.4 Require the Board to reassess whether it can reopen the Prepaid Plan, no later than December 2007, and annually as long as the Plan remains closed.

Currently, state law authorizes the Board to temporarily suspend new enrollment in the Prepaid Plan, if needed to ensure the Fund's actuarial soundness. However, neither statute nor rule offer guidance on how the Board should determine when and if reopening the Plan is possible. This recommendation would require the Board to create a procedure in rule that clearly outlines criteria to use when analyzing whether the Prepaid Plan may reopen. As part of this procedure, the Board should consider the Plan's current structure and whether additional statutory changes are needed for it to reopen.

Reassessing the Plan by December 2007 would ensure consideration of the impact of any legislative changes adopted by the 80th Legislature. If the Board decides to keep the Plan closed, an annual assessment required by law would ensure that the Board revisits the potential for reopening this popular program on a regular basis.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. The Board would continue to be required by law to make decisions, including whether to reopen the Prepaid Plan, that preserve the long-term soundness of the Plan's assets.

Responses

Agency

The Texas Comptroller of Public Accounts agrees with these recommendations. Each year, the Board, in consultation with the actuary and investment consultant, reviews trends in tuition and fees to evaluate the financial soundness of the Prepaid Plan. Management will continue to work closely with the investment consultant and actuary to provide the Board with relevant trends and available options to reopen the Prepaid Plan. (Jesse Ancira, Associate Deputy Comptroller, on behalf of the Comptroller, Chair of the Prepaid Higher Education Tuition Board – Texas Comptroller of Public Accounts)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 1.1 through 1.4.

Commission Decision: Adopted Recommendations 1.1 through 1.3, and adopted Recommendation 1.4 with a modification to remove the requirement that the Board conduct the first annual assessment by December 2007.

Issue 2 The Savings Plan Could Benefit From the Board's Reconsideration of Restrictions in Its Request for Proposals and the Cost-Effectiveness of Its Advertising.

Recommendations

Management Action

2.1 The Board should consider restructuring its next Request for Proposals for the Savings Plan manager to encourage a wider variety of respondents.

This recommendation would direct the Board to consider restructuring the plan manager RFP to improve the volume and quality of respondents. The Board should evaluate eliminating the current requirement that the plan manager exclusively manage the Texas plan. By removing this requirement, the Board would allow many additional firms with good standing in the 529 market to respond. In addition, the Board should reconsider the marketing cost charged to the plan manager to ensure that the required contribution does not unreasonably restrict the RFP respondent pool. By requiring the plan manager to contribute more than the firm can expect to profit from accounts, the Board may have discouraged potential respondents. These considerations would impact the Board's next review of the plan manager contract, scheduled for August 2007.

2.2 The Board should regularly evaluate the impact of its advertising campaign to ensure that it is cost-effectively generating new enrollment.

The Board should routinely assess the advertising plan for the State's Savings Plan, and for the Prepaid Plan should enrollment reopen. The Board should require that the contracted advertising vendor provide regular reports that assess the volume of new business generated by the advertising campaign. The advertising vendor could work with the plan manager to collect information pertaining to how account holders learn about the Plan. Information could be collected on enrollment forms or through calls to the call center. In addition, the advertising vendor and the Board should regularly evaluate the existing advertising plan to ensure that it provides the best mix of advertising to effectively reach the broadest segment of the Texas college-bound population.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

Responses

Agency

The Texas Comptroller of Public Accounts agrees with these recommendations.

Recommendation 2.1: In November 2006, the Board directed staff to begin working on the issuance of a Request for Proposal for a new manager to market the College Savings Plan. Staff plans to secure the services of an independent consultant with experience contracting for management of Section 529 plans. Staff will work with the investment consultant to the Board to ensure that the investment vehicles are attractive and comparable to other 529 plans.

Recommendation 2.2: At the end of each marketing campaign, the marketing agent evaluates the markets in which TV spots aired, including the number of calls from potential prospects, contracts, and material distributed during this period. Also captured is demographic information. Management works with the advertising agent to provide a concise report that allows the Board to evaluate the effectiveness of the marketing campaign on the targeted demographics. The Board will continue to evaluate the effectiveness of the marketing campaign and will consider additional factors and criteria by which to measure the success of the advertising campaign.

(Jesse Ancira, Associate Deputy Comptroller, on behalf of the Comptroller, Chair of the Prepaid Higher Education Tuition Board – Texas Comptroller of Public Accounts)

Staff comment: The Board’s contracted Savings Plan marketing agent typically provides only a verbal report to the Board after a television ad airs, with no written documentation for the Board’s evaluation. While the marketing agent can show that the zip codes of new Savings Plan account holders happen to be in areas where the television ads aired, the agent is unable to show that the ads, as opposed to some other factors, encouraged individuals to open new accounts. The Board’s contracted Savings Plan manager does not ask new account holders how they learned about the Plan.

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 2.1 and 2.2.

Commission Decision: Adopted Recommendations 2.1 and 2.2.

Issue 3 The Board's Statute Lacks Ethics Provisions That Are Important Safeguards for Boards With Significant Investment Oversight.

Recommendation

Change in Statute

3.1 Require in law an ethics policy for Board members and staff that includes disclosure of conflicts of interest and recusal when conflicts exist.

This recommendation would add a provision to the Board's statute that would require the Board to maintain an ethics policy that addresses the following issues for Board members and staff:

- ◆ general ethical standards;
- ◆ conflicts of interest, including disclosure and recusal requirements;
- ◆ acceptance of gifts and entertainment; and
- ◆ compliance with, and enforcement of, the ethics policy.

The Board's current policy contains these provisions, so the Board would not need to develop a new policy. Placing these requirements in statute would help ensure that future Board members adhere to an ethics policy. Placing ethics requirements in statute also makes them more transparent to the public and to the investors for whom the Board is responsible.

Fiscal Implication

This recommendation would not have a fiscal impact to the State.

Responses

Agency

The Texas Comptroller of Public Accounts agrees that expressly including ethics policy requirements in statute will serve to strengthen the Board's current policy. The Board's current ethics policy includes the majority of the Sunset staff recommendations regarding the disclosure of conflicts of interest. (Jesse Ancira, Associate Deputy Comptroller, on behalf of the Comptroller, Chair of the Prepaid Higher Education Tuition Board – Texas Comptroller of Public Accounts)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendation 3.1.

Commission Decision: Adopted Recommendation 3.1.

Issue 4 Texas Has a Continuing Need for the Prepaid Higher Education Tuition Board.

Recommendation

Change in Statute

4.1 Continue the Prepaid Higher Education Tuition Board for 12 years.

This recommendation would continue the Board, housed at the Comptroller of Public Accounts, for the standard 12-year period.

Fiscal Implication

Because the Prepaid Higher Education Tuition Board receives no state appropriations, continuing the Board for 12 years would have no fiscal impact to the State.

Responses _____

Agency

The Texas Comptroller of Public Accounts agrees with the recommendation to continue the Prepaid Higher Education Tuition Board for 12 years. (Jesse Ancira, Associate Deputy Comptroller, on behalf of the Comptroller, Chair of the Prepaid Higher Education Tuition Board – Texas Comptroller of Public Accounts)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendation 4.1.

Commission Decision: Adopted Recommendation 4.1.

Across-the-Board Recommendations

Prepaid Higher Education Tuition Board

Recommendations	Across-the-Board Provisions
Do Not Apply	1. Require public membership on the agency’s policymaking body.
Modify	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency’s policymaking body.
Do Not Apply	4. Provide that the Governor designate the presiding officer of the policymaking body.
Modify	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Do Not Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

New Issues

New Issues

The following issue was raised in addition to the issues raised in the staff report. This issue is numbered sequentially to follow the staff's recommendations.

5. Direct the Board to study how it could leverage the thousands of students with Prepaid Plan benefits to secure discounts or other incentives for Plan beneficiaries from Texas universities. (Howard Wolf, Sunset Commission member)

Recommended Action: Staff makes no recommendation on the new issue.

Commission Decision: The Commission adopted the new issue.

